



W.P(MD)No.19430 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2025

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

**W.P(MD)No.19430 of 2020
and
W.M.P(MD)No.16207 of 2020**

- 1.P.Xavier
- 2.T.Thamotharan
- 3.Manikandan
- 4.Neelakandan
- 5.P.Malarvizhi
- 6.T.Kannan
- 7.P.Vennila
- 8.A.Raju
- 9.P.Vasudevan
- 10.P.Victor

... Petitioners

VS.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai – 600 009.



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- 2.The Commissioner,
Commissionarate of Municipal Administration,
11th Floor, Urban Administrative Building,
No.75, Santhome High Road,
MRC Nagar,
Raja Annamalai Puram,
Chennai – 600 028.
- 3.The Director,
Directorate of Town and Country Planning,
No.807, Anna Salai,
Chennai - 600 002.
- 4.The District Collector,
Thoothukudi District,
Thoothukudi.
- 5.The Commissioner,
Thoothukudi Corporation,
Thoothukudi.
- 6.The Deputy Director,
Tirunelveli Region Town and Country Planning Office,
Door No.108, Trivandrum Road,
Tirunelveli - 627 002.
- 7.The Member Secretary,
Local Planning Authority,
No. 51, West Car Street,
Opposite to V.G.Higher Secondary School,
Thoothukudi - 628 001.



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- 8.The District Registrar,
District Registrar Office,
Thoothukudi.
- 9.The Sub Registrar,
Melur Sub Registrar Office,
District Registrar Office Campus,
Thoothukudi.
- 10.The Christian Vellalar Sangam,
Rep by its President,
D.No.20/Q/1A, 1st Street,
Subbaiah Mudaliyarpuram,
Thoothukudi – 3.
- 11.P.Jayaseeli
- 12.P.Joseph Ravi
- 13.J.Fellsida
- 14.Jegatha
- 15.F.Josephein
- 16.J.Rosemary
- 17.J.Vijayan
- 18.K.Kennady
- 19.L.Vimala Jothi Indira
- 20.M.Jayaraj

... Respondents

*(R – 11 to R – 20 are impleaded vide order
dated 05.08.2025 in W.M.P(MD)No.2377 of 2021)*

PRAYER : Writ Petition filed under Article 226 of the Constitution of India
praying for issuance of a Writ of Mandamus, directing the respondents 5 to 7



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to maintain the land measuring 44 cents comprised in old Survey No.456/3B2B Part and 457/1A3, Meelavittan Village, Thoothukudi as an open space area as per the approved layout in D.Dis.No.4576/73-LPDMM/DDTP/TIN-KAN No.19/73 for the benefit of Thiru.Vi.Ka. Nagar residents, Moondravadamayil, Thoothukudi and consequently forbear the 10th respondent in any manner deal with the property measuring 44 cents comprised in old Survey No.456/3B2B Part and 457/1A3, Meelavittan Village, Thoothukudi.

For Petitioners : Mr.M.P.Senthil

For RR 1 to 4 &
6 to 9 : Mr.P.Thilak Kumar
Government Pleader

For R – 5 : Mr.N.Ananda Kumar

For R – 10 : No appearance

For RR 11 to 20 : Mr.S.Muthumalai Raja

ORDER

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

The writ on hand has been instituted to direct the respondents 5 to 7 to maintain the land measuring 44 cents comprised in old Survey



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No.456/3B2B (Part) and 457/1A3, Meelavittan Village, Thoothukudi, as an open space area as per the approved layout in D.Dis.No.4576/73-LPDMM/DDTP/TIN-KAN No.19/73 for the benefit of Thiru.Vi.Ka. Nagar residents, Moondravadumayil, Thoothukudi and consequently, to forbear the 10th respondent in any manner deal with the said property in any manner.

2.The contention of the petitioners is that the OSR (Open Space Reservation) land in the approved layout has been attempted to be sold by the original land owner in violation of the applicable Rules. Thus, the present Writ Petition came to be instituted.

3.As per the approved layout, sanctioned by the Deputy Director of Town and Country Planning, Tirunelveli, certain lands were reserved as open space. The Commissioner, Thoothukudi Corporation has also reiterated that the OSR lands must be protected in accordance with the Tamil Nadu Combined Building Rules, 2019.



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4.It is needless to state that entire OSR lands, as per the layout approval, is to be taken possession by the Corporation and to be maintained for the purpose for which they were earmarked in the layout approval.

5.It is brought to the notice of this Court that a few individuals encroached upon a portion of the OSR land. It is duty mandated on the Corporation to remove such encroachments and maintain the OSR land for public purposes and as per the Rules in force.

6.The legal principles governing the protection of OSR land have been settled by the Hon'ble Supreme Court of India in the case of ***Association of Vasanth Apartments' Owners v. Gopinath and others [(2023) 4 MLJ 353 (SC)]***. The relevant paragraphs are extracted hereunder:

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



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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



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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 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]:



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“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.

xxx xxx xxx

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 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



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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



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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)

...

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



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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.”

7.The Thoothukudi Corporation has filed a counter-affidavit and the relevant paragraph No.13 reads as under:

“13.I respectfully submit that in any event the fifth respondent Corporation is ready to maintain the OSR as park, further as per Rule 41 of the Tamil Nadu Combined Building Rules, 2019, 10% of total extent (ie.,) 10.02 acres, have to be maintained for open space reservation for every layout, hence 1.002 acre have to be maintained as open space, further the layout only permitted 110 plots but as of now there are more than 140 plots, further even in the affidavit in para 5, it is stated that almost 131 plots, which clearly shows that nearly, atleast 21 plots was encroached over the open space



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8.In view of the settled legal position and considering the fact that a portion of the OSR land has been encroached upon by certain individuals, the respondents 5 to 7 are directed to initiate enforcement action to remove the encroachments and to maintain the OSR land for the purpose for which it was earmarked, as per the Rules and for the benefit of the public.

9.The learned counsel appearing for the respondents 11 to 20 submitted that the said lands have been purchased by respondents 11 to 20.

10.If at all the OSR lands have been fraudulently sold to the respondents 11 to 20, it is for them to approach the competent Court for appropriate relief. However, such purchase would not preclude the Corporation from resuming the OSR lands by following due process of law.



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11. Accordingly, the Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

[S.M.S.,J.] & [A.D.M.C.,J.]
05.08.2025
(1/2)

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1. The Secretary,
Represented by the State of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai – 600 009.
2. The Commissioner,
Commissionerate of Municipal Administration,
11th Floor, Urban Administrative Building,
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S.M.SUBRAMANIAM, J.
and
DR.A.D.MARIA CLETE, J.

ps

ORDER MADE IN
W.P(MD)No.19430 of 2020

DATED : 05.08.2025
(1/2)