In the High Court of Judicature at Madras

Reserved on : 27.2.2025	Delivered on : 04.3.2025

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition Nos.8639 and 8652 of 2024 &
WMP.Nos.9625 & 9628 of 2024

Ms.Krishna Devanandan ...Petitioner in both WPs

Vs

1.Auroville Foundation, rep.by its Secretary Dr.Jayanti S.Ravi, Auroville Foundation Bhavan, Auroville, Tamil Nadu-605101.

2.The District Registrar, the District Registrar Office, 2/7, Pattanam, Sandhai Medu, Tindivanam, Tamil Nadu-604001. ...Respondents in both WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of

(i) a Writ of Mandamus forbearing the 1st respondent from proceeding with any transaction of land transfer, including land exchanges, without following the procedure laid down in the Auroville Foundation Rules 1997 and the General Financial Rules 2017 (WP.No. 8639 of 2024); and

(ii) a Writ of Mandamus directing the 2nd respondent to cancel the relevant entry of registrations of all land exchanges entered into by the 1st respondent from 2021 till date from the concerned book of registration, which have been undertaken without following the process laid down in Rules 4(1)(d) and 4(1)(i) of the Auroville Foundation Rules, 1997 and Rule 309 of the General Financial Rules, 2017 (WP.No.8652 of 2024).

For Petitioner in both the WPs	:	Mr.M.V.Swaroop
For R1 in both the WPs	:	Mr.AR.L.Sundaresan, SC for Mr.Vaibhav R.Venkatesh
For R2 in both the WPs	:	Mr.B.Vijay, AGP

COMMON ORDER

W.P.No.8639 of 2024 has been filed seeking for the issuance of a Writ of Mandamus to forbear the first respondent from proceeding with any transaction of land transfer, including land exchanges, without following the procedure laid down in the Auroville Foundation Rules 1997 (for short, the 1997 Rules) and the General Financial Rules 2017 (for brevity, the 2017 Rules).

2. W.P.No.8652 of 2024 has been filed seeking for a direction to the second respondent to cancel the relevant entries made from the year 2021 whenever the land exchanges were registered and entered in the encumbrance register without following the relevant Rules.

3. Heard the learned counsel appearing for the petitioner, the learned Senior Counsel appearing on behalf of the first respondent and the learned Additional Government Pleader appearing for the second respondent, in both the writ petitions.

4. The facts leading to filing of these cases are as follows :

(i) The petitioner claims to be a Member of the 'Residents' Assembly" that forms part of one of the three Authorities of the Auroville Foundation (hereinafter called the Foundation). Under Rule 4(1)(d) of the 1997 Rules, it is mandatory for the Governing Body of the Foundation to consult (i) the Working Committee and (ii) the Funds and the Assets Management Committee (FAMC) of the Residents' Assembly to acquire by purchase, gift, lease or otherwise any immovable property, which may be necessary or convenient for the purposes of the Foundation.

(ii) Similarly, as per Rule 4(1)(i) of the 1997 Rules, it is mandatory for the Governing Body to dispose of the immovable property through transfer, sale or otherwise only in consultation with the Working Committee and the FAMC. That apart, no property, which is worth more than Rs.5 lakhs, can be sold without the sanction of the Government of India (GoI). Even under Rule 309 of the 2017 Rules, no land belonging to the Government or any of its bodies including autonomous bodies, etc., can be sold without the previous sanction of the Government.

(iii) The grievance of the petitioner is that from the year 2021, several lands of the Foundation have been exchanged with third parties without following any of the Rules and without the knowledge and consultation of the Working Committee and the FAMC and also without following due diligence procedure. That apart, the land exchanges were undertaken without obtaining the prior sanction of the

GoI.

(iv) According to the petitioner, several extent of lands belonging to the Foundation has been exchanged in an illegal manner and it is under these circumstances, the above writ petitions have been filed before this Court.

5. The first respondent has filed a common counter affidavit wherein they have questioned the maintainability of these writ petitions on the ground that the petitioner has no locus standi to question the authority of the first respondent only on the basis that she is a Member of the Residents' Assembly. The first respondent has explained the various land exchanges that took place from 2021 to 2024 and stated that such exchanges were warranted for the formation of the Crown Road and consolidation of lands as per the vision laid out by the Mother's Charter. The first respondent has also explained the manner, in which, the consultation took place with the Working Committee of the Residents' Assembly and the FAMC. The first respondent has also justified the land exchange as a method of acquiring land within the Master Plan Area. That apart, the GoI has also provided a check list through its communication dated 06.11.2023

and this check slip was strictly followed.

6. The first respondent has taken a stand that the Foundation has received 240 acres more than its exchange for value of nearly 70 lakhs more than the value of the land provided. In so far as the sanction from the GoI is concerned, it has been stated that letters were written to the Government for permission and the Ministry of Education issued an Office Memorandum dated 06.11.2023 delegating the authority to the Governing Body. It is the Governing Body, which had been authorised for the land exchanges. The further stand taken by the first respondent in the common counter is to the effect that the working of the Foundation is sought to be disturbed by instituting various frivolous litigations and that the above writ petitions are such kind of litigations by vested interest. Accordingly, the first respondent has sought for dismissal of these writ petitions.

7. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record.

8. Before going into the grounds raised in these writ petitions,

this Court will first deal with the issue of maintainability of these writ petitions raised by the first respondent.

9. The petitioner claims to be a Member of the Residents' Assembly.

10. Section 10(3) of the Auroville Foundation Act, 1988 (for short, the Act) explains the Authorities functioning in the Foundation, which includes the Residents' Assembly. The Residents' Assembly has a Working Committee as provided under Section 20 of the Act and this Committee assists the Residents' Assembly and also the Governing Body in discharging the duties under the Act.

11. The main ground that has been put against the petitioner is that the petitioner is not an aggrieved party, that the writ petitions have been filed in her individual capacity, that the petitioner is not representing the Residents' Assembly, that no one has authorised the petitioner to question the land exchange and that the petitioner has approached this Court only with a view to put spokes into the functioning of the Foundation.

12. In the considered view of this Court, the functioning of the Foundation is governed under the Act and admittedly, the petitioner resides inside the Foundation and is also a Member of the Residents' Assembly. Therefore, if any issue is sought to be projected touching upon the functioning of the Foundation in dealing with the immovable properties, it will not be appropriate to throw out the writ petitions on the ground of maintainability. Ultimately, the Foundation is a Statutory Body under the management of the Central Government and it performs its function with funds allocated by the Central Government. Hence, if any serious complaints are made, this Court cannot shut its eyes and throw out the writ petitions on the technical plea of maintainability. Hence, this Court is not inclined to close these writ petitions on the ground of maintainability.

13. The learned counsel for the petitioner has submitted that there was no prior approval obtained from the GoI before the lands were exchanged with the private parties. The other ground that was raised is that there was no consultation with the Working Committee and the FAMC by the Governing Body before the transactions were

undertaken, that the Governing Body did not properly implement the check list that was provided by the GoI through the Office Memorandum dated 06.11.2023 and that the exchange of lands was done in an arbitrary fashion thereby causing grave prejudice to the Foundation.

14. Section 11 of the Act deals with '***Governing Board***'. It is important to take note of the fact that two representatives of the Central Government, who are nominated, are also the Members of the Governing Board. The Governing Board has been given the power of general superintendence, direction and management of the affairs of the Foundation and it can exercise all the powers and discharge all the functions, which may be exercised or discharged by the Foundation.

15. Section 17 of the Act also deals with '***powers and functions of the Governing Board'.*** One such power that has been given to the Governing Board is to prepare a Master Plan for the Foundation and to ensure development of the Foundation as per the Plan.

16. Rule 4(1)(d) of the 1997 Rules states that the Governing Body should act in consultation with the Working Committee and the FAMC to acquire by purchase, lease, etc., any immovable property. Similarly, Rule 4(1)(i) of the 1997 Rules also provides that the Governing Body can sell, transfer, lease or otherwise dispose of any immovable property of the Foundation in consultation with the Working Committee and the FAMC. The Proviso to Rule 4(1)(i) of the 1997 Rules states that no property of the Foundation shall be sold without the prior sanction of the Central Government if its value is more than Rs.5 lakhs. Apart from the above, Rule 309 of the 2017 Rules also provides that no land belonging to the Government or any of its bodies including autonomous bodies shall be sold without the previous sanction of the Government.

17. What is consistent both under the Act as well as under the Rules is that whenever an immovable property is sold by the Foundation, it requires previous sanction of the Government.

18. There are communications between the GoI and the Foundation and ultimately, the Office Memorandum dated 06.11.2023

was issued to approve the land exchange done by the Governing Body. Paragraph 2 of the said Officel Memorandum is relevant and it is extracted as follows :

> *"Further, the approval of the Governing Body for such proposals would be considered final, provided that necessary financial prudence and due diligence is exercised by the GB as per the following check list/principles :*
>
> *I. No government fund or grant in aid should have been used in procuring or improving the land being exchanged by AF.*
>
> *II. All provisions of applicable statutes, at Central and State level and safeguards against land alienation as also due process for securing clearances should be followed during land acquisition.*
>
> *III. The GB should be satisfied that (a) the acquisition is critical for realizing the Master Plan (b) the land being exchanged could not have been put to better use to further the objective of the Mother's Charter and (c) the potential benefits outweigh the costs and adverse impacts of the acquisition."*

19. The GoI directed the Governing Body to follow the check list

while effecting the exchange and this Office Memorandum does not insist for any prior sanction from the GoI.

20. A combined reading of the Act, the Rules and the communications that have taken place between the Foundation and the GoI brings out a clear distinction between the sale and the exchange of an immovable property. What is provided under the Act and the Rules is only prior sanction in the case of sale of immovable property by the Foundation. That is the reason as to why even in the said Office Memorandum, a check list has been given to the Governing Body to follow while entering into exchange of lands.

21. The term '***exchange***' means transfer of one immovable property for another immovable property. In other words, it is an exchange of one property for another. In so far as the term '***sale***' is concerned, it means a transfer of property for a valuable consideration.

22. Section 54 of the Transfer of Property Act defines the term '***sale***'. In order to constitute a sale, there must be transfer of ownership from one person to another. The transferor cannot retain

any part of his/her interest or right in that property. Such transfer of ownership has to be for a price paid or promised or part paid and part promised. Therefore, a sale simpliciter is when a piece of immovable property is transferred by way of sale with all advantages/ disadvantages on as is where is basis for a consideration.

23. In so far as an exchange is concerned, the same is dealt with under Section 118 of the Transfer of Property Act. A transaction is an exchange when two persons mutually transfer the ownership of one thing for the ownership of another. Mutuality is an essential characteristic of an exchange. There must be a physical delivery of the property to the parties and each party to the exchange has the rights and is subject to the liability of the seller as to that which he gives and also has the rights and liabilities of the buyer as to that which he takes. The sale is the species whereas the exchange is the genesis. In the case of a sale, it should always be for a price. But, in the case of an exchange, a transfer of ownership of one thing is not one for the price paid or promised, but for the transfer of another thing in return.

24. The Act and the Rules consciously use the word '***sale'.*** The

conveyance or transfer of a property can take place in any mode like sale, exchange, lease, etc. However, the specific word that has been used both in the Act as well as in the Rules is '***sale'*** of an immovable property, in which case, it requires the previous sanction of the Central Government, if its value is more than Rs.5 lakhs. The same condition precedent cannot be applied in the case of an exchange considering the language employed in the Act and the Rules.

25. It must be borne in mind that the two Members of the Governing Body are the representatives of the Central Government. Further, the Central Government, even in the Office Memorandum dated 06.11.2023, did not insist for any previous sanction and therefore, it is understood even by the Central Government that the exchange of land done by the Foundation will not require a previous sanction and for exercising proper control, only the check list was provided.

26. In so far as the consultation with the Working Committee and the FAMC is concerned, a specific averment has been made in the counter that such consultation was done before proceeding further

with the exchange of lands. The petitioner, in her individual capacity, cannot allege that there was no such consultation and more particularly when neither the Working Committee nor the FAMC has come before this Court and complained that there was no consultation by the Governing Body.

27. The first respondent has taken a specific stand that such exchange of lands is required for the formation of the Crown Road and the consolidation of the city lands as per the vision laid out by the Mother's Charter. One of the functions of the Governing Body is to adhere to the Master Plan, which is called as the Auroville Master Plan. As per the Master Plan, the Auroville owns lands outside the designated 20 sq.km. area, which can be exchanged for the lands required for development within Auroville. Thus, the exchange of lands made by the Governing Body of the first respondent was towards fulfilling its objective under the Master Plan.

28. The learned counsel for the petitioner relied upon a sketch in order to establish as to how the lands are being exchanged.

29. On carefully studying the sketch, it can be seen that what have been exchanged by the first respondent are those lands outside the designated 20 sq.km area for the lands belonging to the private individuals situated in various pockets inside the area.

30. The learned counsel for the petitioner was attempting to project the case as if certain valuable lands have been exchanged with the third parties and thereby the third parties have been benefited and were able to sell them for huge amounts of money.

31. In the considered view of this Court, this issue raised by the petitioner is a disputed question of fact and this Court, exercising its jurisdiction under Article 226 of The Constitution of India, cannot get into the nitty-gritty of those transactions. This is more so when it has been done by the Governing Body, which is authorised and the Governing Body also consists of two representatives of the Central Government. If at all there is any serious complaint on the interest of the first respondent being compromised, the Central Government itself will take action and provide the remedy. The Central Government, till date, has not even questioned the exchange of land done by the first

respondent. Therefore, based on the ***ipse dixit*** of the petitioner, this Court cannot look at the transactions like a doubting Thomas.

32. The petitioner has also sought for the cancellation of the exchange deeds entered into by the first respondent with the third parties.

33. This Court has already held that there is no ground to interfere with those exchange deeds. That apart, there is no power available for the Registering Authorities to cancel the entries made in the encumbrance register since it will tantamount to cancellation of the documents themselves. The facts of the present case do not warrant granting of such a relief as sought for by the petitioner.

34. It was further contended on the side of the petitioner that the Governing Body does not follow the check list provided by the GoI in the Office Memorandum dated 06.11.2023 for all those exchange deeds that were entered into prior to the issuance of such Office Memorandum.

35. The transactions that had taken place prior to the Office

Memorandum dated 06.11.2023 have not been questioned by the GoI. That apart, the Office Memorandum dated 06.11.2023 was issued as a guiding factor for the Governing Body while exchanging the lands belonging to the Foundation.

36. In the light of the above discussions, this Court does not find any ground to interfere with the functioning of the Governing Body of the first respondent with respect to the exchange of lands belonging to the Foundation since this Court finds that it is in line with the Auroville Master Plan and that such exchange of lands is well within the powers conferred on the Governing Body.

37. For the foregoing reasons, both the writ petitions are dismissed. No costs. Consequently, the connected WMPs are also dismissed.

04.3.2025

To
The District Registrar,
the District Registrar Office,
2/7, Pattanam, Sandhai Medu,
Tindivanam, Tamil Nadu-604001.

RS

N.ANAND VENKATESH,J

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