

W.P.(MD)No.29008 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 31.01.2025

Delivered On : 28.04.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.29008 of 2024

and

W.M.P.(MD)Nos.24566 and 24567 of 2024

Vibhava Enclave Housing Welfare Association,
Rep. by its Secretary,
Mr.S.Raja Venkatachalam,
Having its Registered Office At,
Vibhava Enclave,
Thanatavam Road,
Madurai – 625 016.

... Petitioner

Vs.

- 1.The Secretary to Government,
Department of Municipal Administration and Water Supply,
Fort St. George,
Chennai - 09.
- 2.The Commissioner,
Madurai City Municipal Corporation,
Arignar Anna Maligai,
Thallakulam,
Madurai – 625 002.
- 3.Vvv and Company,
No. 4/18,
Aranmanai Street,
Sayalkudi,
Ramanathapuram – 623 120.
- 4.S.Jagadeesan



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5.S.Velu

6.S.V.Anjali

... Respondents

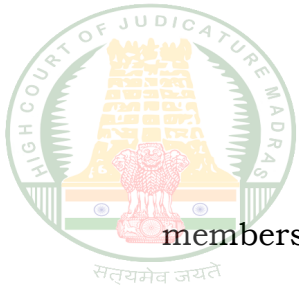
PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd respondent in E6/010461/24 dated 08.11.2024 and quash the same as illegal and arbitrary and consequently direct the 2nd respondent herein to grant the development and maintenance work of the Open Space Reservation area earmarked as park No.4 in the layout approval No.276(R)/1/2018, to the petitioner Society.

For Petitioner	: Mr.Chitra Sampath, Senior Counsel For Mr.J.Hariharan @ Harish
For 1 st Respondent	: Mr.T.Amjad Khan, Government Advocate
For 2 nd Respondent	: Mrs.S.Devasena, Standing Counsel
For 3 rd Respondent	: Mr.B.Saravanan, Senior Counsel For Mr.A.Saravanan
For 4 th Respondent	: Mr.L.Shaji Chellan

ORDER

This Writ Petition is filed, seeking to quash the impugned order of the 2nd respondent in E6/010461/24 dated 08.11.2024 and to direct the 2nd respondent herein to grant the development and maintenance work of the Open Space Reservation area earmarked as park No.4 in the layout approval No.276(R)/1/2018, to the petitioner Society.

2.The petitioner association is a registered society under the Tamil Nadu Societies Registration Act, 1975. The association consists of 150



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members, who are the landowners of the residential houses in the approved layout No.276(R)/1/2018, named as “Vibhava Enclave”. The housing community Vibhava Enclave consists of 30,802.69 square meters of land comprised in 54 plots and 4 parks excluding the area left for formation of roads. Of which, an area of 3,132.70 square meters of land was specifically allocated towards the Open Space Reservation (OSR) area to be maintained in the form of parks for the welfare of the residents of the housing community. The developer of the layout as per the layout approval condition, had gifted the Open Space Reservation areas to the second respondent vide gift deed in document No.10243/2018 of the Madurai Joint IV, Sub-Registrar Office. Apart from this, the developer has also paid a sum of Rs.1,36,10,775/- on 06.09.2018, towards development charges of this layout area to the second respondent.

3.The claim of the petitioners is that, the Open Space Reservation areas earmarked as parks are an integral part of the housing community. Though the OSR areas were allocated for parks in the approved layout and vested with the second respondent, no significant steps were taken by the second respondent to develop the said area as parks. Only after the formation of the petitioner association on 03.07.2023, the members of the petitioner association considering the welfare of the residents, decided to develop the OSR areas for the purposes mentioned in the approved layout specifically, OSR area earmarked as park No.4, which is the largest one in

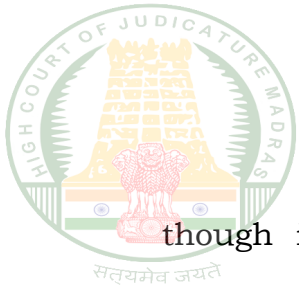


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the area with 2219.45 square meters and in this regard, they had sent a representation to the second respondent, seeking permission to develop and maintain the OSR area earmarked as park No.4 under the “Namakku Namaae Thittam” of the Government of Tamil Nadu, by representation dated 12.08.2024.

3.1.The petitioner association also undertook to proportionately contribute to the said development, as per the scheme. On receipt of the representation of the petitioner association, the second respondent advised the office bearers of the petitioner association that, it would be better for him to issue orders for the proposed development, if the association come forward to bear the total cost of development themselves, as he need not pay for sanction of funds from the Government under “Namakku Namaae Thittam”. Agreeing with his advice on 14.08.2024, a letter was submitted seeking permission to develop the said park by contributing the entire cost to the second respondent by the association.

4. Apart from a proposal to develop the entire area into five parts with separate play area for the kids, area for outdoor gym, area for two shuttle courts, a larger green area with proper landscaping, and providing a separate walking track of 6 feet width to the entire length and breadth of the park area for the residents, it was also proposed to construct a compound wall to the height of 6 feet all around the park No.4 area and the total estimate of Rs.75 lakhs was arrived at towards the said cost of development



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though it was not mentioned in the letter or plan. While the second respondent ensured that the proposal would be taken into consideration and would be sanctioned very soon, since nothing turned up, the petitioner association had sent another representation on 27.11.2024 to the second respondent, seeking permission for the said project.

5.However, to the surprise and shock of the petitioner association, it was understood that second respondent had issued the impugned order dated 08.11.2024, in favour of the third respondent for developing the OSR areas in the housing community of the petitioner association, as far as the park No.4 is concerned. Making allegation that the impugned order has been issued in favour of the third respondent only for the benefit of the respondents 5 and 6, who intend to utilise the OSR area, which is sought to be developed in Ward 22, Block 2, Town Survey No.2/2 for their own personal benefit by creating access to their land in ward No.22, Block 2, Town Survey No.1/8 from the OSR area, this petition is filed by the petitioner association.

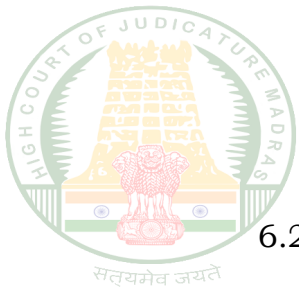
6.The learned Senior Counsel appearing for the petitioner association categorically submitted that, the second respondent's proceeding in the impugned order dated 08.11.2024, is unreasonable, untenable and arbitrary. Having not considered the proposal of the petitioner society to develop and maintain the OSR area earmarked as park No.4 at their own



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cost and expenses, the second respondent's attitude of passing the impugned order is against the spirit of the guidelines of “Namakku Namaae Thittam” (urban) and hence, the same is unsustainable. The learned Senior counsel further pointed out that the second respondent erred gravely by issuing the impugned order in favour of the third respondent, who is in no way connected to the community where the OSR area is located.

6.1. Pointing out that, the second respondent failed to see that the proposal of the third respondent for developing and maintaining the OSR area of the housing community of Vibhava Enclave is *mala fide* and not for the welfare of the community and that the same is against the object of the “Namakku Namaae Thittam”, the learned Senior Counsel categorically submitted that, the impugned proceeding should be struck off. Further the learned Senior Counsel raised allegations that, the respondents 3 to 6 are in collusion and connivance and are trying to take advantage of the “Namakku Namaae Thittam” for their own personal benefit and further insisted that the second respondent's negation in considering the proposal of the petitioner association to develop and maintain the OSR area in the approved layout is unlawful and unsustainable. When the petitioner association was ready to carry out the entire job at their own expenses, the second respondent gravely erred in deciding to issue an order in favor of the third respondent under the “Namakku Namaae Thittam”.

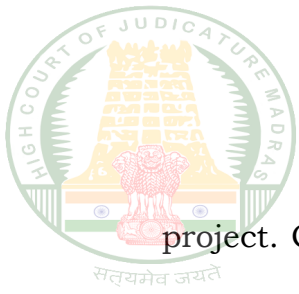


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6.2.The learned Senior Counsel emphatically submitted that, being the custodian of Government revenue, the act of the second respondent is highly unwarranted and is a national waste of the Government money. Insisting upon that the respondents failed to follow the principle of natural justice, the learned Senior Counsel pressed for allowing the Writ Petition by setting aside the impugned work order.

7.The learned Senior Counsel appearing for the third respondent pointed out that, the layout of Vibhava Enclave was regularized under the Tamilnadu Regularization of Unapproved Layouts and Plot Rules, 2017, vide layout No.276(R)/1/2018. He further categorically submitted that, it is only after coming to know that the third respondent is taking sincere efforts to establish a park in the Open Space Reservation area reserved in the Vibhava Enclave under the “Namakku Namaae Thittam”, the petitioner association suddenly woke up from sleep and on 12.08.2024 and on 14.08.2024, gave two representations to the second respondent submitting their willingness to establish a park in the park No.4 area consisting an area of 2,219.45 square meters. However, the said proposal came with the rider that the entire park would be compounded on all the four sides with a six feet height compound wall as well.

7.1. He further pointed out that, the said proposal dated 12.08.2024 and 14.08.2024, was conspicuously silent as to the total amount of contribution, which was likely to be made by the petitioner association for the said



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project. Categorically contending that, the OSR space in any layout is like a lung space for the layout concerned, any attempt on the end of the petitioner association to landlock the same would be a *mala fide* effort on the part of the petitioner association and if at all it is their real intention to landlock the same, the second respondent as a competent authority should necessarily interfere with the same.

7.2.He further submitted that, under the “Namaku Namaae Thittam”, the Government intends to facilitate larger participation of the people in this scheme, if the public or contributors opt to execute the work themselves or through their agency, willingness should be given by them in writing while applying for the work under “Namaku Namaae Thittam” and the Commissioner of the Municipal Corporation would examine the request and permit the contributors or the agency to execute the work provided the public contribution is 50% or more of the overall estimated cost of the work including all components. Though the petitioner association claimed that it had been their proposal to develop a path to a total estimate of at least Rs. 75 lakhs, it is significant to mention that neither of their representations dated 12.08.2024 and 14.08.2024, was explicit about the total budget of their proposal either in their representation or in their proposal or in their proposed plan. In the absence of such a component in their proposal while filing the Writ Petition, the writ petitioners cannot claim that they were intending to contribute 100% of the entire project of establishing park No.4



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in the OSR area.

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8.The learned Senior Counsel for the 3rd respondent, further submitted that, the request of the Corporation ward member from the 68th ward, namely, J.Muvendran, made an application to the Managing Director of Madurai Readymix, at Viraganur, Madurai. And on receipt of the same, the said organization by proposal dated 05.08.2024, made a request to the second respondent that the said organization is ready to contribute 51% of the total budget of establishing a park putting up a park in the said OSR area in survey No.294/1 of Madakulam village in Ponmeni Thanathuvam, Madurai, with a proposal to carry forward the work through the 3rd respondent along with a proper abstract on the work, which was proposed to be undertaken by the said organization through the 3rd respondent along with two demand drafts for an amount of Rs.10,25,000/- dated 14.08.2024.

8.1. Only on receipt of the said proposal, the proposal was forwarded before the Corporation Managing Directorate, Chennai, by the second respondent by proceedings in E6/010461/2024 dated 06.09.2024. Under such circumstances, the petitioner association made a proposal without mentioning the proposed amount of contribution for developing a park in the OSR area. Only after following the due procedure, the proper permission was accorded to the third respondent and the impugned work order also came to be issued facilitating the 3rd respondent to commence the work of



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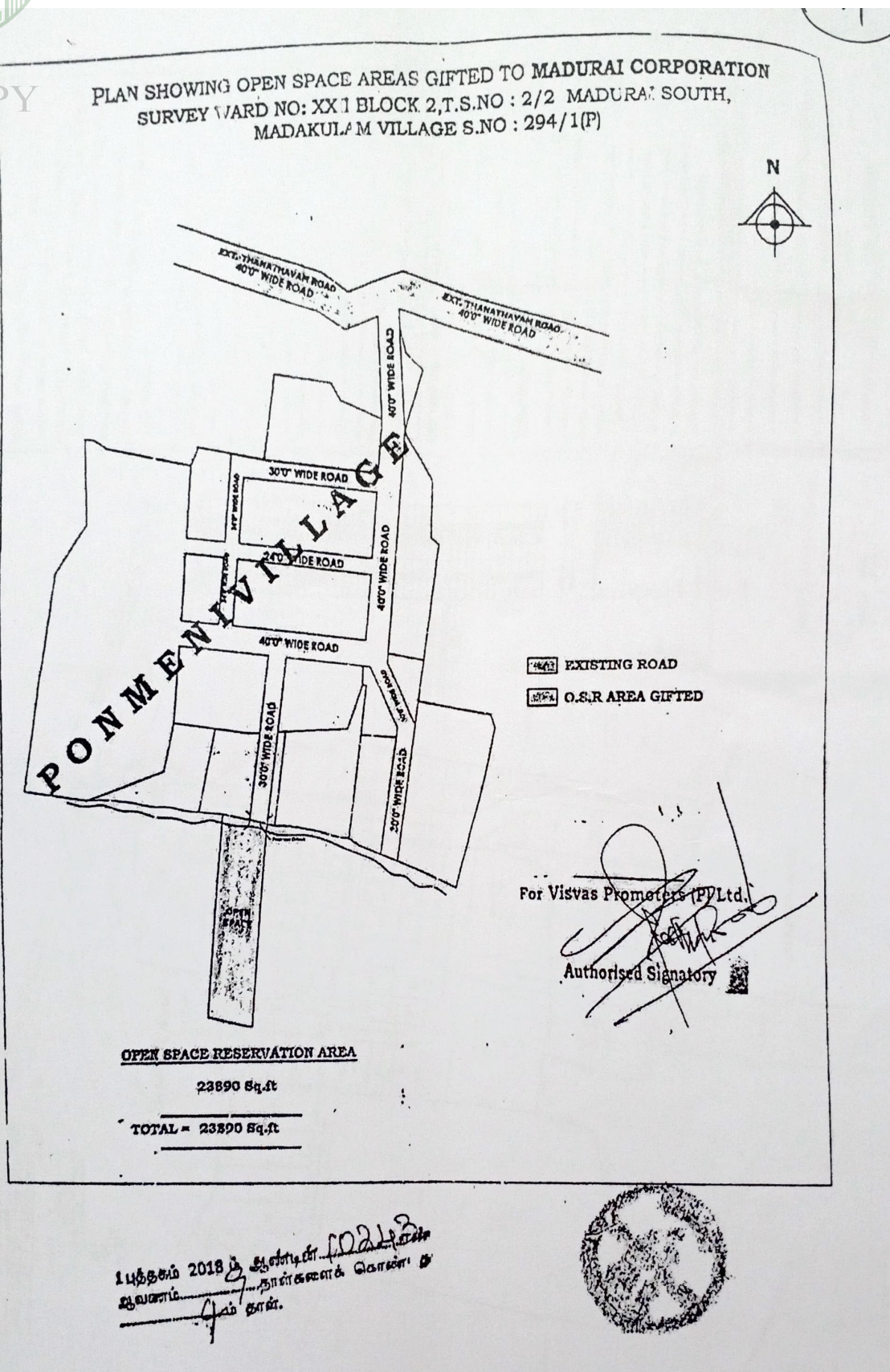
the park in the said OSR area and the learned Senior Counsel pressed for dismissal of the Writ Petition.

9.The learned Standing Counsel appearing for the 2nd respondent Corporation submitted that, the entire case of the petitioner is baseless and that the same is not maintainable. She placed before me the plan showing the open space area gifted to Madurai Corporation in Survey No.294/1 part of Madakulam Village and the same is extracted as follows:-



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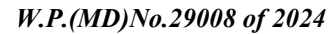


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9.1. The learned Standing Counsel appearing for the 2nd respondent Corporation further submitted that, the 2nd respondent vide regularization of layout No.276(R)/1/2018 dated 03.09.2018, approved the layout promoted by one Thiru.S. Seetharaman. She also fairly conceded that, the area shown as park No.4, comprises an area of 2219.45 square meters in Survey No. 294/1 of Madakulam village.

9.2. Though layout was approved in the manner reserving 4 areas as Open Space Reservation areas, the gift deed bearing document No.10243 of 2018 dated 04.09.2018, executed by Thiru.Seetharaman, for M/s.Visvas Promoters Private Limited in favor of the second respondent Corporation was with respect to all that piece and parcel of land at measuring 23,819 square feet in total cost by OSR area comprised in part of R.S.No.294/1 part in Madakulam village corresponding to T.S. Ward No.22, block No.2, T.S. Nos.2/2, Madurai Thiruparangundam Taluk, Madurai district ,and the purpose of the aforesaid deed was also explicitly mentioned in the covenant of the aforesaid deed and the same is extracted as follows:-



This **DEED OF GIFT** executed at Madurai on this the 04th day of September, 2018, We, "**M/s. VISVAS PROMOTERS PRIVATE LIMITED**" a Company incorporated under the Indian Companies Act 1956, having its Registered Office at Door No. 84, TPK Road, Andalpuram, Madurai-625 003, [PAN AABCV2330G] [TAN MRIV00430D] represented by its Authorised Signatory cum one of its' Directors, **Shri. S.SEETHARAMAN**, Son of Shri. R. Sankaran, residing at the above mentioned address, hereinafter called the **DONOR** which expression shall wherever the context so admits include its executors, administrators and legal representatives of the **ONE PART**;

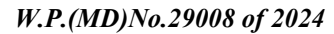
TO AND IN FAVOUR OF THE CORPORATION COUNCIL OF MADURAI, constituted under Madurai City Municipal Corporation Act 1971 through The present COMMISSIONER AND SPECIAL OFFICER, MADURAI CITY MUNICIPAL CORPORATION, MADURAI, hereinafter called the DONEE which expression shall wherever be context so admits include its heirs, executors, administrators and legal representatives of the OTHER PART;

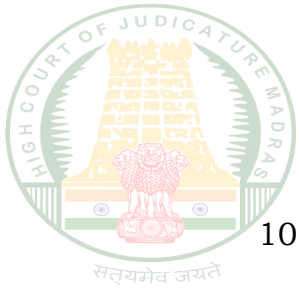
WHEREAS the DONOR is well and sufficiently entitled free from encumbrances to the piece or parcel of land described in the Schedule below vide Deed of Purchase registered with Joint 4 Sub-Registrar, Madurai under Doc. No. 4004/2016 dated 25.04.2016 and intended hereby to be granted conveyed and assigned to the DONEE, as per Regularisation of unapproved layout sanctioned by The Member Secretary, MALPA, Madurai in proceedings No. ந.க.எண். : 383/2018/மதி 2 dated 20.07.2018 and in Layout No. ம.வ./ம.உ.தி.கு. எண். : 276(R)/2018.

For Visvas Promoters (P) Ltd.,

~~Authorised Signatory~~

24.2.2013 10243



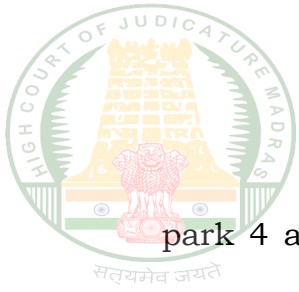


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10.The learned counsel for the 2nd respondent further pointed out that, the said deed was executed by the promoter in favor of the 2nd respondent Corporation with all rights, liberties, privileges, easement advantages and appurtenances whatsoever that belongs to the said piece or parcel of land or any part thereof in any way appertaining there to and all the estates, rights, title, interest, property claim and demand whatsoever of the donor upon the same piece or parcel of land. The learned counsel further pointed out that, a careful reading of the said deed itself would make it clear that the promoter of the said layout did not restrict the gift of the said parcel of land exclusively for the parts in terms of the layout but also for the purpose of public road traffic uses as well.

11.It is only under such circumstances, a proposal was received at the instance of the 68th Corporation ward member Thiru.J.Muvendran from Madurai Readymix, on 05.08.2024, to take up the project of putting up a park in the Vibhava Enclave OSR park No.4 area under the “Namakku Namaae” Scheme by contributing 51% of the total budget along with an abstract budget and a demand draft for an amount of Rs.10,26,000/-, drawn in favour of the 2nd respondent Corporation.

11.1. It is only in such background, another proposal was put forth by the petitioner association on 12.08.2024 and 14.08.2024, seeking permission to contribute towards putting up a park in the very same OSR

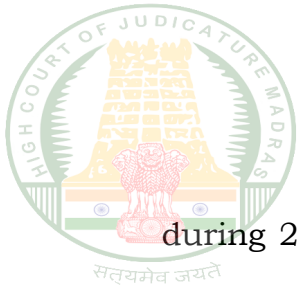


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park 4 area under the “Namakku Namaae Thittam” without specifying the amount, which they propose to contribute. That apart, the learned counsel pointed out that, the said proposal came with the rider that the entire park area would be compounded on all the four sides, which is impermissible. Categorically contending that, it is the privilege of the 2nd respondent to decide between the proposals and finalize the work in favour of the third respondent, she pressed for dismissal of the Writ Petition pointing out that the petitioner association cannot in any way interfere with the maintenance of the OSR areas by the 2nd respondent Corporation, which were already donated by the promoter in favour of the Corporation.

12.Heard the learned counsel on either sides and carefully perused the materials available on record.

13.It is the admitted case of the writ petitioners themselves that the OSR land has already been donated by the promoter of the layout in favour of the second respondent Corporation. As rightly pointed out by the learned counsel for the second respondent Corporation, the gift deed has been executed absolutely as far as the lands reserved for OSR purposes are concerned and the same is not restricted only exclusively for the establishment of park. Even that be so, the 2nd respondent has taken initiative and issued work order in favour of the 3rd respondent only for the purpose of putting up a park in line with the approved layout as early as



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during 2018 and negating the proposal of the petitioner association for the reasons properly explained before this Court that the proposal of the writ petitioner association came with the rider that the OSR area was likely to be compounded on all the four sides, thereby creating a dead end to the road proceeding to the OSR area, that is, the proposed new park.

14.Once a gift deed is executed by the promoter of a layout in favour of the authority, the competent authority reserves the right to enforce the maintenance of such OSR land and neither the promoter nor the residents of the layout could raise any objection to the same except in circumstances where any proposed development is to the detriment of the cause of the common public. No doubt, the developer M/s.Visvas Promoters Private Limited, through Thiru.S.Seetharaman, had transferred the entire area reserved for Open Space purposes, that is, an area of 23,890 square feet, in the interest of public to the authority for parks in terms of the layout for public road traffic uses in terms of the gifted dated 04.09.2018, reserving the right, liberty, privilege, easement advantages and appurtenances with respect to each and every parcel of land so donated by the said person in favour of the Corporation. The petitioner association has *locus* neither as the owner of the property nor has any usage right been assigned to it in the gift deed executed by the donor. The 2nd respondent Corporation is the absolute owner of the gifted property. The property is gifted for the purpose of common public.



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15. Needless to state, by the impugned work order, the property is likely to be improved at the instance of the 2nd respondent Corporation under the “Namakku Namae Thittam”, only for the purpose of establishing a park in terms of the layout sanctioned. The Town and country planning involving land development of cities and towns are exclusively in the domain of the urban bodies concerned. Reserving any site for Open Space park, etc., in a layout is normally for the purpose of the common public and it is inherent in such reservation that it shall be used exclusively for the welfare of the common man. The effect of such reservation is that the promoter or the residents of the layout ceases to have any right over the same, but only the benefit of the larger society would be of primordial concern.

16. In view of the same, I do not find any necessity to interfere with the impugned order and accordingly, the Writ Petition fails and the same is dismissed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

28.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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To

- 1.The Secretary to Government,
Department of Municipal Administration and Water Supply,
Fort St. George,
Chennai - 09.
- 2.The Commissioner,
Madurai City Municipal Corporation,
Arignar Anna Maligai,
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L.VICTORIA GOWRI, J.

Mrn

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