



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-02-2026

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

REV.APPL Nos. 101 and 103 of 2022

Rev.Appl.No.101 of 2022:-

1. R. Kulasekar
S/O.Ramakrishna Naidu, No.26, Balaji
Nagar, Avarampalayam Road,
Coimbatore.

Petitioner

Vs

1. The Commissioner
Coimbatore City Municipal
Corporation, Big Bazaar St,
Coimbatore.

Respondent

PRAYER in Rev.App.No.101 of 2022:-

Review filed under Order 47 Rule 1 of CPC read with 114 of CPC, to review the order passed in S.A.No.510 of 2019 dated 26-04-2019.

Rev.App.No.103 of 2022 :-

1.Jayalakshmi (Deceased)
2.R.Rajendran
the 2nd respondent was brought on record
as LR of the deceased S/o.Ramakrishna Naidu.

..Petitioner



Vs

The Commissioner
Coimbatore City Municipal Corporation
Big Bazaar Street, Coimbatore

..Respondent.

Prayer in Rev.103 of 2022 :-

Review filed under Order 47 Rule 1 of CPC read with 114 of CPC, to review the order passed in S.A.No.518 of 2019 dated 26-04-2019.

For Petitioners: Mr.P.V.S.Giridhar
Senior Counsel For
Mr.P.R.Krishnaraj

For Respondent(s): Mr.K.Magesh

ORDER

The Review Petitioners herein are the respondents in S.A.No.510 and 518 of 2019. They filed the present Review Petitions as against the order dated 26.04.2019 passed in the Second Appeals, seeking to review the findings of the learned Judge.

2. S.A.Nos.510 and 518 of 2019 were filed by the Commissioner, Coimbatore City Municipal Corporation, challenging the concurrent findings of the courts below. On hearing both sides, both second appeals were allowed by this court on 26.04.2019. Challenging the order passed in the second appeals,



S.L.P. (Civil) No.8324 of 2021 arising out of SLP(Civil) Diary No.8014 of 2021 was filed by one Yasodaa.V., a third party purchaser, with condonation of delay in filing. The matter was taken up for hearing by the Supreme Court on 29.06.2021 and the following order was passed:-

- “1.Delay condoned.
2. We are not inclined to entertain the Special Leave Petitions under Article 136 of the constitution.
3. The Special Leave Petitions are accordingly dismissed.
4. Pending applications stand disposed of.”

Another respondent in S.A.No.518 of 2019 filed SLP(Civil)No.10739 of 2021 along with condonation of delay petition and when the matter was heard on 26.07.2021, Supreme Court has passed the following order:-

“ 1.Learned counsel appearing on behalf of the petitioner, after being apprised of the fact that the Special Leave Petition © Diary No.8014 of 2021 against the same judgment of the High Court has been dismissed by a three-judge Bench on 29 June 2021, seeks the permission of this Court to withdraw the Special Leave Petition since the petitioner is advised to



file a review before the High Court. We make no observation on the merits of the review.

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2. The Special Leave Petition is dismissed as withdrawn.”

Thereafter the above Review Petitions in the Second appeals are filed by the respondents in the month of May 2022.

3. The brief facts of the case are as follows:-

(i) The dispute between the review petitioners and the respondent Coimbatore City Municipal Corporation is with respect to site reservation for public purpose in the lay out which was approved as Scheme No.10 under the Madras Town Planning Act (VII of 1920).

(ii) The Deputy Director of Town Planning, Coimbatore and Nilgiris, sanctioned the Plan as Scheme No.10, in T.S.No.157 and 158/2 Part in Coimbatore Town, Krishnarayapuram Village. The said scheme 10 was approved under Sanction Order No.41/7 in accordance with the Town Planning Act, 1920.

(iii) The respondent herein/appellant in Second Appeals viz., the Municipality, on request of the respondents entered into an agreement with some conditions as contained in the sanction order. The important condition of



the sanction order as per the agreement is as follows:-

“ 1. The sites and streets should be durably demarcated with stones in accordance with the approved layout plan T.P./D.T.P. CNR 41/71 of Deputy Director of town Planning, Coimbatore and the streets formed and made (including metalling, sewerage, draining, converging and providing culverts as may be necessary to the approved levels and widths to the satisfaction of the Executive Authority and provided with street lighting to the satisfaction of the Municipal Electrical Engineer in compliance with the provisions under Section 175 and 176 and street-by-laws made under Section 306(8) of the Madras District Municipalities Act within 6 months of the communication of the sanction of layout. The roads should be handed over to the Municipality through a registered gift deed.”

As per the above condition, the Review petitioners developed streets and transferred the same in favour of the respondent-Municipality through registered Gift Deed. According to the review petitioners, except the above condition, no other condition was incorporated or imposed to handover the suit



property, particularly, in handing over the suit property which was ear marked as reserved for public purpose. The only condition was forming of street with street lights and handover the same to the then Municipality viz., the respondent.

(iv) According to the Review Petitioners, this schemed layout was approved much before the new enactment of Tamil Nadu and Country Planning Act, 1971 (Act 35 of 1972) came into force. But the respondent municipality misconstrued the certain provisions of the New Act as if the layout was obtained under the provisions of the new Act 1971 and hence exceeded their powers and tried to interrupt with the peaceful ownership and possession of the suit property and hence the Review petitioners filed a suit in O.S.No.1488 of 2003 for declaration and injunction. So also suit in O.S.No.1490 of 2003 was filed by one Kulasekar in respect of another property which is a part of another lay out adjacent to this suit property for a similar cause of action and relief.

(v) Both suits are tried together. Trial court framed separate issues. Based on the evidence, trial court decreed the suit on the following terms:-

“ (a) the suit lay out has been approved and sanctioned under scheme system contemplated under the Town Planning Act, 1920 before implementation of Town and Country Planning Act, 1971 (Act 35 of 1972). The repealed Town



Planning Act 1920 does not speak about anything of handing over reserve sites to local bodies.

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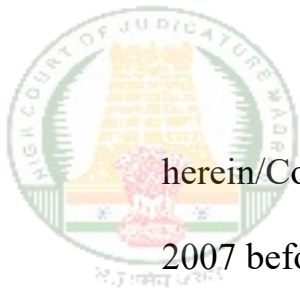
(b) The circular letter (Ex.X.2) issued on 17.08.1987 specifically clarifies that area earmarked as park, playgrounds and children's playground should be handed over to the local body through the Gift deed and other areas which are earmarked as 'Reserved for Public Purpose', can be sold by the land owners. Therefore, the respondent-Corporation has no right over the site earmarked as Reserved for public purpose.

(c) The above notification would further read that as on the date of the publication of it videlicent, 27.2.2001, the plaintiff did not handover the reserved sites to the defendant municipal corporation. Hence, the defendant municipal corporation itself would admit that it has not been in possession of the suit property as on 27.2.2001.

(d) Hence, in view of the above discussion, I answer the first issue in favour of the Plaintiff that she has been in Possession of the suit property.

(e) Hence, in view of the above provision of law (Section 38), the land is not acquired under Section 36 or 37 of the Tamil Nadu Town and County Planning Act 1971 within 3 years of its Gazette publication as per Section 26 and 27, the land under reservation shall be released."

4. Aggrieved by the said finding of the trial court, the respondent



herein/Coimbatore Corporation preferred appeals in A.S.Nos.113 and 114 of 2007 before the Sub Court, Coimbatore.

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5. Before the Additional Sub-Court, Coimbatore, separate issues were framed for consideration by the 1st appellate court. The 1st appellate court given the following findings:-

“1. It is admitted fact that Ex.A.3 approved plan was sanctioned under the old Town Planning Act of 1920. It is further an admitted fact that no condition was imposed upon the Plaintiff to hand over the area reserved for public purpose under Ex.A.3 sanction order, Ex.A.4 agreement, or Ex.A.5 Gift Deed.

2. The Tamil Nadu Town and Country Planning Act of 1971 had replaced the Madras Town Planning Act of 1920 and however any action taken under the previous Act under the corresponding provision of the new Act shall continue to be in force unless and until superseded by or anything done under the new Act as per Section 125 relating to repeal and savings.

3. If no action taken after the expiry of three years as per Section 38, the land shall deemed to be released from the reservation allotment or designation. Admittedly no action for acquiring the land reserved for public purpose was taken under Act



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7 of 1920 and even after coming into the force of Tamil Nadu Town planning Act of 1971; no action was taken by the respondent to acquire the suit property within three years and as such the suit vacant site is deemed to be released. “

6. Accordingly, the 1st appellate court concluded that defendant-corporation's claim over the suit property was expired by limitation for not acquiring the suit property as per the mandatory provision.

7. As against the above said findings, two Second Appeals in S.A.Nos.510 and 518 of 2019 were preferred by the Coimbatore City Municipal Corporation before this Court.

8. At the time of admission, the following substantial questions of law were framed by this court in the Second Appeals.

“a. Whether the plaintiffs are entitled to claim title over the area, which was earmarked for a public purpose in the approved layout ?

b. Whether the promoter of a layout has any right to alienate the property, which has been reserved for a public purpose in the approved layout ?



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c. Whether Section 34 and 38 of the Tamil Nadu Town Country Planning Act, 1978 are applicable to the layout approved under Section 49 of the said Act.?”

9. Thereafter on hearing both sides, this court on 26.04.2019, allowed the Second Appeals preferred by the respondent herein/Coimbatore Municipality, by a common judgment, thereby, set aside the judgment and decree passed in A.S.Nos.113 and 114 of 2007 on the file of III Additional Subordinate Judge, Coimbatore, dated 23.01.2019 which confirmed the judgment and decree passed in O.S.Nos.1488 and 1490 of 2003 dated 26.06.2007.

10. The respondent herein viz., Coimbatore City Municipal Corporation issued a notice to the review petitioners herein/plaintiffs also in the connected suit and a third party bonafide purchaser, directing them to vacate the site in their respective occupation within 15 days from the date of the receipt of the notice.

11. Aggrieved by the said notice, the 3rd party bonafide purchaser preferred SLP, so also the respondent in S.A.518 of 2019. The SLP preferred by the review applicant herein and another were dismissed as withdrawn, as extracted in the preceding paragraph of this common order.



12. Learned counsel for the review petitioners argues that the layout was approved as Scheme No.10 under The Madras Town Planning Act (VII of 192) referred to as Act 1920. After 32 years, retrospectively, sanction was accorded which cannot be faulted and as such, based on assumption, Ex.X.5 was erroneously considered by this court. But the court below rightly held that Ex.X.5 Circular has no retrospective application. Therefore, the findings to that effect requires review of the common judgment passed in S.A.No.510 and 518 of 2019.

13. Learned counsel further argues that the circulars Ex.X.5 have no statutory force and being the executive instructions, it cannot take away the rights of land owners by vested interest. Since, the land owners, for 32 years, by virtue of the lay out permission sanctioned in 1971 under the 1920 Act, are having their rights. The question of application under the 1971 Act does not arise. But this court misdirected itself both on facts and law. Therefore, judgment requires to be reviewed.

14. Learned counsel further submitted that it is not the case of the petitioner/plaintiff that the site in dispute has been allocated for Play Ground and School. The specific averment of the petitioner/plaintiff in the suit is that



this site has been earmarked as public purpose which is different from earmarking of the site for school, playground, children's playground, park and hence with due respect, it is submitted that the conclusion of this court in holding that the plaintiff has earmarked this site for the public purpose of forming a school or ground or park is not correct.

15. Learned counsel for the review petitioner further submitted that the framing of the issue by this court for the third substantial question of law is whether Section 34 and 38 of the Tamil Nadu Town and Country Planning Act, 1971 are applicable to the lay out approved under Section 49 of the Act is factually incorrect. The Hon'ble Court has erred in presuming that this lay out has been sanctioned under Section 49 of the Act 1971 whereas admittedly the layout has been sanctioned under the provisions of the erstwhile Act 1920.

16. Learned counsel for the review petitioners also submitted that when the layout was approved under the 1920 Act as far back as 1971, the question of the petitioner/plaintiff applying under the 1971 Act does not arise and the court has misdirected itself both on facts and law and the judgment therefore required to be reviewed.

17. He further submitted that the order of the court in S.A.Nos.510 and



518 of 2019 is prejudicial to the claim of the review petitioners/respondents in SA., and hence it is a fit case, liable to be reviewed.

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18. Furthermore, learned counsel also pointed out that though this court is empowered under Section 100 CPC to frame substantial question of law, not raised by parties, such question need to be notified to the parties to enable them to answer the question during the course of hearing. But the learned Judge, failed to follow the legal procedures. In this connection, the learned counsel relied on the following authorities:-

- (i) Mehboob-Ur-Rehman vs. Ahsanul Ghani (2019) 19 SCC 415.
- (ii) R.Nagaraj (Dead) through LRs and another Vs. Rajamani and Others (2025) INSC 478.

19. By way of reply, the learned counsel for the respondent/Coimbatore City Municipal Corporation would submit that aggrieved by the findings of the courts below, the Coimbatore Corporation as appellants filed Second Appeals before this court. This court has given sufficient opportunity for both sides and taken up the matter. Both appellants and respondent submitted their arguments on the substantial questions of law framed by this court and on hearing both sides, this court has elaborately passed the order answering the issues involved



in the appeals by applying correct provisions of law and the judgment was pronounced. There is no illegality in the order passed by this court as alleged by the review petitioners.

20. The respondent counsel also submitted that the above review petitions are filed praying to review the order passed by this court, as such, is beyond the scope of the review and there is no apparent error on the face of the record.

21. The counsel for the respondent-Coimbatore Corporation also submitted that the grounds for review submitted by the review petitioners lacks merit and the order passed in Second Appeals requires no review.

22. Heard and considered both side submissions.

23. The Review Petitioners have come forward with the present review seeking review of the order passed by the learned Single Judge of this court dated 26.04.2019. As on date, the learned Single Judge who passed the order has retired and surprisingly, the above review applications was not filed while the learned Judge was serving as Judge of this court and filed just 3 days after his retirement i.e., 9.05.2022. The Apex Court has observed that after the retirement of the Judges, filing review ought not to be encouraged. The present



review applications are filed after retirement of the judge of this court and without assigning any proper reason. So at the time of filing review application, the Hon'ble Judge was in service which itself shows that the petitioners have not approached this court with bonafide reason.

24. As rightly pointed out by the learned counsel for the respondent-Coimbatore Corporation, the very many grounds raised by the review petitioners are beyond the scope of the review applications. While exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order. It is observed that a rehearing of the matter is impermissible in law. Review is not appeal in disguise. The power of review can be exercised for correction of a mistake but not to substitute a view.

25. While considering the grounds raised on the side of the review petitioners, this court finds that the same arguments raised before this court in the main second appeals are attempted to be resubmitted in the present review, which is not permissible for the reason that it is settled principle that under the guise of review, the entire order cannot be revisited. If there is any error apparent on the face of record, this court, had the power to review the order but not beyond that.



26. While framing question of law, more particularly third question of law, that is

“Whether section 34 and 38 of Tamil Nadu Town and Country Planning Act of 1978 are applicable to the layout approved under Section 49 of the said Act.?”

The learned counsel for the review petitioners submits that the said question could not arise either as per pleadings or out of the evidence. Moreover, the learned counsel submits that it is based on the false premises that approval of the layout was granted under the Tamil Nadu Town Planning Act of 1920. So, it is an error on the face of record. Therefore, the learned counsel prayed to review the order.

27. Learned counsel pointed out that in paragraph 10 and 11 of the order, the learned Judge has observed that “it is not the case of the plaintiff that the said disputed areas are reserved for non-commercial purposes. In fact, it was reserved only for providing a playground and park”. This was not the case of the defendant either at any stage either in the suit or in the Appellate Court proceedings. As such, the finding is without any foundation in pleadings or evidence. This is a clear error on the face of the record and it is clear miscarriage of justice, hence, prayed for the review of the order.



28. He would also submit that the learned Judge failed to apply Section 6 General Clauses Act, 1897 and relied exclusively on Section 125 of the 1971 Act, ignoring in particular Section 6(c) of the former, under which the provisions of the 1971 Act cannot affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. This is also a glaring error on the face of the record, particularly in view of the law laid down by the Supreme Court in *State of Punjab Vs. Mohar Singh (AIR 1955 SC 84)*.

29. On perusal of the order of this court passed by the learned Single Judge, it is seen that both parties were heard and orders were passed on 26.04.2019 based on the three substantial questions of law framed by the court and the Second Appeals were allowed. Consequently, suit filed by the plaintiff was dismissed.

30. Admittedly, review petitioners are the plaintiffs. With regard to question of law A and B, learned Judge of this court has discussed about the submissions made by the learned counsel for the respondents/plaintiff and held as under:-



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11.4. The law on this subject is now well settled that, the common area which is earmarked for public purpose should be used only for public purpose, the owner ceased to be the legal owner of the land, and he hold the land only for the benefit of the public in general, and he cannot alienate the land.

11.5. In P.T. Chet Ram Vashist (dead) by LRS V.Municipal Corporation of Delhi (1995) 1 SCC 47 considering number of the earlier judgements, the Hon'ble Supreme Court has held as follows :

" 6. reserving any site for any street, openspace, 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...."

11.6.. In Kirubakaran v. Commissioner (East) Corporation of Coimbatore (2013) 8 MLJ 257, another Division Bench of this Court has held thus :

"9. The Division Bench of this Court in (2007) 3 MLJ



990 (supra) considered the earlier decisions of the Supreme Court and held that "public purpose", though cannot be precisely defined, broadly means the general interest of the community as opposed to the interest of an individual. In the judgment of the Supreme Court reported in AIR 1952 SC 252 (State of Bihar Kameshwar Singh) it is held that public purpose will be construed to promote the welfare of the people at large and if there is dispute regarding public purpose, the Courts have jurisdiction, and it is their duty to determine the matter whenever a requisition is made to acquire the land according to the spirit of the times in which particular legislation is enacted. The Supreme Court in the Decision reported in 12 AIR 1956 SC 294 (State of Bombay V. R.S.Nanji) also took a similar view. When the use of land earmarked for public purpose was unauthorisedly allotted to a school, the Supreme Court set aside the same and the said decision is reported in AIR 1996 SC 253 : (1995) 5 SCC 762 (G.N. Khajuria (Dr) V. Delhi Development Authority). The Division Bench in the above referred judgment held that, "a portion of land reserved for public purpose in a layout or in a development plan or master plan approved by the local body cannot be used for any other purpose, than the one specified



therein."

11.7.. Yet another Division of this Court in

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K.Rajamani v. Alamunagar Residents' Welfare Association, 2011(1) CTC 257, after considering the various judgments of the Hon'ble Supreme Court has held as follows :-

"21. A survey of the above law shows that the land once earmarked for public purpose cannot be earmarked for any other purpose and particularly, to dereserve or put to use as housing plots. (See Krishna Nagar Residents' Welfare Association v. Director of Town and Country Planning, 2001 (3) LW 828) “

31. Considering the propositions of law laid down by the Supreme Court, the learned Judge observed that suit property is the subject issue and different parties purchased the layout and two exhibits more particularly as per in Ex.X.5, it is clearly stated that in a layout for an area less than 10 acres, an extent, 10% of such area should be reserved for open spaces like, park, play fields, etc. In cases where the layout for more than 10 acres, 50% of the total reservation area may be provided for other public purpose like Kalyana Mandapam, Community Hall, etc., only those area the promoter is permitted to alienate. The relevant portion of the circular under Ex.X.2 and Ex.X.5 are extracted as under:-



Ex.X.2

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" ஒப்புதல் அளிக்கப்பட் மனைப்பிரிவுகளில் சாலைகள் மற்றும் பொது திறந்தவெளி ஒதுக்கீடுகளான பூங்கா விளாயாடுமிடம், குழந்தைகள் விளையாடும் இடம் போன்றவைகள் மட்டு் மே மனைப்பிரிவு, சொந்தக்காரர் உள்ளாட்சிகளுக்கு தானமாக ஒப்படைக்க வேண்டும. ' மற்றைய பொது ஒதுக்கீடுகள்விலைக்கு விறறுக் கொள்ளலாம். இது வீட்டு வசதி வாரிய மனைப்பிரிவிற்கு ம் பொருந்தும். "

Ex.X.5

" During the meeting of the Regional Deputy Directors held at Madras from 18.04.1985 to 20.04.1985, it was felt that the word "Reserved Lands" stipulated in the layout condition mentioned above requires explicit definition as the lands reserved in the layout would include parks, play fields, <http://www.judis.nic.in> community halls, Kalyana Mandapam, etc., It was felt that it would be sufficient if areas reserved as open space like parks, play fields, children play space alone need be handed over to the Executive authority of the local body as they essentially belong to the category of non commercial public purposes. The other reservations like Kalyana Mandapam, Community Halls, eetc., belongs to commercial category and it was felt that the layout owner should not be deprived of income which, he may likely to get by disposal of these plots as he has to



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surrender to the Executive Authority of the local Body a sizeable amount of land by way of non-commercial open spaces, Instructions have already been issued in this office circular that in layouts which are of less than 10 acres in extent, 10% of such area should be reserved only for open spaces such as parks, play fields, etc. In cases of layouts of more than 10 acres in extent, 50% of the total reservation made may be provided for public purpose like Kalyana Mandapam, Community Hall, reading room, library, etc., and the balance 50% may be reserved as open space. "

.....

"In pursuance of the decision taken at the meeting of the Regional Deputy Directors held at Madras from 18.04.1985 to 20.04.1985 and in view of the circumstances stated above the Regional Deputy Directors are hereby informed that the circular issued in this office reference first cited shall be modified as indicated below : a) the applicant/owner should relinquish the road/ street portion and the reserved lands for open spaces like parks, play fields, children play space, to the local body after duly forming the roads/ streets by a prescribed deed duly registered ; b) the applicant/owner should relinquish the road/ street portion



and the lands reserved for open spaces like parks, play fields, children play space, in the layout after paying the cost of road/street formation to the local body. The other instructions issued in the circular reference first cited shall continue to be in force.

The receipt of this circular instructions shall be acknowledged by return of post . "

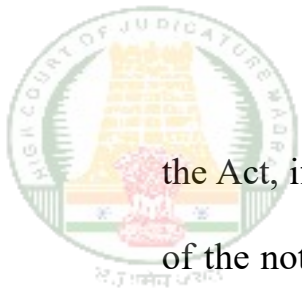
The learned Judge observed that the circulars make it clear that 10% of the area reserved for the playground and park, should be handed over to the local body and only those areas reserved under the commercial category for construction of Kalyanamandapam (Marriage Hall) and community hall, etc., the owner is permitted to alienate; it is not the case of the plaintiff that the said disputed areas are reserved for non-commercial purpose. In fact, it was reserved only for providing play ground and park. In the above circumstances, the plaintiffs cannot claim any title over the same. Both the Courts below totally misconstrued the above circulars, and came to a conclusion that, the plaintiffs are entitled to alienate the property, which is totally erroneous and perverse and that findings are liable to be set aside. The learned Judge, thereby, answered the substantial questions of law (a) and (b) in favour of the appellant/defendant/Coimbatore Corporation.



32. In respect of substantial question of law (c), the learned Judge has relied on Chapter III of the Act deals with the planning areas, planning authorities and plans. The learned Judge further referred to Section 17 to 32 of the Act which deals with preparation, approval and notification of Master Plan, New Town Development Plan, Detailed Development Plan. Further, referred to Section 33 of the Act which deals with the variation and revocation of the Detailed Development Plan. The learned Judge also pointed out that the Planning permission was granted to the respondent/plaintiff, under the Tamil Nadu Town Planning Act, 1920 and Section 34 of the Tamil Nadu Town and Country Planning Act 1971, which would validates the detailed Town Planning Scheme prepared under the Tamil Nadu Town planning Act, 1920, which reads as follows:-

“ Every detailed town-planning scheme notified, submitted or sanctioned under the Tamil Nadu Town-Planning Act,1920 together with any variation made thereto shall for purposes of this Act be deemed to be a detailed development plan made under the Act and all actions taken under the said Act in respect thereof shall be deemed to have been taken under this Act.”

33. The learned Judge, in paragraph 12.3, held that Under Section 38 of



the Act, if no declaration was issued within 3 years from the date of publication of the notice under the notice under Sections 26 and 27 of the Act, such land is deemed to be released from the reservation; also extracted Section 38 which reads as follows :

“If within three years from the date of the publication of the notice in the Tamil Nadu Government Gazette under Section 26 or Section 27

(a) no declaration as provided in subsection 2 of Section 37 is published in respect of any land reserved, allotted or designated for any purpose specified in a regional plan, master plan, detailed development plan or new town development plan covered by such notice; or

(b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation. “

34. The learned Judge further held that the plaintiffs layout approval falls under Chapter VI of the Act, they sought for permission to develop a lay out, under Section 49 of the Act, which has nothing to do with the reservation of the land under Chapter III and IV of the Act. Further held that Section 38 of the Act no way applicable to the plaintiffs’ case as the land was not reserved under any Town Development Plan or detailed Development plan. The land reserved for public purpose in the approved lay out need not be acquired by the appropriate authority under Section 38 of the Act.



35. Accordingly, the learned Judge answered substantial question of law (c) and answered against the plaintiff and in favour of the appellant/defendant/Coimbatore Corporation.

36. With regard to the findings, learned counsel argues that approval was granted under the old act ie., under the Tamil Nadu Town Planning Act of 1920 but the Circulars Ex.X.2 and Ex.X.5 are issued on 17.08.1987 and 24.5.1985 and on a wrong premise, it was held that approval for the layout was granted under the Tamil Nadu Town and Country Planning Act 1920 which act would not apply to the land in dispute as it cannot be applied retrospectively.

37. In the Authority relied on by the Review Petitioners **(2008) 2 MLJ 184 [K.S.Kamakshi Chetty P. Vs. The Commissioner, Aruppukottai]**, this court held that Tamil Nadu Town and Country Planning Act, 1971 has repealed the Madras Town Planning Act, 1920 (Madras Act VII of 1920), however, stating that any action taken under the previous Act under the corresponding provisions of the new Act shall continue to be in force unless and until superseded by or anything done under the new act. In the said decision, Section 125 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) was extracted as under:-



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“125. Repeal and saving.- (1) **The Tamil Nadu Town**

Planning Act, 1920 (Tamil Nadu Act VII of 1920) (hereinafter referred to as the said Act) is hereby repealed.

(2) Notwithstanding such repeal-

(a) anything done or any action taken including any appointment or delegation made, notification, order, instruction or direction issued, rule, regulation or scheme framed, certificate, permit or licence granted or registration effected under the said Act shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force accordingly, unless and until superseded by anything done or any action taken under this Act; and

(b) the betterment fee in respect of any land which any local authority was, immediately before the commencement of this Act, entitled to levy, assess and recover under the said Act, may be levied, assessed and recovered by the local planning authority concerned under the said Act as if this Act had not been passed.”

38. The learned Judge has rightly observed that the disputed area was earmarked for public purpose and should be used only for public purpose, the owner ceased to be the legal owner of the land, and he hold the land only for the



benefit of the public in general and he cannot alienate the land. Apart from that, if the area is less than 10 acres, 10% of such area should be reserved for open spaces like park, play fields, etc. In cases where the layout for more than 10 acres, 50% of the total reservation area may be provided for other public purpose like Kalyana Mandapam, Community Hall etc., and only those area the promoter is permitted to alienate.

39. The land which is earmarked and reserved as Open Space Reservation area was not even 10% of the total area and the plaintiffs have not complied with the said public purpose. As submitted by the learned counsel for the respondent, at the time of submitting the layout plan, not even 5% of the space of the entire extent area was shown as open space for public purpose. Therefore, even at the time of seeking approval, as per the old Act, the petitioner not reserved sufficient area for public purpose. Thereafter, in the year 1975, after formation of layout, even as per their own admission, the plaintiffs handed over the land through gift deed after new Act came into force i.e, after 1972. Considering all the above and by relying on catena of judgments of the Supreme Court, the learned Judge of this court has rightly decided substantial questions of law and there is no error on the face of the record as contended by the review petitioners. Even if there is no pleadings or evidence involving the issue, if any substantial question of law emerges out of the submission of both parties, the



court is empowered to frame questions for determination on the basis of the issues and take it into consideration. Accordingly, question of law (c) framed by this court as such is sustainable one and the said question of law could be decided based on the available materials with the facts and findings of the courts below and the same does not require any new material. The other argument that the plaintiffs are not given sufficient opportunity to put forth their objections in respect of the issues raised and liberty was not given, as such, is not sustainable. That apart, as per submission of the learned counsel appearing for the respondent, open space reserved is now being used for park and public pathway purpose and under the control of municipality.

40. In the result, the findings of the learned Judge in the Second Appeal Nos.510 and 518 of 2019 do not require any review. Further the conduct of the review petitioners in filing the above reviews that is after retirement of the learned Judge, is not appreciable one. Therefore, the above review applications are dismissed as no merits. No costs.

03-02-2026

nvsri

Neutral Citation: Yes/No



To
WEB COPY

1.The Commissioner
Coimbatore City Municipal
Corporation, Big Bazaar St,
Coimbatore.



WEB COPY

REV.APPL No.101 & 103 of 2022



T.V.THAMILSELVI J.

nvsri

**REV.APPL Nos. 101 &
103 of 2022**

03-02-2026