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W.A.No.2551 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2026

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR.JUSTICE K.SURENDER

W.A.No.2551 of 2023

S.P.Thiyagarajan

...Appellant

Vs.

1.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore – 641 001.

2.The Member Secretary,
Local Planning Authority,
Sivananda Colony,
Coimbatore – 641 012.

3.The District Educational Officer,
Coimbatore – 641 001.

4.The Director of Town and Country Planning,
807, Anna Salai,
Chennai – 600 002.

5.The Chairman,
Empowered Committee,
The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai – 600 009.

6.Sachithananda Nageswaran

7.The Executive Officer,
Kuniamuthur Panchayat,
Coimbatore District.

...Respondents



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PRAYER : The Writ Appeal filed under Clause 15 of the Letters Patent praying to set aside the order dated 12.04.2022 made in W.P.No.43824 of 2016 passed by this Court by allowing this Writ Appeal.

For Appellant : Mr.N.Manoharan

For Respondents : Mr.N.Umapathi for R1

Mr.P.Kumaresan,
Addl. Advocate General
assisted by Dr.S.Suriya,
Addl. Govt. Pleader for R2 to R5

Mr.T.R.Rajagopalan,
Senior Counsel
for Mr.V.Anantha Natarajan for R6

Dr.S.Suriya,
Addl. Govt. Pleader for R7

J U D G M E N T

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

Under assail is the writ order dated 12.04.2022 passed in W.P.No.43824 of 2016.

2. The writ appellant has instituted the writ proceedings challenging the Resolution passed by the Empowered Committee in 33rd Empowered Committee meeting held on 30.08.2016 in Agenda No.26 and to direct the



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Commissioner, Coimbatore City Municipal Corporation to resume the land earmarked for park and playground in Nethaji Nagar Layout from the 6th respondent as per the eviction notice dated 10.03.1015.

3. The facts in brief would show that the 6th respondent Mr.Sachithananda Nageswaran purchased the subject land which is earmarked for park and playground in the year 1993 from the developer of an approved layout. It is not in dispute that as per the approved layout, the subject land has been earmarked for developing park and play ground by Coimbatore City Municipal Corporation. The said purchase of land was made for developing Home for aged people. However, the 6th respondent constructed a school and running the same for the past about 16 years. The appellant who is residing in the nearby location made a complaint stating that the park and playground area earmarked under the approved layout has been sold illegally and the 6th respondent has constructed a school building contrary to the layout approval as well as the provision of the Town and Country Planning Act. The complaint given by the appellant was considered by the District Collector and the certificate dated 04.04.2013 issued by the District Collector would read as follows:-

CERTIFICATE

The Siddar Gnana Padasal functioning in Coimbatore South Circle, Sundakkamuthur Vilalge, Siddar Gnana Peedam, Vivakudil, Kovaipudur has purchased the below



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*mentioned Punjai land situated at Sundakkamuthur Village,
Kovaipudur South circle, Coimbatore District.*

Serial Number	Ka.Sa.No	Extent in Square feet	Sub Registrar of Madukkarai / Document number	
1.	117/2	2400	663/1989	date: 25.04.1989
2.	117/2	1000	1590/1989	date: 18.11.1989
3.	117/2	5502 $\frac{3}{4}$	459/1993	date: 04.03.1993
4.	117/2	5515 $\frac{1}{4}$	1343/1993	date: 27.07.1994
14418				

*Through the Coimbatore, Kuniyamuthur town
Panchayat File No.19813/88---Ma.Va.U.E.No.155/88 eh land
purchased has been approved for development as a Layout.
Among this 14418 Square feet (the 14418 square feet
mentioned in the above mentioned Sl.No.1 to 4) this land has
been allotted for Park and Playground.*

4. Further representations submitted by the 6th respondent before the Member Secretary, Commissioner Local Planning Authority was considered and the Member Secretary has communicated a reply dated 02.08.2013, wherein he has reiterated that the proposed place has been earmarked for park and playground with Layout plan KA/T CP.No.155/88. It is not permissible to construct a school in the place reserved for park and playground. The said intimation resulted in approaching the Assistant Commissioner, South Zone, Coimbatore Corporation by the 6th respondent



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who in turn in his reply dated 28.01.2014 again reiterated that the subject school building built, operational and located at Coimbatore Municipality South Zone Kovaipudur, Sundakkamudur Village Survey No.117/2, 117 approved is meant for park and play area.

5. The Member Secretary, Coimbatore Town Planning Authority addressed a letter to the Commissioner, Town Planning Department on 22.12.2014, wherein, he made a finding that the physical inspection of the subject land has been made. The subject land earmarked as park and playground for the benefit of the public has been purchased and school building has been constructed and was functioning. He has reiterated that the application submitted regarding conversion of the park and playground earmarked for public usage is impermissible and consequential enforcement actions are initiated by invoking the provisions under Section 56 and 57 of the Town and Country Planning Act, 1971. Notice in Form I was issued on 03.03.2015. Pertinently the 6th respondent has submitted an undertaking as follows:-

Undertaking

I, Sarvothama Sachidanandha Natheswaran, Managing Trustee, Sri Siddhar Gnana Peedam Trust, Nethaji Nagar, Kovaipudur, Coimbatore – 641 042 hereby agree to shift our existing school premises as per your letter No.4660/2014/M.H.4(S) dated – 03.2015 within an estimated period of two years subject to extensions if any. We are also



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*building a new school in Sundakamuthur Vilalge,
SF.No.:43/2D1 in an extent of 408.32 sq. mts.*

6. After filing the undertaking before the competent Authority of Coimbatore Corporation, the 6th respondent approached the Empowered Committee constituted by the Government. The Empowered Committee in its 33rd meeting held on 30.08.2016 passed a Resolution as follows:-

<i>Agenda No.</i>	<i>Subject</i>	<i>Decision taken in the meeting</i>
26.	<i>Layout – Relaxation of Park & Play Space and permit to use for School Building – In Approved Layout L.P/DTCP No.155/88, Coimbatore Local Planning Area- Coimbatore Corporation – Sundakkamuthur Village – S.F.No.117/2B – Applicant Constructed a School Building – regarding. (File No.4863/2015/LA2) Managing Trust, Sri Sitthar Gnanapedam Trust</i>	<i>The Committee discussed the subject in detail and decided to allow the request of the appellant for dereservation of the land reserved for park and playground for school purpose in approved layout in LP/DTCP No.155/88 and to compensate the same by handing over the plot No.45 for park purpose and to pay guideline value to the Government for the balance land of the reserved park used as school building since</i>



the layout promoter sold him park land to establish a school and the school is run by a trust serving the educational needs of the poor.

7. The said Resolution came to be challenged in the Writ Petition.

8. Mr.N.Manoharan, learned counsel appearing for the appellant would mainly contend that the Resolution passed by the Empowered Committee *per se* is untenable in view of the fact that one Tr.Dharmendra Pratap Yadav, I.A.S., acted in three capacities as Secretary to Government, Housing and Urban Development Department, Member Secretary, Chennai Metropolitan Development Authority and Commissioner of Town and Country Planning. One IAS Officer acting in three capacities have taken a decision by sitting in Empowered Committee meeting, which would defeat the very purpose of constitution of the Committee.

9. Regulation 10 of the Development Control Regulations for Coimbatore Local Planning Area issued in G.O.Ms.No.130, Housing and Urban Development Department, dated 14.06.2010, in which, more specifically Clause 10 speaks about the Empowered Committee as follows:-



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10. Empowered Committee:-- *Specific cases of demonstrable hardship shall be referred to Empowered Committee under the Chairmanship of Secretary, Housing and Urban Development with Secretary, Municipal Administration and Water Supply, Member-Secretary, Chennai Metropolitan Development Authority as members and Director of Town and Country Planning as Convener of this committee. This Empowered Committee may relax any of the planning parameters prescribed in these regulations on due consideration to merit on case to case basis. The Empowered Committee will also be the appellate Authority as per section 79 of the Act. The Government may give directions on individual cases to be referred to Empowered Committee on specific issues.*

10. Therefore, the decision taken by the Empowered Committee is running counter to the Regulations and this ground was considered by the writ Court and made a finding that the decision is farcical. Despite the finding, the Writ Court has dismissed the Writ Petition.

11. Mr.T.R.Rajagopalan, learned Senior Counsel appearing on behalf of the 6th respondent would submit that the subject land was purchased in the year 1993 by the 6th respondent for the purpose of establishing Home for aged people. Subsequently a decision was taken to construct a school and the school constructed is functional for the past about 16 years. The Empowered Committee has taken a decision and granted exemption / relaxation and the



Writ Court considered the fact that the school is functional for several years and the complaint made by the appellant after a lapse of many years need not be considered. That apart, the 6th respondent has paid a consideration as decided by the Empowered Committee and alternate portion of land was also handed over to the Corporation in lieu of the land in possession of the 6th respondent. Since the conditions stipulated by the Empowered Committee has been complied with, the writ Court considered the issues and rejected the Writ Petition.

12. This Court has considered the arguments as advanced between the parties to the lis on hand.

13. The first issue to be considered is, whether conversion of public purpose area viz., park, playground, OSR land for any other purpose other than the purpose for which it has been approved in the approved layout is permissible or not. The issue is no more *res integra*. The Hon'ble Supreme Court in the case of **Association of Vasanth Apartments' Owners v. V. Gopinath & Others**¹ elaborately considered the issues and held that conversion is impermissible. The Hon'ble Supreme Court reiterated the principles that even in case no gift deed has been executed in favour of the local Authority, still the common purpose area vest with the local Authority and non-execution of gift

¹2023 INSC 123
9/30



deed is not fatal, nor developer can claim any right over common purpose area merely on the ground that no gift deed has been executed in favour of the local Authority.

14. In the present case, it is not in dispute that layout is approved under the provisions of the Town and Country Planning Act. Further it is not in dispute that the subject land has been earmarked for developing public park/ playground. Therefore, very sale of park area and playground is in violation of the conditions stipulated in the approved layout, in view of the provisions under the Town and Country planning Act. The apex Court in following paragraphs reiterated the said principles:-

153. The matter may be viewed in the following manner. In the facts in Pandit Chetram Vashishta (supra), it was held that the position of the developer, would be that of a trustee. It was so held in the absence of a 210 statutory mandate. Now, in this case, there is a statutory mandate to execute a gift deed. The question would arise as to what would be the nature of the rights of the donee, viz., the local authority. Would the donee become an absolute owner? Can the local authority transfer the land? Can the local authority build on the OSR area? The answer to all these questions is only in the negative. Unlike the donee, in the case of a gift, the local authority cannot in anyway acquire the right as the absolute owner. Just as in the case of Pandit Chetram Vashishta (supra), where the developer would be a trustee, we would think that the Rule, if is to be upheld, in the conspectus of the law and bearing in mind the object, the transfer by way of a gift to the donee will be only for the purpose of ensuring that the object of the law is attained, i.e., the property is maintained



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as OSR. The local authority, under the gift deed, would be a mere trustee. As trustee, it will be the obligation of the local authority to ensure that all such lands, set apart under the impugned Rules/ Regulations, are effectively maintained as such. In 211 this regard, in the Open Space Act, 1906, a U.K. Law, Section 3 reads as follows: “3 Transfer to local authority of spaces held by trustees for purposes of public recreation. (1) Where any land is held by trustees (not being trustees elected or appointed under any local or private Act of Parliament) upon trust for the purposes of public recreation, the trustees may, in pursuance of a special resolution, transfer the land to any local authority by a free gift absolutely or for a limited term, and, if the local authority accept the gift, they shall hold the land on the trusts and subject to the conditions on and subject to which the trustees held the same, or on such other trusts and subject to such other conditions (so that the land be appropriated to the purposes of public recreation) as may be agreed on between the trustees and the local authority with the approval of the Charity Commission. (2) Subject to the obligation of the land so transferred being used for the purposes of public recreation, the local authority may hold the land as and for the purposes of an open space under this Act.”

159. In case there is no requirement to execute a gift of OSR area in terms of Pandit Chetram Vashishta 220 (supra), the project proponent/owner would remain in the position of a trustee. As a trustee in law is the legal owner, and therefore this being the position in law, he may not be disabled from transferring the property in any manner. However, as he is under obligation as a trustee to maintain the property as OSR, he cannot defeat the obligation by transferring the same and it can lead to abuse. No doubt, he would be prohibited from raising any construction over the OSR area. One of the bundle of rights of an owner, however, which would survive after the owner steps into the shoes of a trustee, could be said to be the power to



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exclude 'others' from the OSR area. The attribute of ownership of property consisting of the power to exclude others may continue with the project proponent in the absence of a gift. Now, interestingly, this again would depend upon the interpretation of the words 'communal and recreational purpose'. This is for the reason that if the OSR area can be accessed by members of the general public as contended by the respondents, then, the project proponent cannot possibly have the right of an owner to exclude them. Equally, even with 221 the requirement to maintain the OSR area in the absence of the demand for a gift, it could be said that the sole project of proponent could have the right to remain in possession. Another dimension may be noticed. What would happen if the OSR area is acquired in the exercise of the power of eminent domain for the public purpose? Who would be entitled to the compensation, if a gift is made in terms of the impugned Rule/Regulation? We would think that since the interpretation we are placing is that the gift under the Rule/Regulation is intended only to ensure due compliance with the requirement of the OSR area being effected and to prevent misuse by the owner, as between the original owner and the local authority, it would be the original owner, who may be entitled to the compensation.

166. Having made these observations, we pass on to consider further aspects. In the case of Vasanth Apartments, i.e., Civil Appeal Nos. 1890-1891 of 2010, the developer undoubtedly executed a gift deed. A contention is taken on behalf of the respondents including Shri Jayant MuthRaj that the donor has gifted the land for roads and parks from the perusal of the gift deed. It would appear that the donor has indeed gifted the land in question and provided that the donee may peacefully and quietly enjoy the said land 'of roads/parks' free from all encumbrances. At this 231 juncture, we bear in



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mind the actual terms of the gift deed executed in the case of Association of Vasanth Apartments, which we have adverted to in paragraph-47 of this Judgment.

167. The Division Bench has considered the report of the Advocate Commissioner also to find that there existed a kachha pathway and that is a road which is being used by thousands in terms of the gift deed which came into effect. It is their contention that even if it is found by this Court that in terms of the OSR requirement of 10 percent of the land, it can only be used as open space for communal and recreational purpose and not for a road, this Court may not interfere.

168. Firstly, we must consider the ambit of the words communal and recreational purpose and find whether it could take in a public road for being used by members of the public generally. Equally, we must consider whether the word communal is capable of extending the benefit of the open space requirement to the members of the general public or whether it must be confined to the beneficiaries of the group development. In other 232 words, if the word communal is interpreted as the community of the beneficiaries of the group development, then it must be understood as meaning that members of the general public cannot be permitted to partake of the benefits flowing from the open space reservation. For instance, if adjoining the site and as indicated in the explanation in a shape and location determined by the CMDA, a park is constructed. By use of the word communal and interpreting it to mean a community which is larger than the mere beneficiaries of the group development



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as such, then the benefit of the open space may become available to the general public in the nearby area. This would have the advantage of facilitating the members of the public avoiding travelling to the areas where there is recreation or open space, as for instance, under the zoning requirements. Undoubtedly, the absence of any construction which is indispensable to make it an open space area and which is insisted upon also will provide a large chunk of space for all the people in the area. Making available the facilities on the basis that when development is permitted, it brings in its train 233 certain responsibilities for the project proponents which can be appreciated as legitimate State interests, is one way of approaching the issue. It must be understood in all these cases that setting apart of 10 percent of the area is actually as such not objected to. This means all parties are agreed that the law providing for setting apart of 10 percent of the total area excluding roads in the case of group development in excess of 10,000 square metres is legitimate and valid, unless we find favour with the arguments that it is otherwise constitutionally infirm. We have already found that the provision does not offend Article 14 on the ground that it represents a species of class legislation. We are unable to also find that the provision is manifestly arbitrary. If in other words, there is no other basis to find the impugned rule vulnerable, we can safely proceed to hold that the requirement of OSR is not unjustified. We have noticed the stand of the two appellants and the writ petitioners also in this regard. We find that it is their stand that they are prepared to maintain the 10 percent area as OSR. What is objected is to the 234 execution of the gift deed and allowing



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the property rights to change hands. This is apart from the objection to the chosen site being made accessible to the general public.

169. We have noticed that in Pandit Chetram Vashishta (supra), this Court has held that in the absence of valid provision under which the gift in the said case could be supported, the mere resolution was not sufficient. The position still was found to be that the original owner would continue to be a trustee. He cannot transfer or change the nature of the property. In fact, in the decision reported in Virender Gaur (supra), this Court discountenanced conversion of what was an OSR area into land on which construction though for what was projected as a laudable object was carried out. We are of the view that bearing in mind the laudable object the law relating to town planning which has been the very basis for our reasoning otherwise, we must clarify that what the Rule and the Regulation mandatorily stipulated was the dedication and maintenance of 10 percent of the area for communal and recreation purposes area only. There is inviolable duty 235 on the part of all including the local body and the CMDA to ensure that an area which is set apart or purported to be set apart in terms of the OSR requirement under the Rule/Regulation in question is used only for communal and recreational purpose. We notice in, this regard, the complaint of Ms. V. Mohana, learned Senior Counsel, as indeed the other counsel that only lip service is being paid to the projected sublime object of maintaining OSR. This cannot be permitted.



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170. *Unrelentingly persevering is the aspect relating to the contours of the word communal in the setting of the Rules/regulations and Act. Rules do shed some light in Rule 19 (b)(II)(vi). In regard to plots having a size of 3,000 square metres to 10,000 square metres, the law giver has provided that it shall not be necessary to provide access to the public. When it comes to the impugned Rule, viz., Rule 19 (b)(II)(vi) providing for plot size in excess of 10,000 square metres, it is apparent that the access of the members of the general public to the OSR area is to be permitted. This result is inevitable having regard to 236 the fact that unlike the immediate predecessors, viz., plot size having 3,000 to 10,000 square metres wherein it has been indicated that public access shall not be insisted upon such a relaxation is conspicuous by its absence. The wisdom and the value judgement, which underlies permitting or contemplating public access to the OSR area, can be understood only in terms of the difference in the size. Once wisdom and a value judgment are beyond the pale of judicial review and scrutiny, and further, it is found that the project developer and also the beneficiaries of the group development are duty-bound for maintaining an OSR area, then the matter goes to the legitimacy of the public or State interest. The consequences of executing the gift deed and the underlying purpose have been adverted to by us already. In fact, apart from it being a legitimate public purpose, even the rough proportionality concept in Nollan (supra) would appear to be satisfied.*



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177. In this regard we find reassurance in the view taken by the courts in the United States even in the presence of the taking clause under the 5th Amendment to the U.S. Constitution. In an Article titled “Techniques for Preserving Open Spaces” published in 75 Harv. L. Rev. 1622, we find the following: “Required Dedication and Reservation. — A municipality can require the developer of a new subdivision to provide such facilities as roads, streets, sewers, and playgrounds as a condition to plat approval. In the leading case of *Ayres v. City Council* a requirement that the subdivider dedicate land for road and street purposes and leave undeveloped an accompanying area for trees and shrubbery was approved on the theory that since the new subdivision created the need for and would specially benefit from the improvements, the developer and ultimate purchasers rather than the entire 241 community should bear the cost of providing them. In a case involving required reservation of land for a public park the argument that this would be an unconstitutional taking of land was rejected on the theory that the subdivider would be compensated by the share of the benefits to the whole community which accrued to his particular development. The Pennsylvania Supreme Court has taken a contrary view, however. And where the need for a particular improvement is a general one, not specifically attributable to the subdivider's activity, the entire municipality must bear the cost.” We would therefore come to the conclusion that the word ‘communal’ must be understood as where the layout exceeds 10000 sq.meters entitling members of the general public also to avail the benefit of the OSR area. Once, the word ‘communal’ is so understood it



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further fortifies us in our conclusion that there would be no infraction of Article 300A or Article 14 as understanding the execution of the gift deed as obligating the donee only to act as a trustee to ensure the fulfilment of the sublime goal of the law and since the owner/developer would not have a right to exclude others or to claim exclusive right to possession which would be incongruous to recognising the right of the members of the general public to access to the OSR 242 area. This discussion furnishes our rationale to uphold the Rule / Regulation and to hold that it can withstand the challenge based on Article 300A on the basis that properly appreciated the “so called compelled gift” would be valid. Even proceeding on the basis that a challenge to Rule 19(b) would imply a challenge to the Explanation as well, on the reasoning which has appealed to us, namely, about the nature of the right under the Gift Deed as also finding that the word ‘communal’ is intended to reach the benefit of the OSR area to the members of the public as well, there would be no merit in the contention.

15. On the similar line the Division Bench of this Court also decided the issues in the case of **S.Ponnusamy Vs. V.Chandrasekar and others**².

Paragraph Nos. 30 to 35 are extracted hereunder:

30. The Apex Court as well as Division Bench of this Court had occasion to consider the variation, change or modification in the Development plan / Layout plan and held as follows:

²**2024 (2) LW 793.**



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31. *In Bangalore Medical Trust Vs. B.S. Muddappa and Ors. [AIR 1991 SC 1902], Apex Court while considering the validity of the conversion of public purpose land, held that it has to be made only on public interest and if any change, alteration is made, the residents of the locality are the persons, who are aggrieved persons:*

*“24. Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens. See *Kharak Singh v. The State of U.P. and Ors.* MANU/SC/0085/1962 : 1963CriL J329 ; *Municipal Council, Ratlam v. Shri Vardhichand and Ors.* MANU/SC/0171/1980 : 1980CriL J1075 ;*



Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and Ors. MANU/SC/0517/1981 : 1981CriL J306 ; Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors. MANU/SC/0039/1985 : AIR1986SC180 ; State of Himachal Pradesh and Anr. v. Umed Ram Sharma and Ors. MANU/SC/0125/1986 : [1986]1SCR251 and Vikram Deo Singh Tomar v. State of Bihar, MANU/SC/0572/1988 : AIR1988SC1782.

25. Reservation of open spaces for parks and play grounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation. See for e.g: Karnataka Town and Country Planning Act, 1961; Maharashtra Regional and Town Planning Act, 1966; Bombay Town Planning Act, 1954; The Travancore Town and Country Planning Act, 1120; The Madras Town Planning Act, 1920; and the Rules framed under these Statutes; Town & Country Planning Act, 1971 (England & Wales); Encyclopaedia Americana, Volume 22, page 240; Encyclopaedia of the Social Sciences, Volume XII at page 161; Town Improvement Trusts in India, 1945 by Rai Sahib Om Prakash Aggarawala, p. 35; et. seq.; Halsbury-s Statutes, Fourth Edition, p. 17 et. seq. And Journal of Planning & Environment Law, 1973, p. 130 et. seq. See also: Penn Central



Transportation Co. v. City of New York, 57 L.Ed. 2d 631 438 US 104 (1978); *Village of Belle Terre v. Bruce Boraas*, 39 L.Ed. 2d 797 416 US 1 (1974); *Village of Euclid v. Ambler Realty Co.*, 272 US 365 (1926) and *Halsey v. Esso Petroleum Co. Ltd.* [1961] 1 WLR 683.

.....

29. *The residents of the locality are the persons intimately, vitally and adversely affected by any action of the BDA and the Government which is destructive of the environment and which deprives them of facilities reserved for the enjoyment and protection of the health of the public at large. The residents of the locality, such as the writ petitioners, are naturally aggrieved by the impugned orders and they have, therefore, the necessary locus standi.*

.....

32. *The impugned orders and the consequent action of the BDA in allotting to private persons areas reserved for public parks and play grounds and permitting construction of buildings for hospital thereon are, in the circumstances, declared to be null and void and of no effect."*

32. *Hon-ble Apex Court in Pt. Chetra Vashist vs Delhi Municipal [1995 (1) SCC 47], has considered the rights of the Delhi Municipal Corporation to impose condition that the open*



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space for parks, schools to be transferred to the favour of Corporation with free of cost and after considering various provisions of the Delhi Municipal Corporation Act, observed in paragraph no. 6 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. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it



and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.”

33. This Court in *Thai Nagar Welfare Association vs. Special Commissioner and others* [2008 (6) CTC 689] has held that any variations or conversion of the land earmarked as open space could not be converted into commercial purpose. Further, if any variations, conversions or modifications of the layout is prepared under Section 49(2) of the Town and Country Planning Act, it must be decided based on public interest and it is observed as follows:

“9. At the outset, it has to be noticed that when an application is made for conversion of part of the earmarked open space to the commercial purpose, as per Section 49(2) of the Act, the appropriate planning authority, shall, in deciding whether to grant or refuse such permission, have regard to the following matters, namely:

- (a) the purpose for which permission is required;
- (b) the suitability of the place for such purpose;
- (c) the future development and maintenance of the planning area.

....

11. The open space in a residential area or in busy townships is treated as a lung space of the



area. Where open space is preserved and earmarked in the plan for development of a planned town, the authorities cannot ignore the public interest and allot the same for construction of godowns, thereby causing environmental hazards to the residents of the colony. In other words, when an area is earmarked for a particular purpose in the approved layout, the said area cannot be converted or used for a different purpose. Open space is an essential feature of modern planning and development, as it greatly contributes to the improvement of social ecology. The interests of the residents of the area, who have purchased the plots as per the approved layout, have to be safeguarded and for the benefit of ecology, certain areas should be earmarked for garden and park, so as to provide fresh air to the residents of that locality, as ecological factors indisputably are very relevant considerations in construing a town planning statute.”

34. In the present case, the promoters of the layout namely Varivadu Chettiar layout (VVC layout) have submitted the layout plan for developing their land and it was approved by the Local Planning Authority. Based on this approval, the promoters have come forward to execute gift deed, transferring their right of the land, which has been earmarked as a road to the extent of 40 feet, including the road earmarked on the eastern side of the plot numbers 9 and 10.



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After gifting the above lands, the promoters have leased out the said public road in favour of third parties and same is not permissible and the lease itself is void abinitio.

35. The contention of the promoters / Private Defendants is that the Corporation has not come forward to lay road in the earmarked area, so they have converted the land and used it for their own purpose. Subsequently, the land is also sold to 12th Defendant. Even, in the absence of any gift deed in favour of the Corporation, the promoters / private respondents are not entitled to convert the public roads or land earmarked for public use into a private property. Admittedly, the land owners / promoters have not obtained any assent from the Local Planning Authority to convert the public road for their own use, hence on this ground also the claim of the private respondent that they are entitled to use the land as a private property is liable to be rejected.

16. The above judgment has been confirmed by the Hon'ble Supreme Court by dismissing the Special Leave Petition Nos.8932-8934/2024 on 22.04.2024. Thus, the legal position on conversion of public purpose area including OSR lands, parks, streets, playgrounds etc., by the developer or sale of such common purpose land is illegal and cannot be approved by the competent Authorities.



17. In the present case, all the Authorities have taken a consistent view that conversion of land is impermissible and rejected the request made by the 6th respondent. However, Empowered Committee has taken a decision in favour of the 6th respondent and directed the 6th respondent to pay a sum of Rs.48,57,500/- and an alternate portion of land in lieu of the land in occupation of the 6th respondent. This Court has considered the view that the writ Court has made a finding that the decision of the Empowered Committee is farcical. The decision taken by a Single Authority by exercising power of three different Authorities is impermissible and in the event of approving the said decision of the Empowered Committee, the very purpose and object of constitution of the Empowered Committee in consonance with the Regulations will be defeated.

18. Since the Government has failed to take appropriate decision in consonance with the Regulations and constitution of Empowered Committee is also improper, this Court is of the view that the matter is to be remitted back to the Empowered Committee for taking a decision by considering the facts as well as the legal position and other aspects of the matter.

19. Yet another ground raised before the Writ Court is that the appellant has no locus to agitate the matter. In this regard Mr.N.Manoharan, learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court



in **Bangalore Medical Trust Vs. B.S.Muddappa and others**³, wherein, the

Hon'ble Supreme Court made the following observations:

It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the courts. Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busy bodies or interlopers [S.P. Gupta v. Union of India](#), [1982] 2 SCR 985--AIR 1982 SC 149; [Akhil Bhartiya Soshit Kararnchari Sangh v. U.O.I.](#), [1981] 1 SCC 246--AIR 1981 SC 293 and [Fertilizer Corporation Karngar Union v.U.O.I.](#), AIR 1981 SC 364. Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise

³(1991) 4 SCC 54



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of discretion as grave issues of public concern outweigh such considerations.

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20. In view of the above judgment, the locus of the appellant need not be questioned as the issue raised is for protection of park and playground earmarked in an approved layout, which is for the benefit of the people residing in the entire locality.

21. Accordingly, the resolution passed by the Empowered Committee in in 33rd Empowered Committed meeting held on 30.08.2016 in Agenda No.26, as well as the writ order dated 12.04.2022 in W.P.No.43824 of 2016 are set aside. The matter is remanded back to the Empowered Committee for taking fresh decision on merits and in accordance with law as expeditiously as possible. The Empowered Committee shall provide opportunity to all the parties including the petitioner to put forth their claims, counter claims etc., along with the documents, if any.

22. With these findings, the Writ Appeal stands allowed. No costs.

(S.M.S., J.) (K.S., J.)
10.03.2026

dsa
Index :Yes/No
Neutral Citation :Yes/No
Speaking/Non-speaking order

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To
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- 1.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore – 641 001.
- 2.The Member Secretary,
Local Planning Authority,
Sivananda Colony,
Coimbatore – 641 012.
- 3.The District Educational Officer,
Coimbatore – 641 001.
- 4.The Director of Town and Country Planning,
807, Anna Salai,
Chennai – 600 002.
- 5.The Chairman,
Empowered Committee,
The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai – 600 009.
- 6.The Executive Officer,
Kuniamuthur Panchayat,
Coimbatore District.



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S.M.SUBRAMANIAM, J.
and
K.SURENDER, J.

dsa

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10.03.2026