



W.P.Nos.38817, 38820, 38823, 38825 and 38826 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2025

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.Nos.38817, 38820, 38823, 38825 and 38826 of 2024

& W.M.P.No.42024, 42030, 42034, 42035, 42037 of 2024

W.P.No.38817 of 2024

1. Sivappa Reddy

2. Venkatesh

.. Petitioners

vs.

1. The District Collector

Office of the District Collectorate

Hosur, Krishnagiri

2. The Commissioner

Hosur Municipality

Hosur

... Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of certiorarified mandamus calling for the



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records relating to the impugned order issued by the 2nd respondent having reference Na.Ka.No.13057/2024/F1 dated Nil.11.2024 and received by the petitioners on 21.11.2024, quash the same and consequently direct the 2nd respondent not to take any coercive action against the petitioners pursuant to the said order.

For Petitioner : Mr.T.Vedi
(in all WPs)
For Respondents : Mr.T.K.Saravanan
(in all WPs) Government Advocate for R1

Mr.T.Balaji
Standing Counsel for R2

COMMON ORDER

(Order of the Court was made by M.SUNDAR, J.)

This common order will govern the captioned five main 'Writ Petitions' ['WP' in singular and 'WPs' in plural for the sake of brevity] and the captioned 'Writ Miscellaneous Petitions' ['WMP' in singular and 'WMPs' in plural for the sake of brevity].

2. 'Five notices signed by R2 on 09.11.2024 bearing reference ந.க.எண்:13057/2024/எப்1' [collectively 'impugned notices' for the sake



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of convenience] have been called in question in the captioned WPs. This is the third round of litigation in this Court. First round of litigation was vide W.P.No.33975 of 2016 and WMP thereat, which came to be disposed of by another Hon'ble Division Bench on 10.12.2018. The second round is vide W.P.Nos.34362, 34264, 34268, 34279 and 34283 of 2024, which came to be disposed of by this Division Bench in and by a common order dated 25.11.2024.

3. The impugned notices are identical and impugned notice in the case file in W.P.No.38817 of 2024 is as follows:



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ஒரு மாதகராட்சி ஆணையாளர் அவர்களின் செயல்முறை ஆணைகள்
மூன்றின்மை- திரு.எச்.எம்.பூநாதன், இ.ஆ.ப.,

ந.க.எண்.13057/2024/எம்1

நாள். 11.2024

பொருள் - ஆக்கிரமிப்பு- ஒரே மாதகராட்சி- சென்னத்துர் கிராமம், சர்வேஎண்.766pt, 768pt, 769pt, 774pt மற்றும் 989pt, அங்கீகரிக்கப்பட்ட மனைப்பிரிவு எண்75/83-க் பூங்கா மற்றும் பொது உபயோகத்திற்கு ஒதுக்கீடு செய்யப்பட்ட இடத்தில் ஆக்கிரமிப்பு செய்யப்பட்டுள்ளது- நேரடி விசாரணை நடத்தப்பட்டது- தொடரமாக.

- பார்வை- 1. இயல்புவசை ந.க.எண்.13057/2024/எம்1 நாள்28.08.2024
2. தங்களுது விண்ணப்பம் நாள்.09.09.2024
3. சென்னை உயர்நீதிமன்ற WPN.33975/2016, 33976/2016, 33977/2016 நாள். 10.12.2018
4. இயல்புவசை அறிவிப்பு ந.க.எண்.13057/2024/எம்1 நாள். 15.10.2024
5. தங்களுது விண்ணப்பம் நாள்.23.10.2024

உத்திரவு:-

ஒரே மாதகராட்சி, சென்னத்துர் கிராமம், சர்வேஎண்.766pt, 768pt, 769pt, 774pt மற்றும் 989pt அங்கீகரிக்கப்பட்ட மனைப்பிரிவு எண்75/83-க் பூங்கா மற்றும் பொது உபயோகத்திற்கு ஒதுக்கீடு செய்யப்பட்ட இடத்தில் ஆக்கிரமிப்பு செய்யப்பட்டுள்ள இடத்தில் பார்வை 1ல் காணும் இயல்புவசை அறிவிப்பில் ஆக்கிரமிப்புகளை அகற்ற நகர்ப்புற உள்நாட்சி ஆணையர்களின் சட்டம் 1996, பிரிவு 120 (1) b-ன் கீழ் அறிவிப்பு எழுப்பப்பட்டது.

பார்வை 2ல் காணும் தங்களுது விண்ணப்பத்துடன் பார்வை 3ல் காணும் மாண்புமிகு உயர்நீதிமன்ற உத்திரவை இணைத்து தங்களுது விளக்கத்தை சமர்ப்பித்தீர்கள்.

இதனை தொடர்ந்து பார்வை 4ல் காணும் இயல்புவசை அறிவிப்பில் நீதிமன்ற உத்திரவின்படி நேரடி விசாரணை செய்யப் பொது 23.10.2024 அன்று நேரடி விசாரணைக்கு ஆணையுமடி அறிவிப்பு அனுப்பப்பட்டது.

இதனை தொடர்ந்து 23.10.2024 அன்று மனுவை 04.30 மணிக்கு நடைபெற்ற நேரடி விசாரணையின்போது தங்கள் ஆணையி் இது தொடர்பான ஆணைகளை 15 நினைக்கருகும் சமர்ப்பிப்பதாக தெரிவித்து காவ அலுவலர் கோரி பார்வை 5ல் காணும் விண்ணப்பத்தில் கோரப்பட்டது.



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நீண்டும் 06.11.2024 அன்று ஆணையர் அவர்களால் நேரடி விசாரணை நடத்தப்பட்டது. விசாரணையில் ஆக்கிரமிப்பு செய்யப்பட்டுள்ள இடம் சென்னைக் கிராமம், சர்வேளண்.766pt, 768pt, 769pt, 774pt மற்றும் 989pt அங்கீகரிக்கப்பட்ட மனைப்பிரிவு எண்.75/83-ல் பூங்கா மற்றும் பொது உபயோகத்திற்கு ஒதுக்கீடு செய்யப்பட்ட இடம் என்ற விவரத்தை உரிய மனைப்பிரிவு வரைபடத்தை காண்பித்து விளக்கப்பட்டது. தங்களைச் சம்பந்திக்கப்பட்ட கிளைய ஆணையர்கள் எழுப்பிய மாற்றாட்சியை கட்டுப்படுத்தாது:

அங்கீகரிக்கப்பட்ட மனைப்பிரிவில் பூங்கா மற்றும் பொது உபயோகத்திற்கான ஒதுக்கீடு செய்யப்பட்டுள்ள இடங்கள் அந்தந்த பயன்பாட்டிற்கு மட்டுமே சட்டப்படி பயன்படுத்த வேண்டும்.

இந்தியில் தங்களை ஆக்கிரமிப்பு செய்யப்பட்டுள்ள இடம் நகர் ஊரணைய துறையால் அங்கீகரிக்கப்பட்ட மனைப்பிரிவு நகர் ஊரணைய, துணை இயக்குநர் வேலூர் அவர்களால் ம.ப.வ(வேது)எண்.75/83 என்பது அங்கீகரிக்கப்பட்ட மனைப்பிரிவில் பூங்கா மற்றும் பொது உபயோகத்திற்கு ஒதுக்கீடு செய்யப்பட்ட இடம் என்பதால் தங்களை விளக்கம் இதன்மூலம் நிராகரித்து உத்திரவிடப்படுகிறது.

மேலும் இவ்வத்திரவு சிலைக்கப்பெற்ற 15 நினைவுகூறுகள் தங்களைச் செய்யப்பட்டுள்ள ஆக்கிரமிப்பை அகற்றுப்படி தெரிவிக்கப்படுகிறது. தவறினால் மேற்கண்ட ஆக்கிரமிப்பை மாற்றாட்சி மூலம் அகற்றுப்பட்டு அதுவான சொல்லியங்கள் தங்கலிடமிருந்து வசூலிக்கப்படும் எனானது என இந்த மூலம் தெரிவித்துக்கொள்ளப்படுகிறது.

ஆணையர்
ஒரு மறுகரன் சி

பெறுதல்-

1. திரு.சிவப்பாரெட்டி,
த/பெ.செங்கடேய்,
எண்.3/558, அவசரத்தம் கிராமம்,
ஒருசீ.
2. திரு.வெங்கடேய்,
த/பெ. அழமநாட்டா,
எண்.1/86, சிசி நகர், ஒருசீ.



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4. Learned counsel for writ petitioner submits that the matter pertains to a 'layout in S.No..766pt, 768pt, 769pt, 774pt and 989pt in Sennathur Village, Hosur Corporation' [hereinafter 'said land' for the sake of convenience]. The layout provides for park and common use and the layout number is 75/83.

5. In the first round of litigation, the writ petitioners filed W.P.No.33975 of 2016 assailing a notice dated 12.09.2016 bearing reference Na.Ka.No.--/2016/F1 qua said land. This notice is not part of case file but learned counsel for writ petitioners submits that it was a similar notice but at that point of time, it was Hosur Municipality, 'the Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' [hereinafter 'TNULB Act' for the sake of brevity] had not kicked in and therefore, it was governed by the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act 5 of 1920). In and by order dated 10.12.2018, this Court directed R2 (then Commissioner of Hosur Municipality) to pass final orders uninfluenced by any of the observations and based on



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the factual and legal pleas. Thereafter, the Commissioner of Hosur Municipality issued notices dated 28.08.2024 which was assailed in W.P.Nos.34262, 34264, 34268, 34279 and 34283 of 2024. To be noted, this is the second round of litigation. The second round of litigation came to be disposed of by this Division Bench by a common order dated 25.11.2024, which reads as follows:

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2024

Coram

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.Nos.34262, 34264, 34268, 34279 and 34283 of 2024

&

W.M.P.Nos.37109, 37114, 37116, 37139 and 37144 of 2024

in W.P.Nos.34262, 34264, 34268, 34279 and 34283 of 2024

W.P.No.34262 of 2024

I.Kanthamma

W/o.Nagaraju



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2. G.Nagaraju

S/o.Late.Govindappa

... Petitioners

vs

The Commissioner

Hosur Municipality

Hosur

Respondent

..

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the respondent relating to the impugned proceeding having reference Na.Ka.No.6865/F1/202 dated 28.08.2024, quash the same and consequently direct the respondent not to take any coercive action pursuant to the said proceeding.

*For Petitioners : Mr.R.Bharath Kumar
(in all WPs)*

*For Respondent : Ms.Radhika
for Mr.T.Balaji
Standing counsel
for Hosur Corporation*

COMMON ORDER

(Order of the Court was made by M.SUNDAR, J.)

Captioned five 'Writ Petitions' ['WPs' for the sake of brevity] assail 'notice dated 28.08.2024 bearing reference e/f/vz;□6865□vg;1□202' issued under Section 128(1)(b) of 'the Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' [hereinafter 'impugned notice and



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'said Act' for the sake of brevity].

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2. *Learned counsel submits that the writ petitioners have not been show-caused or in other words they have not been given opportunity to respond. Learned counsel submits that there was an earlier round of writ petition being W.P.No.33975 of 2016 where there is a direction to give opportunity to the writ petitioners.*

3. *Issue notice to respondent.*

4. *Ms.Radhika, learned counsel representing Mr.T.Balaji, learned Standing counsel, accepts notice for the respondent.*

5. *Ms.Radhika, learned counsel, on instructions, submits that the writ petitioner has sent a representation dated 23.10.2024 in response to the impugned notices and orders have also since been passed. Learned counsel further submits that orders have been signed by the respondent on 09.11.2024 and counsel for writ petitioner has been favoured with copies of the orders so passed.*

6. *Section 128(1)(b) of said Act reads as follows:*

'128. Power to remove encroachment from public place. - (1) The Commissioner may, -

(a)

(b) remove any immovable structure whether permanent or of temporary nature encroaching the street or public place or the [land belonging to municipality or vested with the municipality] within the municipal limit, after issuing a show cause notice for such removal, returnable within a period of seven days from the date of receipt thereof:



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Provided that the Commissioner shall consider any representation received within the time limit, before passing final orders.'

7. We find that the procedure has been complied. Therefore, the challenge to the impugned notices has lost steam.

8. The sequitur is, captioned writ petitions will stand dismissed albeit preserving rights of the petitioners qua the orders signed on 09.11.2024, which have now been made by the Commissioner, leaving open all contentions if the writ petitioners choose to challenge the order. Consequently, captioned WMPs are also perish and the same are also dismissed. There shall be no order as to costs.'

6. Post orders in the second round of litigation, impugned notices have been made, though said land neither belongs to or is vested in the Municipality, is the central theme of the point on which the challenge to the impugned notices is predicated.

7. Issue notice to official respondents.

8. Mr.T.K.Saravanan, learned Government Advocate accepts notice for R1 and Mr.T.Balaji, learned Standing counsel accepts notice for R2 in all WPs.



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9. Owing to the limited scope of the captioned writ petitions, main writ petitions were taken up in the Admission Board with the consent of both sides.

10. We carefully considered the arguments of learned counsel for writ petitioners. We find that TNULB Act which is a conditional legislation kicked in on 13.04.2023. Therefore, the first round of litigation and the order of this Court dated 10.12.2018 in W.P.No.33975 of 2016 was prior to coming into force of TNULB Act when District Municipalities Act was holding the field. In and by Section 200(1)(b) of TNULB Act, the District Municipalities Act stood repealed. Thereafter, order of this Bench being order dated 25.11.2024 in W.P.Nos.34262, 34264, 34268, 34279 and 34283 of 2024 (second round of litigation) came to be made.

11. This Court has already scanned and reproduced one of the impugned orders and has written that the impugned notices are identical.

A careful perusal of the impugned notices brings to light that there is



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complete adherence to Section 128(1)(b) of TNULB Act together with the proviso thereof of TNULB Act as regards procedure is concerned.

Besides this, it is also in accordance with orders of this Bench dated 25.11.2024 alluded to supra.

12. It is argued by learned counsel for writ petitioner that Section 128 will apply only when the land vests in or belongs to local body and therefore, the point that needs to be considered is whether the impugned notices can be sustained in the absence of any deed showing that said land has been vested with the Municipality or the Corporation i.e., vested with the local body. In this regard, the lead case is ***Pt. Chet Ram Vashist vs Municipal Corporation Of Delhi*** reported in ***1995 (1) SCC 47*** wherein Hon'ble Supreme Court held that the effect of reserving any street, open space, park, etc., in a layout is that the owner ceases to be legal owner of the land and that he can at best hold the land only for the benefit of the society or the public in general. Thereafter, Hon'ble Mr. Justice V.Ramasubramaniam, (sitting as a Hon'ble single Judge of this Court, as



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his Lordship then was), in ***Krishnasamy v. Member Secretary, Chennai***

Metropolitan Development Authority, Gandhi Irwin Road, Egmore,

Chennai-81 reported in ***2013 1 CTC 80*** held that OSR land, which is

neither gifted nor handed over to the local body, may really not matter as

long as the point that it is OSR land is not disputed. It was held that such

land is in public domain. This principle in ***Krishnasamy*** case was

referred to with approval by Hon'ble Supreme court in the case of

Association of Vasanth Apartment owners Vs. V.Gopinath & Ors. vide

Civil Appeal No.1890-91 of 2010 (Supreme Court Neutral Citation: **2023**

INSC 123). Relevant paragraphs in Vasanth Apartment case are

Paragraphs 43, 87 and 88, which read as follows:

' 43. Thereafter it is interesting that the learned Single Judge holds as follows: -

“Para 13. Incidentally it must be pointed out that in Pt. Chet Ram Vashist vs. Municipal Corporation of Delhi {1995 (1) SCC 47}, the Supreme Court held that the effect of reserving any site for open space, park etc., in a layout is that the owner ceases to be a legal owner of the land in dispute and that he would hold the said land for the benefit of the



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society or the public in general. It was further held in the said decision that the entitlement of the Corporation or the local body to demand the transfer of the land to them, is not made out from the provisions of any Act or on any principle of law. The Court pointed out that the Corporation may get a right as custodian of public interest to manage it in the interest of the society in general. However, the right to manage as a local body, was held by the Supreme Court in the said decision, to be not the same thing as to claim transfer of the property to itself. The decision in Pt. Chet Ram Vashist, was followed in Chairman, Indore Vikas Pradhikaran vs. Pure Industrial Coke & Chemicals Ltd {MANU/SC/7706/2007 : 2007 (8) SCC 705}. Again in Babulal Badriprasad Varma vs. Surat Municipal Corporation {MANU/SC/7606/2008 : 2008 (12) SCC 401}, the Supreme Court pointed out that a statute of town planning ex facie is not a statute for acquisition of a property. The Court further observed that every step taken by the State does not involve application of the Doctrine of Eminent Domain.”

Para 16. At this juncture, a small prelude is necessary, to understand how the liability to earmark open space for public and recreational purposes, in a land developed into a layout and how the liability to pay OSR charges, came into existence. Hence it is presented as follows: -

(i) Section 9C, Chapter II-A of the Tamil Nadu Town and Country



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Planning (Amendment) Act, 1973 (Tamil Nadu Act No. 22 of 1974)

prescribed that the Madras Metropolitan Development Authority shall carry out a survey of Madras Metropolitan area and prepare a Master Plan as referred to in Section 17.

(ii) Accordingly, MMDA carried out necessary surveys and studies and prepared the First Master Plan for the Chennai Metropolitan Area in 1975. The Government approved the same in G.O.Ms. No. 2395, Rural Development and Local Administration dated 4.12.1976.

(iii) The First Master Plan covered an extent of approximately 1170 sq. kms. It included within the City of Chennai, a part of Ambattur Taluk, Tambaram Taluk, Tiruvallur Taluk, Chengalpet Taluk, Sriperumbudur Taluk, Ponneri Taluk and Poonamallee Taluk.

(iv) Under the said Plan, all lands in the Metropolitan Area were categorised into 10 zones such as Primary Residential Use Zone, Mixed Residential Use Zone, Commercial Use Zone, Light Industrial Use Zone, General Industrial Use Zone, Special and Hazardous Industrial Use Zone, Institutional Use Zone, Open Space and Recreational Use Zone, Agricultural Use Zone and Non-Urban Use Zone.

(v) Along with the First Master Plan, a set of rules known as Development Control Rules were issued by the Government. These rules dealt with (i) permission for development (ii) use zones and (iii)



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general provisions. (vi) Rule 19 of the Development Control Rules, which comes under Part III, under the heading "General Provisions" deals with layout and subdivision.

(vii) The liability to reserve a portion of the site in a layout as open space, arose out of Rule 19 of the Development Control Rules, till these rules were in operation. Para 17. Rule 19 of the Development Control Rules contains a Table which prescribes the minimum width of the streets and roads in different types of layouts. Just below the Table under Rule 19, there is a Note. The said Note contains 3 prescriptions. The third prescription in the said Note contains a Table indicating the extent of land to be reserved for communal and recreational purposes in a layout or subdivision for residential, commercial, industrial or combination of such uses.

Para 21. It may be of interest to note that at the time when the First Master Plan was conceived in 1975, the concept of "Group Development" or "Flats", had not gained momentum in the City of Chennai. Therefore, the Development Control Rules did not contain specific provisions to regulate the same. But when developers started promoting flats, the issue was taken up by the Madras Metropolitan Development Authority with the Government, in a letter dated 22.3.1981. On the basis of the said letter of the Member Secretary and the recommendations of the Technical Committee of MMDA and the response of the public to the proposed amendment to the Rules, the Government issued G.O.Ms. No. 940, Housing and Urban Development, dated 8.10.1982, approving the Draft



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Rules for incorporation in the Development Control Rules with certain modifications. They were issued by the Government in exercise of the power conferred by Section 32 of the Tamil Nadu Town and Country Planning Act, 1971.

Para 22. By the Amendment so made to the Development Control Rules, sub-rules (b) & (c) were inserted under Rule 19. While sub-rule (b) dealt with “Special Buildings”, sub-rule (c) dealt with “Set Back” for residential and commercial. Under Clause (v) of sub-rule (c) of Rule 19, the extent of land to be reserved for Community Recreational Purposes, was indicated in a tabular column. It reads as follows:

<i>Extent of layout (1)</i>	<i>Reservation (2)</i>
<i>(i) For the first 3000 sq.meters</i>	<i>Nil</i>
<i>(ii) Between 3000 square meters and 10,000 square meters</i>	<i>10% of the area excluding roads or in the alternative, he/she shall pay the market value of the equivalent land excluding the first 3000 square meters as per the valuation of the registration department. The space so reserved shall be maintained as Community Recreational Space and shall remain private.</i>
<i>(iii) Above 10,000 sq.meters</i>	<i>10% of the area excluding roads shall be reserved and this space shall be transferred to the Authority or to the local body designated by it, free of cost, through a deed. It is obligatory, to reserve the 10% space of the site area and no charges can be accepted in lieu.</i>

Para 23. But in so far as “Group Development/Flats” are concerned, the open space to be reserved for Community Recreational Purposes was indicated in a separate Table in the same



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Government Order G.O.Ms. No. 940, dated 08.10.1982, as follows:

Extent of layout (1)	Reservation (2)
(i) For the first 3000 sq.meters	Nil
(ii) Between 3000 square meters and 10,000 square meters	10% of the area excluding roads or in the alternative, he shall pay the market value of the equivalent land excluding the first 3000 square meters as per the valuation of the Registration Department. The space so reserved shall be maintained as Community 75 Recreational Space and shall remain private.
(iii) Above 10,000 sq.meters	10% of the area excluding roads shall be reserved and this space shall be transferred to the Authority or to the local body designated by it, free of cost, through a deed. It is obligatory to reserve the 10% of the site area and no charges can be accepted in lieu.

Para 24. Rule 19(a) & (b) was amended further by G.O.Ms. No. 35, Housing and Urban Development, dated 9.1.1989. But the Amendments introduced by the said Government Order covered only layouts of the extent between 3,000 sq.meters and 10,000 sq.meters. In other words, layouts of larger extents above 10,000 sq.meters, were not covered by the said Amendment. Para 25. There appears to be a subsequent amendment. Though the year of such amendment is not clear, the Development Control Rules hosted in the Internet by



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the CMDA, as amended upto September 2004, contains two Tables, one in respect of normal buildings under Rule 19(a) and another in respect of “Special Buildings and Group Developments” under Rule 19(b). The Table under Rule 19(a) is as follows:

<i>Exent of layout (1)</i>	<i>Reservation (2)</i>
<i>For the first 3000 square meters</i>	<i>Nil</i>
<i>Between 3000 square meters and 10,000 square meters</i>	<i>10 percent of the area excluding roads or in the alternative he shall pay the market value of equivalent land excluding the first 3000 square meters as per the valuation of the registration department. “No such area reserved shall measure less than 100 square meters with a minimum dimension of 10 meters”. The space so reserved shall be transferred to the Authority or to the Local body designated by it, free of cost, through a deed, and in turn the Authority or the Local body may permit the residents Association or Flat Owners' Association for maintaining such reserved space as park. In such cases public access for the area as earmarked shall not be insisted upon.</i>
<i>Above 10,000 square meters</i>	<i>Space to the satisfaction of the authority or transferred to the authority for maintenance. It is obligatory to reserve 10 percent of the layout area.</i>



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Para 26. The Table under Rule 19(b) in respect of Special Buildings,

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<i>Exent of layout (1)</i>	<i>Reservation (2)</i>
<i>For the first 3000 square meters</i>	<i>Nil</i>
<i>Between 3000 square meters and 10,000 square meters</i>	<i>10 percent of the area excluding roads or in the alternative shall pay the market value of the equivalent land excluding the first 3,000 square meters as per the valuation of the Registration Department only where it is not possible to provide open space due to physical constraints. No such area reserved shall measure less than 100 square meters with a minimum dimension of 10 meters. The space so reserved shall be transferred to the Authority or to the Local Body designated by it, free of cost, through a deed, and in the turn the Authority or the local body may permit the Residents Association or Flat Owners' Association for maintaining such reserved space as park. In such cases, public access for the area as earmarked shall not be insisted upon.</i>
<i>Above 10,000 square meters</i>	<i>10 percent of the area excluding roads shall be reserved and this space shall be transferred to the authority or to the local body designated by it, free of cost, through</i>



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<i>Exent of layout (1)</i>	<i>Reservation (2)</i>
	<i>a deed. It is obligatory to reserve the 10 percent space of this site area and no charges can be accepted in lieu, in case of new developments or redevelopments.</i>

Para 27. After a spurt in developmental activities, the CMDA felt a need for a Second Master Plan for the Chennai Metropolitan Area. Therefore, a Draft Second Master Plan 2011 was prepared and submitted to the Government and the Government gave its consent to it under G.O.Ms. No. 59, Housing and Urban Development Department, dated 30.6.1995. After public consultation, it was submitted to the Government in December 1995 for approval. But approval could not be granted on account of an interim prohibitory order granted by this Court in a Writ Petition. Though the Writ Petition W.P. No. 14819 of 1995 was eventually dismissed on 10.7.2001, the Government returned the Draft Second Master Plan to the CMDA for suitable modifications. This was under G.O.Ms. No. 408, dated 5.10.2001. Para 28. Thereafter, a revised Draft Second Master Plan with the year 2026 as the horizon year, was prepared and submitted to the Government in December 2005. The Government again returned it under G.O.Ms. No. 331, H & UD Department, dated 5.12.2006, with a direction to incorporate certain developments in the field and to submit a fresh proposal for consent. This



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was done in February 2007 and the Government gave its consent on 30.3.2007. Para 29. Thereafter, copies of the Draft Second Master Plan were made available to the public and also hosted in the official website of the First Respondent. Subsequently public consultations were conducted in April and July 2007 and a twoday workshop was also held in August 2007. Thereafter, the draft was finalised and submitted to the Government. Finally, the Second Master Plan for Chennai Metropolitan Area was approved by the Government of Tamil Nadu in G.O.Ms. No. 190, Housing and Urban Development, dated 2.9.2008 and it was notified in the Gazette on the same day. As part of the Second Master Plan, a set of Regulations known as “Development Regulations” were issued and they came into force on 2.9.2008. Para 30. Regulation 26 of the Development Regulations 2008, contains stipulations regarding “Special Buildings”. A Special Building is defined in Regulation 2(40) to mean (i) a residential or commercial building with more than two floors, or (ii) a residential building with more than 6 dwelling units or (iii) a commercial building exceeding a floor area of 300 sq.meters.”

'87. In the said case, the Municipal Corporation of Delhi passed a Resolution that, building activity in certain areas, be allowed, subject to the condition that the open spaces for parks and schools was to be transferred to the Corporation. This led to a civil suit by the appellant, challenging the Resolution. This Court found that Section 313 of the Delhi Municipal Corporation Act, 1957, did



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not empower the Corporation to claim any property in the manner done. It was further found that the Resolution was contrary to the language used in Section 313 and violated a civil right, which vests in every owner, to hold his land and transfer it in accordance with law. The finding of the High Court that condition was only one involving transfer of the right of management, was not accepted. In fact, this Court also held, inter alia, as follows:

“5. The power directing transfer of the land has been exercised under Section 313 of the Act. This section falls in Chapter XV which deals with streets. The public streets are dealt from Section 298 to Section 311 whereas private streets are dealt from Section 312 to Section 330. Section 312 obliges an owner of any land utilising, selling, leasing out or otherwise disposing of the land for the construction of building to layout and make a street or streets giving access to the plots into which the land may be divided and connect it with an existing or public street. Section 313 requires such owner to submit a layout plan before utilising the land for any of the purposes mentioned in Section 312 and send it to the Commissioner with a layout plan showing the particulars mentioned in clauses (a) to(e). The reservation or allotment of any site in the layout plan for any open space, park or school is to be provided by clause (b) of Section 313. Section 316 entitles the Commissioner to declare a private street to be a public street on the request of owners. Section 317 prohibits a person from constructing or projecting any structure which will encroach upon, overhang or



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project into a private street. In fact the entire cluster of sections from 312 to 330 of which Section 313 is a part, deals with private streets only. There is no provision in this chapter or any other provision in the Act which provides that any space reserved for any open space or park shall vest in the Corporation. Even a private street can be declared to be a public on the request of owners of the building and then only it vests in the Corporation. In absence of any provision, therefore, in the Act the open space left for school or park in a private colony cannot vest in the Corporation. That is why in England whenever a private colony is developed or a private person leaves an open space or park to be used for public purpose he is required to issue what is termed as 'Blight Notice' to the local body to get the land transferred in its favour on payment of compensation. Section 313 which empowers the Commissioner to sanction a layout plan, does not contemplate vesting of the land earmarked for a public purpose to vest in the Corporation or to be transferred to it. The requirement in law of requiring an owner to reserve any site for any street, open space, park, recreation ground, school, market or any other public purposes is not the same as to claim that the open space or park so earmarked shall vest in the Corporation or stand transferred to it. Even a plain reading of sub-section (5) indicates that the land which is subject-matter of a layout plan cannot be dealt with by the owner except in conformity with the order of the Standing Committee. In other words the section imposes a bar on exercise of power by the owner in respect of land covered by the layout plan.



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But it does not create any right or interest of the Corporation in the land so specified. The resolution of the Standing Committee, therefore, that the area specified in the layout plan for the park and school shall vest in the Corporation free of cost, was not in accordance with law.” (Emphasis supplied).'

'88. Still further, the Court held as follows:

“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 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. ...”



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(Emphasis supplied)'

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13. We remind ourselves of oft-quoted ***Padma Sundara Rao*** case [***Padma Sundara Rao Vs. State of Tamil Nadu*** reported in (2002) 3 ***SCC 533: 2002 SCC OnLine SC 334***] as regards precedents. Relevant paragraph is paragraph 9 and the same reads as follows:

"9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'



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14. Applying *Padma Sundara Rao* case law of precedents, we find that once land is set apart for public use in a layout, the owner ceases to be legal owner and it is in public domain. In this view of the matter, the argument of learned counsel that said land neither belongs to the Corporation/Municipality nor has been vested in the Municipality pales into insignificance. In other words, it does not cut ice with us. To be noted, there is no dispute about OSR.

15. Another point that was made by learned counsel for writ petitioner is that the extent of land has not been mentioned with specificity. As there is a specific reference to layout, this argument does not hold water.

16. Be that as it may, we record the statement of learned Standing counsel for R2 that any other encroachment by any person be it the writ petitioners or any other encroacher would also be dealt with in the same



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manner i.e., in an even handed manner is recorded.

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17. As both the points on which the campaign against the impugned notices was predicated fail to cut ice, captioned main WPs fail and the same are dismissed. Consequently, captioned WMPs thereat also perish with the main WP and the same stand dismissed. There shall be no order as to costs.

[M.S., J]

[K.R.S., J]

02.01.2025

Index: Yes/No

Neutral Citation: Yes/No

Speaking order / Non-speaking order
gpa

To

1. The District Collector
Office of the District Collectorate
Hosur, Krishnagiri

2. The Commissioner
Hosur Municipality
Hosur



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M.SUNDAR,J.,
and
K.RAJASEKAR, J.,

gpa

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02.01.2025