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W.P.No.29665 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 03.02.2026

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**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.P.No.29665 of 2023

and

W.M.P.No.29273 of 2023

M/s.Jain Housing,  
A Partnership Firm,  
Represented by its Authorised Signatory,  
R.Vasudevan,  
Having Office at No.98/99, Habbibullah Road,  
T Nagar, Chennai – 600 017.

.. Petitioner

**Vs.**

1.The Commissioner,  
Tambaram City Municipal Corporation,  
Tambaram, Chennai – 600 075.

2.The Member Secretary,  
Chennai Metropolitan Development Authority,  
Thalamuthu Natarajan Building,  
No.1, Gandhi Irwin Road,  
Egmore, Chennai – 600 008.

.. Respondents

(R2 impleaded vide order dated 20.03.2024  
made in W.M.P.No.6945 of 2024 in W.P.No.  
29665 of 2023)

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India  
praying to issue a Writ of Mandamus, directing the respondent herein to  
remove all constructions which have been put up and which is being  
continued to be put up in the Survey field numbers 168/1A, 168/1B and



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168/3 of Pammal Village, Pallavaram Taluk (formerly under Tambaram Taluk), Chengalpattu District (formerly under Kancheepuram District) and consequently direct the respondent to develop a recreational zone in the entire area of 5620 square meters earmarked and gifted by the petitioner for Open Space Recreational purposes as per the Development Control Regulations.

|                |   |                                                                       |
|----------------|---|-----------------------------------------------------------------------|
| For Petitioner | : | Mr.P.V.Balasubramaniam<br>Senior Counsel<br>for M/s.Ganesh and Ganesh |
| For R1         | : | Mr.P.Srinivas                                                         |
| For R2         | : | Mr.V.Sudalai Selvan<br>Standing Counsel                               |

### **ORDER**

Heard Mr.P.V.Balasubramaniam, Senior Counsel for M/s.Ganesh and Ganesh, Mr.P.Srinivas for the 1<sup>st</sup> respondent and Mr.V.Sudalai Selvan, Standing Counsel for the 2<sup>nd</sup> respondent.

2.The writ petitioner is a developer of properties. It developed a residential community in Survey Numbers 168/1A, 168/1B and 168/3 of Pammal Village, Tambaram Taluk, Kancheepuram District. It obtained permission for putting up a residential community in layout approval No.87/2006. One of the conditions for granting the approval was gifting an area of 5620 sq.mts to be used as Open Space Recreational Purposes (OSR). The petitioner executed a document on 15.06.2006 in this regard.



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A perusal of the document shows that an extent of 6780 sq.mts was reserved for road and another extent of 5620 sq.mts was reserved for park.

3.An attempt was made by the predecessor of the 1<sup>st</sup> respondent, namely, the Pammal Municipality, to convert this Open Space Reservation into a dump yard. Hence, the petitioner filed writ petition in W.P.Nos.7658 of 2018 and 7659 of 2018. The same came to be ordered by this Court in the following terms:-

*“6.Considering the rival submission, it is seen that the respondent municipality is only going to construct a micro compost yard in a small extent of 7100 sq.feet of the land, out of the total extent of 60,500 sq.feet earmarked for public purpose. It is stated that the micro compost yard is only going to process the wastes generated by the residents in the neighbouring area, by which the petitioner is also going to be benefited. In the said circumstances, I find no illegality on the part of the respondents in using the space for constructing a compost yard, which is also for a public purpose.*

*7.So far as the writ petition in W.P.No.7659 of 2018 is concerned, now the respondent municipality has filed a counter affidavit stating that they are going to develop the park site as Compost Yard in a smaller extent of the area and in the remaining areas, at the cost of Rs.34 lakhs, the Municipality going to develop the area. Hence, there is no necessity to hand over the area to the petitioner.”*



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4.The grievance of the petitioner is that the respondent has expanded the area of usage from 7100 sq.ft, as was approved for usage of a dump yard / MCC by this Court in the aforesaid writ petitions. It has further pleaded that the area that was undertaken before this Court to be developed as a park was never so developed. Hence, the petitioner is again before this Court seeking for a direction that the respondent develop the Open Space Recreational Purposes (OSR) to an extent of 5620 sq.mts in terms of the dedication in document No.2321 of 2006 dated 15.06.2006.

5.This Court entertained the writ petition and ordered notice to the respondents.

6.It is the plea of Mr.P.Srinivas that the entire extent of the property cannot be used, as stated by the petitioner for Open Space Recreational Purposes (OSR), since *inter se* the parties, this Court had already declared that an extent of 7100 sq.ft out of the total extent of 60,500 sq.ft should be earmarked for public purpose. He also pleads that the judgment relied upon by Mr.P.V.Balasubramaniam, Senior Counsel in *Association of Vasanth Apartments Owners Vs. V.Gopinath and others, 2023 SCC*



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**OnLine SC 137**, is applicable only prospectively and does not apply retrospectively.

7.I have carefully considered the submissions of both sides and I have gone through the records.

8.It is not in dispute that the extent of 5620 sq.mts had been set apart for the purpose of development of a park. An area once dedicated for a particular purpose, unless and until, the rules and regulations which govern the field permit any deviation, the purpose of dedication should be respected, honored and maintained. The land had been handed over to the Pammal Municipality, the predecessor of the 1<sup>st</sup> respondent, for usage of a park. When the matter came up before this Court in W.P.Nos.7658 of 2018 and 7659 of 2018, the respondent Municipality had filed an affidavit stating that it intends to install a micro compost yard (MCC) to an extent of 7100 sq.ft and the remaining extent would be used for a park. It had also stated that a sum of Rs.34 lakhs would be used for the purpose of creating a recreational facility over the remaining extent. As rightly contended by Mr.P.Srinivas, this judgment would operate *inter se* parties. The petitioner cannot demand that an extent of 60,500 sq.ft corresponding to 5620 sq.mts must be restored as a park.



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9.The argument of Mr.P.Srinivas is a double edged sword. While the petitioner cannot object to an extent of 7100 sq.ft being used as an MCC, neither can the 1<sup>st</sup> respondent plead that it is entitled to use an extent of more than 7100 sq.ft for the purpose of operating the MCC. They secured an order from this Court stating that the remaining extent will be developed and used as a recreational facility. They cannot be permitted to resile from the same.

10.Furthermore, the Supreme Court in *Association of Vasanth Apartments Owners Vs. V.Gopinath and others, 2023 SCC OnLine SC 137*, has held in paragraph No.220.6 as follows:-

*“220.6.The areas covered by the OSR cannot be diverted for any other purpose. The respondents are duty-bound to ensure that the area set apart as OSR is stringently utilised only for the purpose in the Rule/Regulation. We direct that no area meant for OSR shall be utilised as dumping yards or any other purpose other than as OSR;”*

11.When the law has been so clearly declared by the Supreme Court, the plea of Mr.P.Srinivas that it should operate only prospectively and not retrospectively cannot be countenanced. This is for the simple reason that a declaration of law by the Constitutional Court always operates retrospectively, unless and until, the Court states it would



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operate prospectively. (See, **Kanishk Sinha and another Vs. State of West Bengal, SLP (Crl).Nos.8609 to 8614 of 2024 dated 27.02.2025**). A perusal of the judgment, cited supra, nowhere indicates that the Supreme Court intended the judgment to operate prospectively.

12.In the light of the above discussion, the Writ Petition is allowed in part. The 1<sup>st</sup> respondent will be entitled to use an extent of 7100 sq.ft as an MCC. The remaining extent of 53400 sq.ft shall be maintained as Open Space Recreational Purposes (OSR). The undertaking previously given by the petitioner before this Court that it would utilize the remaining area as a park is emphasized. In case, any extent above 7100 sq.ft is utilized, the 1<sup>st</sup> respondent shall immediately vacate the excess area and restore the area as a park forthwith. Consequently, the connected miscellaneous petition is closed. No costs.

**03.02.2026**

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Index : Yes / No  
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**V.LAKSHMINARAYANAN, J.**

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To

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Thalamuthu Natarajan Building,  
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