



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2025

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CORAM

THE HON'BLE MR. JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

Writ Appeal Nos.475, 486 & 488 of 2025
and
Civil Miscellaneous Petition No.4220 of 2025

W.A.No.475 of 2025:

M.P.S.Residents Welfare Association,
Rep. By its Secretary,
Plot No.62, Shanthinekatan Nagar,
Ramalingam 3rd Street,
Thoraipakkam,
Chennai 600 097.

... Appellant

Vs.

- 1.The Commissioner,
Corporation of Chennai, Chennai 600 003.
- 2.Executive Engineer,
Ward No.193, Zone XV,
Corporation of Chennai,
Sholinganallur, Chennai 600 119.
- 3.CMDA, by its Member Secretary,
Talamuthu Natarajan Building,
Egmore, Chennai 600 008.
- 4.The Collector,
Kancheepuram
Kancheepuram District.



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5.The Tahsildhar,
Sholinganallur, Chennai 600 119.

6.Assistant Commissioner,
J-9, Police Station,
Toraipakkam, Chennai 600 097.

7.Director of Town Plannin,
807, Anna Salai, Chennai 600 002.

8.Dy. Director of Town Planning,
No.3, Varadarajan Street,
Vedachalam Nagar, Chengalpattu.

9.The Sub-Registrar,
Office of the Sub Registrar,
2/71, 1st Floor, Kajera Garden 2nd Street,
Neelankaran, ECR, Chennai 600 115.

10.N.Ayyadurai

11.S.V.Srinivasan

12.M.Manikandan Lakshmanan

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act, challenging
the order dated 05.09.2024 in W.P.No.13760 of 2024.

For Appellant : Mrs.V.J.Latha

For RR1 & 2 : Mr.D.B.R.Prabhu,
Standing Counsel for GCC

For R3 : Mrs.P.Veena Suresh,
Standing Counsel for CMDA

For RR4 to 9 : Mrs.E.RangaNayaki,
Additional Government Pleader

For RR10 & 11 : Mr.G.V.Sridharan

For R12 : Mr.D.Clinton Chandrasekaran



W.A.Nos.475, 486 & 488 of 2025

W.A.No.486 of 2025:

M.P.S.Residents Welfare Association,
Rep. by its Secretary,
Plot No.62, P.V.S. Nagar,
Ramalingam 3rd Street,
Thoraipakkam,
Chennai 600 097.

... Appellant

Vs.

1.The Commissioner,
The Tamil Nadu Town and Country Planning,
807, Anna Salai, Chennai 600 002.

2.The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai 600 003.

3.The Deputy Director,
The Tamil Nadu Town and Country Planning,
No.3, Varadarajanar Street,
Vedachalam Nagar, Chengalpattu.

4.The Deputy Director,
St.Thomas Mount Panchayat Union,
Chitlapakkam, St. Thomas Mount,
Chennai 600 044.

5.S.S.Grand Home,
Rep. By its Proprietor,
3rd Floor, SRK Building,
No.32, East Jones Road,
Saidapet, Chennai 600 015.

6.M/s. Vijay Shankar Builders,
Rep. By Proprietor,
P.Vijay Shankar

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act, challenging
the order dated 05.09.2024 in W.P.No.23323 of 2014.



W.A.Nos.475, 486 & 488 of 2025

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For Appellant : Mrs.V.J.Latha

For RR1, 3 & 4 : Mrs.E.RangaNayaki,
Additional Government Pleader

For R2 : Mr.D.B.R.Prabhu,
Standing Counsel for GCC

W.A.No.488 of 2025:

M.P.S.Residents Welfare Association,
Rep. by its Secretary,
Plot No.62, Shanthinekatan Nagar,
Ramalingam 3rd Street,
Thoraipakkam,
Chennai 600 097.

... Appellant

Vs.

1.Manikandan

2.The Commissioner of Greater Chennai Corporation,
Rippon Building,
Chennai 600 003.

3.The Regional Deputy Director (South),
Greater Chennai Corporation,
Dr.Muthulakshmi Road,
Adyar, Chennai 600 020.

4.The Assistant Commissioner,
Zone-15, Greater Chennai Corporation,
Sholinganallur, Chennai 600 117.

5.The Special Tahsildar,
Land and Estate Department,
Greater Chennai Corporation,
Adyar, Chennai 600 020.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act,
challenging the order dated 05.09.2024 in W.P.No.17625 of 2024.



W.A.Nos.475, 486 & 488 of 2025

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For Appellant : Mrs.V.J.Latha

For R1 : Mr.D.Clinton Chandrasekaran

For RR2 to 4 : Mr.D.B.R.Prabhu,
Standing Counsel for GCC

For R5 : Mrs.E.Ranga Nayaki,
Additional Government Pleader

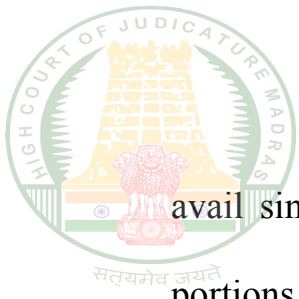
COMMON JUDGMENT

(Judgment of the Court was made by S.M.SUBRAMANIAM, J.)

Aggrieved and dissatisfied with the orders of the writ Court dated 05.09.2024 in W.P.No.13760 of 2024, W.P.No.23323 of 2014 and W.P.No.17625 of 2024, the present writ appeals came to be instituted.

2. The writ petitions have been instituted to maintain the OSR lands as per the law and to remove the encroachments in OSR lands and roads area. The writ Court directed the Commissioner, Corporation of Chennai to issue notice to the petitioner - Association and by affording opportunity, decide the issues on merits and in accordance with law within a period of twelve (12) weeks.

3. The learned counsel for the appellant in all the writ appeals would mainly contend that the directions issued by the writ Court would be of no

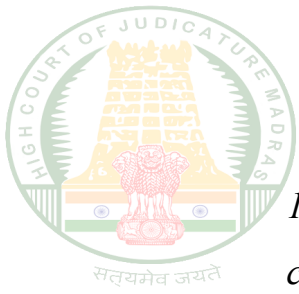


avail since, the OSR lands have already been encroached upon and road portions are also under encroachment. The writ Court ought to have directed the Commissioner, Corporation of Chennai to remove the encroachments and restore the OSR lands as per the lay out approval.

4. The learned counsel for the 12th respondent in W.A.No.475/2025 would submit that he is the Bonafide purchaser.

5. The learned Standing Counsel for the Greater Chennai Corporation would rely on the common Status Report filed on behalf of the Greater Chennai Corporation. The Executive Engineer, Zone-XV, conducted field inspection and survey and found encroachments in OSR lands and roads and the details regarding the encroachments are narrated in paragraph Nos.4 and 5 of the Status Report as under:

“4.I respectfully submit that as per the approved layout plan No.136/1975, 68 plots were developed with different measurement, leaving for roads measuring width of 30 feet (9mt) on East, West, and Northern side respectively, and 60 feet road width on the Southern side. The layout was adhered to the norms prescribed leaving space for O.S.R. Land for public purpose. In that, an area of



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166 sq.m (12.2 x 13.6 mt) (1786 sq.ft) pillaiyar temple was constructed at North/west corner during the year of 1975 for the public use, amount the total temple utilized area of 248 sq.m (16 x 15.5 mt) (2669 sq.ft). On behind the temple location, to an area of 24 sq.m (16 x 1.5 mt) (258 sq.ft) is in the occupation of TANGEDCO by erecting the Transformer here. Adjacent to temple at southern side, there is a Library building which was constructed to an area of 17.5 sq.m (5x305 mt) (188 sq.ft) and this building is not in use.

5.I respectfully submit that eastern side facing 9 mt (30feet) roads, a construction has been made to an area of $13.55 \times 5.75 = 78$ sq.m in the land which was allotted for road purpose. This is a clear encroachment. This encroachment on the 9mt road (Eastern side) of 78 sq.m to be demolished. I further submit that the area statement submitted as follows:-

A. Total area of OSR (for public purpose) as per FMB = 892 sq.m (9600 sq.ft).

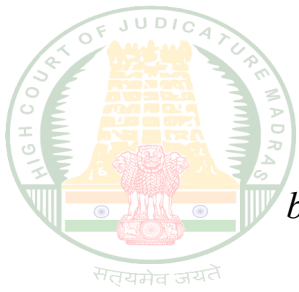
B. Total area of OSR available at Site (At present) = 845.25 sq.m (2669 sq.ft).

C. Existing Temple = 248 sq.m (2669 sq.ft).

D. TNEB Transformer area = 24 sq.m (258 sq.ft).

E. Existing Library building (5 x 35 mt) = 17.5 sq.m (188 sq.ft), which is not in use.

F. Existing Building encroachment (at basement level) on OSR area (13.55×7.5) = 102 sq.m (1093 sq.ft) (to



be removed).

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G. Available vacant land (including Library) $(18.5 \times 24.5) + (2.45 \times 7.5) = 471.25 \text{ sq.m (5071 sq.ft)}$.

H. Existing building encroachment (at basement level) on eastern side road $(13.55 \times 5.75) = 78 \text{ sq.m (839 sq.ft)}$ (to be removed).

I. Presently Vacant Land area available (Excluding Library) $= (18.5 \times 24.5) + (2.45 \times 7.50) - (3.5 \times 5) = 454.25 \text{ sq.m (4888 sq.ft)}$.”

6. In respect of the OSR lands, the Hon'ble Supreme Court of India in the case of ***P.T.Chetram Vashist vs. Municipal Corporation of Delhi (1995) 1 SCC 47*** made the following observations at para 6, which reads as under:-

“6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing

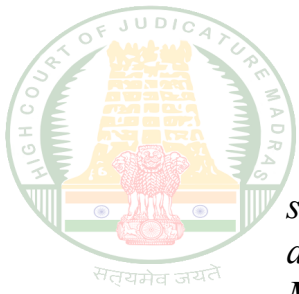


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more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.”

7. In the case of ***Association of Vasanth Apartments Owner Mr.Gopinath and others*** reported in ***(2023) 4 MLJ 353 (SC)*** the Apex Court held that the OSR lands are to be protected and the OSR lands are to be utilized for the purpose for which it has been earmarked which reads as follows:

“22. It is further contended that the Rules/Regulations, being part of the master plan, are

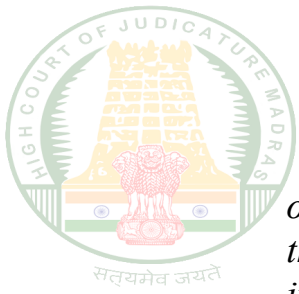


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statutory and being framed under the Statute, they operate as law under Article 300A. Reliance is placed on **Pune Municipal Corporation and another v. Promoters and Builders Association and another [(2004) 10 SCC 796]**. Reliance placed by appellants on **Pt. Chet Ram Vashist (Dead) by Lrs. v. Municipal Corporation of Delhi [(1995) 1 SCC 47]**, is alleged to be misplaced. In the said case, there is no provision in the **Delhi Municipal Corporation Act, 1957**, under which, the Corporation could pass a Resolution to ask the appellant therein to transfer property free of cost. It is further contended that the Court may bear in mind that the **Act replaced the Tamil Nadu Town and Country Planning Act, 1920**, which was based on the **British Town and Country Planning and Housing Act, 1909**. From the Statements of Objects and Reasons, it is contended that the Act was based on the Model Town and Country Planning Bill, which was prepared by the Ministry of Health and Housing of the Government of India after a comprehensive study of various Town Planning Enactments in the western countries. The regional concept in the **Maharashtra Town and Country Planning Act, 1966** also made its presence felt. The Act is designed to serve legitimate state interest of planned development down to the regional limit. Crowded urban areas, create adverse living conditions. The reservation of open space for parks and playgrounds is universally recognised. The decision of this Court in **Bangalore Medical Trust v. B.S. Muddappa and others [(1991) 4 SCC 54]**, is relied upon. It is contended that the Act requires only the simple laying of Rules and Regulations under Section 123 of the Act. The laying of the Rules, which is not mandatory, if not followed, will not affect the validity of the Rules/Regulations. The terms of Section 123(2) are relied upon to contend that the Rules will come into effect even before they are placed before the Legislative Assembly and any modification made by the Assembly, will apply only from the date it is carried out. **Reliance is placed on Atlas Cycle Industries Ltd. and others v. State of Haryana [(1979) 2 SCC 196]**. It is further contended that acquisition under Chapter IV of the Act is not required in the facts. The area is not reserved in the master plan nor was any Notice published under Section 26



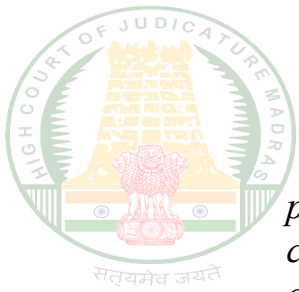
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or 27. Acceptance of appellant's contention would involve the need to compulsorily acquire all the reserved lands including areas such as setback areas, open spaces and other reserved area. Such interpretation would also render the provisions of Chapter VI, in particular Section 55, otiose. Chapter IV apply to areas reserved and notified in the master plan itself or to an area in excess of 10 per cent for proposed developed area of 3000 and above square meters or where area reserved is sought to be utilised for purpose not being communal or recreational, or areas, for which, there are other exceptions in the impugned Rules/Regulations. Section 20(1)(d) stipulates that a detailed development plan may propose or provide for acquisition by purchase, exchange or otherwise, of any land. The words 'or otherwise' include a transfer of 10 per cent of the land by way of a gift. It is further contended that there is no constitutional obligation to pay compensation. The Act contemplates divestment of property without compensation as is evident from Sections 31 and 55 read with Sections 17 and 20. It is a settled position of law that Article 300A does not involve or compel payment of compensation. Support is drawn from Judgment of this Court in **K.T. Plantation Private Limited and another. v. State of Karnataka [(2011) 7 MLJ 1185]**: "183. Payment of compensation amount is a constitutional requirement under Article 30(1- A) and under the second proviso to Article 31- A(1), unlike Article 300-A. After the Fortyfourth Amendment Act, 1978, the constitutional obligation to pay compensation to a person who is deprived of his property primarily depends upon the terms of the statute and the legislative policy. Article 300-A, however, does not prohibit the payment of just compensation when a person is deprived of his property, but the question is whether a person is entitled to get compensation, as a matter of right, in the absence of any stipulation in the statute, depriving him of his property.

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192. At this stage, we may clarify that there is a difference between "no" compensation and "nil" compensation. A law seeking to acquire private property for public purpose cannot say that "no compensation shall be



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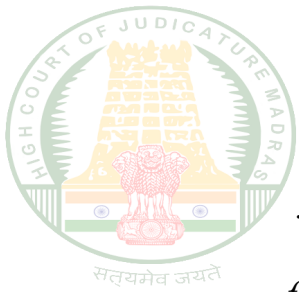
paid". However, there could be a law awarding "nil" compensation in cases where the State undertakes to discharge the liabilities charged on the property under acquisition and onus is on the Government to establish validity of such law. In the latter case, the Court in exercise of judicial review will test such a law keeping in mind the above parameters.

xxx xxx xxx

205. Plea of unreasonableness, arbitrariness, proportionality, etc. always raises an element of subjectivity on which a court cannot strike down a statute or a statutory provision, especially when the right to property is no more a fundamental right. Otherwise the court will be substituting its wisdom to that of the legislature, which is impermissible in our constitutional democracy."

...

74. We may however notice the following: "This does not mean, however, that an owner whose property is unencumbered has completely unlimited rights. To describe someone as an absolute owner of property is to say two things; it is to assert that his title to the property is indisputable, and that he has all the rights of ownership allowed by the legal system in question. We have seen that the rights of ownership may be limited by the adverse dominant rights of an encumbrancer or by the rights of the possessor (who is in fact one very special type of an encumbrancer). They may also be limited by special provisions of law such as Town & Country planning law, which regulates for social purposes the use which an owner may make of his land. But in addition to being restricted by such specific provisions of public law, and owner's rights are restricted by a whole variety of provisions of the ordinary law, according to which various harmful and dangerous types of conduct qualify as criminal or tortious; the fact that I am the owner of a knife will not entitle me to use it to kill Smith. We may say that an owner is free to use and dispose of his property as he pleases, except in so far as he does not infringe his duties to specific encumbrancers, his duties under special regulations concerning the use of property (f) and his general duties under the general law of the land (f)." (Emphasis supplied)



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... 106. The Court, in **Virender Gaur (supra)**, further found power to the Municipality under Section 66 to transfer the land vested in it. The Court went on to hold, *inter alia*, as follows:

“11. It is seen that the open lands, vested in the Municipality, were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreation, playground and ventilation purposes. The buildings directed to be constructed necessarily affect the health and the environment adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the Government and the action taken pursuant thereto by the Municipality would clearly defeat the purpose of the scheme. Shri D.V. Sehgal, learned Senior Counsel, again contended that two decades have passed by and that, therefore, the Municipality is entitled to use the land for any purpose. We are unable to accept the self-destructive argument to put a premium on inaction. The land having been taken from the citizens for a public purpose, the Municipality is required to use the land for the protection or preservation of hygienic conditions of the local residents in particular and the people in general and not for any other purpose. Equally acceptance of the argument of Shri V.C. Mahajan encourages preemptive action and conduct, deliberately chartered out to frustrate the proceedings and to make the result *fait accompli*. We are unable to accept the argument of *fait accompli* on the touchstone of prospective operation of our order.”

8. Since the Corporation authorities have conducted field inspection and survey and identified the encroachments, all enforcement actions are to be initiated to restore the OSR lands in its original position as per the approved lay out plan by removing the encroachments. As far as the claim

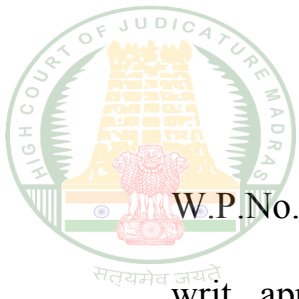


of the 12th respondent is concerned, he is at liberty to sue his vendors or any other persons who has misrepresented or committed fraud or otherwise.

However, the claim of the 12th respondent cannot be considered by this Court since the encroachments are established in OSR lands and roads.

9. In view of the facts and circumstances, the Commissioner, Corporation of Chennai and the Executive Engineer /R1 and R2 in W.A.No.475/2025 are directed to initiate enforcement actions by following the due procedures, demolish the unauthorized constructions, remove encroachments and restore the land in its original position as per the lay out approval. If at all, any revenue records are mutated or changes are made, the Collector/R5 in W.A.No.475/2025 is directed to verify the revenue records and the lay out plan approval and carry out all necessary corrections in the revenue records and inform the same to Chennai Corporation for maintenance of OSR lands and for removal of encroachments. The said exercise is directed to be completed by the said respondents within a period of three (3) months from the date of receipt of a copy of this order.

10. In view of the above facts and circumstances, the writ Orders impugned dated 05.09.2024 passed in W.P.No.13760 of 2024,



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W.P.No.23323 of 2014 and W.P.No.17625 of 2024 are set aside and the writ appeals stand allowed. There shall be no order as to costs.

Consequently, the connected miscellaneous petitions are also stands closed.

(S.M.S., J.) (K.R.S., J.)
25.03.2025
(1/2)

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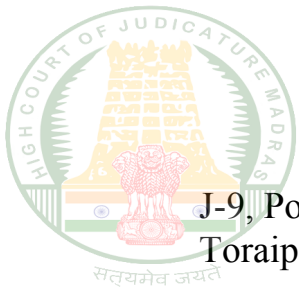
Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case : Yes/No

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- 6.Assistant Commissioner,



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ssi

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25.03.2025
(1/2)