



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-12-2025

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THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

**WP No. 17104 of 2012
and MP No. 1 of 2012**

M/s Nawab Sikohul Mulk Dilawar Jung
Bahudur Wakf, Rep.By Its Power Agent,
P.Dharamchand, S/o.Late Sri.J.D.Pannalal,
No.76, 238, R.K.Mutt Road, Chennai-4.

Petitioner(s)

Vs.

1. The State Of Tamil Nadu
Rep. by The Secretary,
Housing And Urban Development Department,
Fort. St. George, Chennai-9

2.The Member Secretary
Chennai Metropolitan Development Authority,
(CMDA), Chennai-8

Respondent(s)

PRAYER

calling for the records of the 1st respondent dated 10.3.2011 in G.O.(3D) No.16, Housing and Urban Development (UD-V) Department, quash the same and direct the respondents to issue planning permit to the petitioner's property measuring 90,999 sq.ft in R.S. Nos. 1022/1, 1022/2 and 1022/8 abutting Dr.Natesan Road and Lloyds Road, Chennai-5. Amended as Writ of Certiorarified Mandamus, calling for the records of the 1st Respondent in Letter No. 17276/UDVI (1) / 2017-7 dt. 30.10.2019 insofar as it requires the Petitioner



to apply a fresh application for reclassifications of his land to CMDA from OSR use Zone to Primary Residential use Zone quash the same and direct the Respondents to issue planning permit to the Petitioner based on the acknowledgement dated 20.07.2007 as per Ref. No. PPA No. BC1/17522 /2007 dated 06.05.2008 to the Petitioner's property measuring 90,999 sq. ft. in R.S. Nos. 1022/1, 1022/2 and 1022/8 abutting Dr. Natesan Road and Lloyds Road, Chennai-5 without insisting on an application for reclassification.

(PRAYER AMENDED AS PER ORDER dated 17/12/2019 made in WMP.35722/2019 in WP.17104/2012 by AQJ)

For Petitioner(s): Mrs.Hemasampath
Senior Counsel
for Ms.R.Meenal

For Respondent(s): Mr.L.S.M.Hasan Fizal, AGP(R1)
Mrs.P.Veena Suresh (R2)

ORDER

Heard Mrs.Hema Sampath, learned Senior Counsel instructed by Ms.R.Meenal, for the petitioner and Mr.L.S.M.Hasan Fizal for the 1st respondent and Mrs.P.Veena Suresh for the 2nd respondent.

2.The petitioner is the owner of 90,999 sq.ft. in R.S. No. 1022/1, 1022/2 and 1022/8 in Krishnampet, Triplicane, Chennai-600 005. The property being a Trust property, the petitioner approached this Court for permission to alienate the same. By an order dated 24.11.1994, this Court granted permission to the petitioner to develop the said property. The area, where the property falls, is a



mixed residential zone. Hence, there is no bar for the petitioner to develop the same by constructing 56 dwelling units as proposed.

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3.The petitioner filed an application seeking permission from the 2nd respondent for putting up a construction. This application was made as early as 20.07.2007. The 2nd respondent replied that the property had been reserved as 'open space reservation and recreation zone' in the Detailed Development Plan. The petitioner issued a notice pointing out that the reservation had lost its vitality and called upon the 2nd respondent to proceed further. The CMDA passed an order on 06.05.2008 rejecting the planning permissions by giving two reasons, viz.,

- (1) the site does not abut a road;
- (2) it has been shown as an 'open space reservation' and 'recreation zone' in the Detailed Development Plan.

4.The petitioner filed a writ petition before this Court in W.P. No. 15939 of 2008. It sought to quash the order dated 06.05.2008. By an order dated 16.06.2008, this Court dismissed the writ petition granting liberty to the petitioner to avail the alternate remedy before the 1st respondent. It further directed that if an appeal is so filed, it should be disposed off expeditiously and in accordance with law.



5. Within four days of the said order, the petitioner preferred an appeal to the 1st respondent on 20.06.2008. As the appeal was not disposed of as directed by this Court, the petitioner yet again approached this Court by way of Writ Petition in W.P. No. 7953 of 2010. Taking into consideration that the appeal had been pending for a long time, this Court had directed the appeal to be disposed of within a period of eight weeks.

6. In compliance with the order of this Court, the 1st respondent passed an order on 10.03.2011 stating that the property is landlocked, and that the CMDA should notify the area as a “play ground” to be used by the general public. On 17.08.2011, the 1st respondent addressed the CMDA to report as to the applicability of the order passed by this Court to the site under question.

7. After much litigation and lapse of time, on 27.07.2017, the Appeal Committee held a meeting. The Appeal Committee, in its meeting dated 27.07.2017, held that as the Detailed Development Plan had not been implemented in terms of Section 37 of the Town and Country Planning Act, 1971, the reservation of the land is deemed to have lapsed in terms of Section 38 of the said legislation. After having come to the conclusion, the Appeal Committee directed the petitioner to submit a fresh application for re-



classification of the site from “open space and recreational zone” to “primary residential zone”.

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8.It is the plea of Mrs.Hema Sampath that having come to the conclusion that the reservation is deemed to have lapsed under Section 38 of the Town and Country Planning Act, to call upon the petitioner to re-apply for classification is erroneous. She further points out that the area is classified as a “mixed residential zone” in which construction of residential units are permissible. Hence, there is no requirement for the petitioner to file another application to classify the land from “mixed residential zone” to “primary residential zone”.

9.Mr.L.S.M.Hasan Fizal and Mrs.P.Veena Suresh submit that the land has been reserved under the Detailed Development Plan in the records of the Town and Country Planning Authority, necessarily the petitioner would have to file an application seeking deletion of the said reservation.

10.Mrs.P.Veena Suresh adds that the petitioner’s property is landlocked and does not have access. She states that the plan submitted by the petitioner shows that the set back area for the property has been demarcated as a 10 feet lane and hence, such a classification cannot be accepted by the 2nd respondent.



11.I have carefully considered the submissions of both sides and gone through the records.

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12. There are three aspects involved in this case. The first^t one being the reservation of the land of the petitioner as an “open space and recreational zone”. The second, on the aspect of the zoning regulation itself and the third, whether the petitioner should be called upon to file a fresh application all over again.

13. Insofar as the 1st issue is concerned, the minutes of the Appellate Committee in its proceedings C.No.172/76/U/D-V/2017 dated 27.07.2017 has rightly come to the conclusion that as the 2nd respondent has not resorted to any of the modes of acquisition under Section 37 of the Town and Country Planning Act, Section 38 of the said Act will apply and the reservation made for the area is deemed to have lapsed. The reservation seems to have been made as early as in the year 1976. Once three years from the date of reservation have gone by and the Planning Authority had not acquired the same, it is the duty of the 2nd respondent to update its plan, and not insist upon the petitioner to file an application for deletion of the reservation.



14. The law cannot expect a party to do an impossibility. There is no provision under the Town and Country Planning Act for a party to file an application seeking deletion of the reservation. The Legislature of the State of Tamil Nadu has been cautious enough to incorporate Section 38 in the Town and Country Planning Act, by which, if the Town and Country Planning authority does not perform its duty as required under Section 37, statutorily the reservation lapses. For the mistake of the respondents in not updating the records on the lapse of three years, the petitioner cannot be put to prejudice. In any event, the decision of the appeal committee on this aspect is approved and it is hereby declared that as no steps have been taken by the respondents to acquire the land, as required under Section 37, the reservation made under the Detailed Development Plan as 'open space and recreational area' is deemed to have lapsed.

15. On the second aspect of calling upon the petitioner to apply for reclassification of the land from 'mixed residential zone' to 'primary residential zone' is concerned, hereto, this is unnecessary in terms of the then prevailing Development Control Rules.



16. A perusal of the Development Control Rules shows that Division No.80 viz., Krishnampet, has been shown as 'mixed residential use zone'. In a mixed residential use zone, it is the activities other than residential activities, which require to be brought under it. Residential activity is permissible in a residential zone as well as in a 'mixed residential zone'. In addition, as rightly contended by Mrs.Hema Sampath, Rule 4(c)(ii) of the Development Control Rules read with item 80 of Annexure II makes it clear that all the lands bound on North by Beasant Road, East by Bay of Bengal, South by Lyolds Road and West by Barbers Bridge Road (Obviously an error, it should be read as 'Hamilton Bridge') are treated as "mixed residential zone". Hence, the demand in the impugned order calling upon the petitioner to file a fresh application for re-classification, obviously, suffers from non-application of mind.

17. Insofar as the plea of Mrs.Veena Suresh that there are no separate road and the property is landlocked is concerned, that is the call, which the 2nd respondent has to take while processing the application for permission. The planning permission application having been rejected on the ground that re-classification has not been sought for from 'OSR and Recreational Area' and since it is not a mixed residential zone, it is deserved to be set aside and accordingly, it is set aside. The application filed by the petitioner will stand restored onto the file of the 2nd respondent. The 2nd respondent shall pass



appropriate orders in terms of Development Control Rules, then, prevailing, and not with respect to the Tamil Nadu Combined Development and Building Rules, 2019.

18. I give this direction since, in terms of Rule 73(2) and (3), in all matters, which were pending, before the Tamil Nadu Combined Buildings Development Rules come into force, the existing Regulations are directed to apply. The 2nd respondent shall not return the application filed by the petitioner on the same ground which has been interfered by this Court. The 2nd respondent should also not invent new grounds for the purpose of its rejections. The application shall be processed in accordance with Development Control Rules of 2004 and orders to be passed within a period of three months from today.

09-12-2025

Index: Yes/No
Speaking/Non-speaking order
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V.LAKSHMINARAYANAN J.

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To

1.The State Of Tamilnadu
Rep.By The Secretary, Housing And
Urban Development Department, Fort.
St. George, Chennai-9

2.The Member Secretary
Chennai Metropolitan Development
Authority, (CMDA), Chennai-8

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