

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-04-2007

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA

and

THE HONOURABLE MR.JUSTICE J.A.K.SAMPATHKUMAR

W.P.No.5051 of 1996
and W.P.No.19015 of 1996

Karpaga Nagar Nala Urimai Sangam
represented by its Secretary
Shanmugavel

... Petitioner
in both the W.Ps

-Vs-

1.Municipal Administration and
Water Supply Department
Rep.by its Secretary,Chennai -2

2.The Director of Town and Country
Planning, Madras -2

3.The Commissioner of Corporation
Madurai - 625 002

4.Pillayar Patti Karpaga Vinayagar
Koil Nagarathar Trust
rep.by its Trustee
N.K. Lakshmanan, Pillayarpatti Pasumpon
Muthuramalingam District

... Respondents
in both the W.Ps

Prayer:- Petitions under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records of the first respondent bearing G.O.Ms.No.244 dated 23.9.94 culminating in ordr No.K2/85710/1994 dated 22.4.1996 and sanctioned plan Ma.Va/Tha.V.E.994/1995, quash the same and direct the respondents to forbear from dereserving the plots comprised in R.S.No.120 to 126, 130 to 133, 176/1 to 178/2 measuring 2.5 acres in Karpaga Nagar, K.Pudur, bearing Plot Nos.272 to 281, 342 to 343 and 364 to 373 Madurai permit them to be used for any purpose other than the public purposes mentioned in L.P./MRI/70 and detailed Development Plan DT/CP[MR] 9.92 respectively.

For Petitioners :Mr.N.L.Rajah
For Respondents
for R1 and R2 :Mr.P.Subrmaniam
for R3 :Mr.P.Srinivas
for R4 :Mr.R.Krishnamurthy,
Senior Counsel for
Mrs.A.L. Gandhimathi

COMMON ORDER

J.A.K.SAMPATHKUMAR, J.

These writ petitions are filed challenging the notification issued by the Government on 23.9.1994 vide G.O.Ms.No.244 of 1994 (Municipal Administration and Water Supply Department) and also challenging the consequential acts pursuant to issuance of the said G.O. and for praying to quash the same.

2. The common plea in both the writs are as follows:

The land presently known as Karpaga Nagar was initially owned by the fourth respondent and extent of 73 acres and 60 cents of land in R.S.No.120 to 126, 130 to 133, 176/1 and 178/2 was owned by the fourth respondent in the erstwhile Tallakulam Town Panchayat, Madurai District. The fourth respondent formed a layout with an object of selling their lands in survey Numbers referred above as house sites. The entire extent was divided into 832 plots. The Director of Town Planning, Madras gave approval for the said layout vide LPMR 1/75. These lands were under the jurisdiction of Tallakulam Town Panchayat before they were merged with the Madurai Corporation in dated 30.1.1994.

3. The approval was granted subject to the condition that an extent of 2.52 acres comprised in R.S.No.120 to 126, 130 to 133, 176/1 and 178/2 should be kept reserved for public purposes.

4. The third respondent had not provided any basic amenities like roads etc. At the same time the third respondent has been collecting road cost from the plot owners as and when they apply for permission for construction on the sites. In the meantime, the fourth respondent some time in 1986 tried to sell to third parties the forty plots reserved for public purposes like school, temple, market, children's park etc., as per lay out approval.

5. In this regard, the then Commissioner of the third respondent attended to the complaints of the petitioner and effectively stopped such efforts by the Fourth respondent by giving a notice to the trust not to sell the plots reserved for public purposes. However, the fourth respondent proposed to put up a building in plot Nos. 276 and 369 and

applied for approval of the building plan. Plot Nos. 276 and 369 formed part of the 2.52 acres which was reserved for public purposes. The approval for construction was granted by the third respondent under the mistaken impression that the said plots were in a residential area. On realising the mistake subsequently, the third respondent, refused to renew licence for construction.

6. However, the fourth respondent filed a writ petition i.e W.P.No.1565 of 1987 praying for a writ of certiorarified mandamus to quash the order dated 16.12.1986 refusing permission and to direct the respondent to grant permission for construction. The said writ petition was allowed with the following directions:

"The application made by the petitioner for sanction of building plan in the above plots shall stand restored to the file of the Madurai Corporation and shall be disposed off within the statutory period. If no orders are made within three months from today, on the said application, the application will be deemed to have been granted. It is made clear that the application can be rejected only in case in the detailed development plan for this area the above plots come under the identification, "Reserved for Public purposes". It is needless to state that the petitioner will be given an opportunity to be heard in person if he so desires, in the matter of sanction of plan".

This order was only with reference to two plots i.e.Nos.276 and 379.

7. While matters stood thus, the petitioners were shocked to find sometime in the second week of February that the fourth respondent was trying to take steps to sell the plots earmarked for public purposes to third parties and the petitioner instituted enquiries at the office of the third respondent. They were given a copy of the G.O.Ms.No.244 dated 23.9.1984 wherein the first respondent had stated that "In view of the order of the High Court Madras in W.P.No.1565 of 1987 and W.M.P. No.338 of 1992 the Director of Town and Country Planning has recommended the case for de-reservation subject to the conditions that the trustee may be requested to hand over the roads in the layout area to the Municipal Corporation."

In and by the said G.O., the first respondent has granted permission for de-reservation of 2.52 acres of land earmarked for school in the approved lay out L.P.M.R. 1/75 in R.S.No.92/94 etc., as residential area in Madurai Corporation area. The said order dated 23.9.1994 is illegal, vitiated by malafides, in excess of the powers of the first respondent, in violation of the principles of natural justice and deserve to be quashed.

8. The fourth respondent resisted this petition on the following points:-

8.1.The respondent trust formed in or about 1924, look after religious and secular activities of Pilliyarpatti Kovil for welfare of Nagarathar

Community.

8.2. During the year 1930, Trust acquired properties including lands in S.No.92, 94, 120 to 126, 130 to 133, 176/1, 178 Tallakulam Village. The said lands were divided into plots for sale in order to augment income for Trust and named as "Karpaga Nagar". A detailed lay out plan comprising 76.12 Acres was prepared and the same was got approved on 19.5.1972 in P.R.No.21/72.

8.3. As per the approved lay out, plots were sold and 40 plots were retained by Trust (Plot No.272 to 281, 324 to 343, 364 to 373), roads as per the plan were formed and gifted to panchayat. During the year 1974, Tallakulam Town Panchayat included in Madurai City Municipal Corporation. Laws applicable to Corporation were extended from date of extension of limits under Section 3(7) of Act XV of 1971. Saving clause provides Corporation is bound by all acts of Panchayat before extension. Therefore, the plan in P.R.21/72 approved by the Town Panchayat will hold good.

8.4. However, since Madurai Corporation insisted to revalidate the plan, Trust again applied for revalidation of the Original Plan in 21/72. Plan No.1/75 showed 40 plots as reserved for School. However since the Trust had already obtained plan approval from the Town Panchayat, they had not paid the development Charges to the Corporation.

8.5. But on 18.4.1979, Corporation demanded Rs.7.59 Lakhs for laying of Roads for approval of layout.

8.6. During 1979-80, Local Planning Authority of Madurai prepared a detailed Draft Plan (DDP) for Pudur Neighbourhood which also includes the lands of the Trust DTP (MR)12/80. It also provides for residential areas, industrial areas, schools and lands for public. The said plan shows the 40 plots retained by the Trust as residential area.

8.7. On 19.1.1982, the concerned authority issued notification calling for objections before approval. The respondent Corporation enquired as to the effect of DDP basing on the earlier lay out in L.P.No.1/75 by Director of Town and Country Planning.

8.8. On 30.8.1982, the respondent Corporation was informed by Deputy Director of town and Country Planning that plan in L.P.No.1/75 may be treated as cancelled and 12/80 would alone prevail and be valid. Since in plan in 12/80 has not effected any change in the plan approval by Tallakulam Town Panchayat in respect of properties of Trust, the Trust had not raised any objections.

8.9. At this stage, the respondent Trust proposed to put up constructions in Plot No.342 and the same was approved as per order in K3/PR 533/82. After that the Trust applied for permission to put up construction in Plot Nos.276 and 369. But the same was rejected on the ground that the area was reserved for construction of a school and permission cannot be granted for putting up constructions for individual use.

Therefore, the Trust filed Writ Petition No.1565 of 1987 to quash the rejection and for direction to grant approval.

8.10. On 21.11.1991, Writ Petition No.1565 of 1987 was allowed, rejection order was quashed and restored the application. The Court further directed the Corporation to pass orders within three months. The said order made it clear that the application can be rejected only if the detailed development plan in the said area comes under the "Reserved for Public Purpose". On 23.10.1992, the Director of Town Planning agreed to keep the 2 plots 276 and 369 as Residential plots as per judgment of High Court in W.P.No.1565 of 1987. On 15.6.1993, the Trust made a representation highlighting the layout in P.R.No.21/72 and cancellation of Plan No.1/75 and prayed for restoration of status of residential area for the 40 plots.

8.11. In pursuance of such representation on 23.9.1994, G.O.Ms.No.244 was passed de-reserving the 40 plots subject to condition that the trustees requested to hand over the roads in the layout area to the Municipal Corporation. Subsequent to that on 18.10.1994, the Trust wrote a letter to the third respondent stating that all the roads in the approved plan were gifted to panchayat under Gift deed 11.5.1972. On 24.2.1995, another gift deed executed and registered in Document No.532/1995 in favour of the third respondent. On 27.5.1995, the second respondent approved the plan in respect of 40 plots in DDP No.994/95. On 22.4.1996, the second respondent approved the same, the present writ petitions were filed against the said G.O. and the D.D.P. Approval order. There is no merit in the writ petitions and therefore they are liable to be dismissed.

9. We have heard Mr.N.L.Rajah, learned counsel appearing for the appellants, Mr.P.Subramaniam, learned Government Advocate appearing for respondents 1 and 2, Mr.R.Krishnamurthy, Senior Counsel for the fourth respondent.

10. Upon hearing the rival contention, the points for consideration are:

i) Whether the impugned order viz., G.O.Ms.No.244/23.9.1994, Municipal Administration and Water Supply Department and consequently order arising out of the same are illegal, vitiated by malafides in excess of the powers of the first respondent in violation of the principles of natural justice?

ii) Whether the notification issued under Section 27 of the Town and Country Planning Act reserving the disputed 40 plots for public purpose under detailed development plan has become null and void as no final order passed within three years from the date of publication under Section 38 of the Town and Country Planning Act.

(iii) Even assuming that the disputed land does not come within the Detailed Development Plan, what is the effect of the approval of P.R.No.21/1972.

11. It is true that the fourth respondent is absolute owner of the disputed 40 plots related to plot No.272 to 287, 324 to 333, 364 to 372, includes in the detailed lay out comprising 76.12 acres of Thalakulam

Village. The plan approved on 19.5.1972 by order of Thalakulam Town panchayat in P.R.21/72.

11.1 During the year 1974, Thalakulam Town Panchayat was included in Madurai City Municipal Corporation. Therefore, the fourth respondent again applied for re-validation of the original plan in 21/72. So far, the said original plan in 21/72 approved by Thalakulam Town Panchayat on 9.5.72 was not re-validated by the third respondent with the approval of respondents 1 and 2. It is also true that Madurai Corporation on 9.6.88 demanded Rs.80,69,784 under Section 250 Clause 4 of Madurai City Municipal Corporation Act for providing amenities. The said demand notice was quashed as per order in W.P.No.8962 of 88. Then the fourth respondent applied for permission to put up constructions in Plot Nos.276 and 369. The said request was rejected as the plot Nos.276 and 369 lies within the reserved area meant for construction of school against which the fourth respondent filed W.P.No.1565 of 1987 to quash the rejection order and the same was allowed with the following finding:-

"There will be an order in this writ petition quashing the refusal order made by the Corporation of Madurai for putting up buildings in Plot No.276 and Plot No.369 under identical impugned orders K3/Ka.vi.838/86, both dated 16.12.1986. The application made by the petitioner for sanction of building plan in the above plots shall stand restored to the file of the Madurai Corporation and shall be disposed of within the statutory period. If no orders are made within three months from today, on the said application, the application will be deemed to have been granted. It is made clear that the Application can be rejected only in case in the Detailed Development Plan for this area, the above plots come under the classification 'Reserved for public purpose'. It is needless to state that the petitioner will be given an opportunity to be heard in person, if he so desires, in the matter of sanction of plan. ".

The said order was passed in pursuance of the submission made by the fourth respondent in the affidavit filed in W.P.No.1565 of 1987. The above said order was not with reference to the detailed development plan No.11/92. In fact, the direction of this Court to the Municipal Corporation Madurai is to consider the request of Pillayarpatti Karpaga Vinayagar Kovil Nagarathar Trust with regard to the sanctioning of construction of building in the said plots. The de-reservation of 40 plots which is the subject matter of the litigation in detailed development plan No.9/92 was not at all considered by this court. The dispute in the said writ petition is to whether the petitioners viz., Pillayarpatti Vinayagar Kovil Nagarathar Trust entitled to have construction of building in the said plot viz., Plot Nos.276, 369 or otherwise for which a request have been made by them in the Madurai Corporation. The said trust have not made any request to the Court for de-reservation of 40 plots pertaining to detailed development plan

No.9/92. The request was to get a sanction for approval of construction of building in the said plot and nothing more than that. They have neither made any request for sanction of plan approval or for construction of building in the disputed 40 plots nor for de-reservation of 40 plots pertaining to detailed development plan No.9/92.

11.2. In such view of the fact, this Court while passing direction for re-consideration of the request made by the said Trust for approval of plan for construction in the said two plots, not considered the point with regard to the validity of detailed development plan No.9/92. It was also observed that the Trust is not entitled for the relief sought for in the said application, if the, said plots comes under the classification reserved for public purpose. It is no doubt true that the concerned authority ear-marked the disputed 40 plots under the caption reserved for public purpose.

11.3. However, the Government in G.O.(Ms).No.244 dated 23.9.1994, Municipal Administration and Water Supply Department accorded permission for de-reservation of 2.5 acres ear-marked for in the approved lay out LP/MR/75 in T.S.No.92,94,120 to 126, 130 to 133, 176/1 and 178 as residential area in Madurai Corporation area subject to the condition that the roads in the lay out area should be handed over to the Madurai Corporation by Pillayarpatti Vinayagar Kovil Nagarathar Trust. The Government passed the said order in pursuance of the order in W.P.No.1565 of 1986 and W.M.P.No.3338 of 1992.

11.4. The approach of the Government in the said order is that (a) The Government was under the mis-conception that the order in the said writ petition recommended for de-reservation of the plots in dispute.

(b) Whereas the writ order does not speak about de-reservation of the plots which is under dispute.

(c) More so no such relief sought for in the writ.

11.5. In such view of the fact, we are satisfied that the impugned G.O.Ms.No.244 dated 23.9.1994, Municipal Administration and Water Supply Department is out of mis- conception of the direction of this Court in W.P.No.1565 of 1987 dated 21.11.1991 and therefore the said Government order is illegal, vitiated by malafides in excess of the powers of the Government. Therefore, the said Government Order is in violation of the principles of natural justice and deserves to be quashed and accordingly this point is answered in favour of the petitioner.

12. The learned counsel for the fourth respondent submitted that even if the said plots are shown as reserved for public purpose under section 27 of the Town and country planning Act, still, under the provisions of Section 38 of the Town and Country Planning Act, if within three years of the date of the publication of the notice in the Tamil Nadu Government Gazette under Section 26, 27, no declaration has been provided under sub section 2 of section 27 is published in respect of any land reserved, allotted or designated for any purpose, specified in general

plan or in view of Government plan covered by such notice or such land is not required by agreements, such land shall be deemed to be released from such reservation allotment or designation. The learned counsel for the petitioner would submit that the validity of the detailed development plan No.9/92 neither considered in the said writ petition nor considered by the Government while passing the said Government Order. Learned counsel for the petitioner further contended that the scope of the writ petition was not very wide but narrow to a limited extent whether rejection of the application of the trust is not valid or otherwise. He further contended that the submission of the learned counsel for the fourth respondent has no merit as the scope of the said writ petition was not with reference to the validity of the above said detailed development plan.

13. The Tamil Nadu Town and Country Planning Act, 1971 is an Act to provide for planning the development and use of rural and urban land. Under Section 2(14) "Development Authority" means a regional planning authority or a local planning authority or a new town development authority constituted under the Act. "Development Plan" under Section 2(15) means a plan for the development or re-development or improvement of the area within the jurisdiction of a planning authority and includes a regional plan, master plan, detailed development plan and a new town development plan prepared under the Act. Under Section 2(16) "Director" means the Director of Town and Country Planning appointed under section 3.

Under Section 2(23) "Local Authority" means - (i) the Municipal Corporation of Chennai or of Madurai; or

(ii) a Municipal Council constituted under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920); or

(iii) a Township Committee constituted under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920), or the Tamil Nadu Panchayats Act, 1958 (Tamil Nadu Act XXXV of 1958), or under any other law for the time being in force, or the Mettur Township Act, 1940 (Tamil Nadu Act XI of 1940), or the Courtallam Township Act, 1954 (Tamil Nadu Act XVI of 1954), or the Bhavanisagar Township Act, 1954 (Tamil Nadu Act XXV of 1954); or

(iv) a Panchayat Union Council or a Panchayat constituted under the Tamil Nadu Panchayats Act, 1958 (Tamil Nadu Act XXXV of 1958)."

Under Section 2(30) "planning area" means any area declared to be a regional planning area, local planning area or a site for a new town under this Act. Under Section 2(36) "public purpose" means any purpose which is useful to the public or any class or section of the public. Section 11 envisages constitution of town and country planning authorities. Section 11(1) is as follows :-

11(1) As soon as may be, after declaration of a regional planning area, a local planning area or the designation of a site for a new town under section 10, the Government may, in consultation with the Director, constitute for the purpose of the performance of the functions assigned to them, an authority called the "regional planning authority", the "local planning authority", or the "new town development authority", as the case may be, for that area having jurisdiction over it:

Provided that, in case where the local planning area consists of the area under jurisdiction of a single local authority, the Government may declare such local authority as the local planning authority for that area.

Under Section 11(2), the regional planning authority constituted under sub-section (1) shall consist of the Chairman to be appointed by the Government, the Deputy Director of Town and Country Planning of the region and others. Under Section 11(3), the local planning authority constituted under sub-section (1) other than the local authority which has been declared as the local planning authority under the said sub-section shall consist of the Chairman to be appointed by the Government and others as envisaged in other clauses. Under Section 11(4), the new town development authority constituted under sub-section (1) shall consist of the Chairman to be appointed by the Government, the Chairman of the regional planning authority or a member of the regional planning authority nominated or the Deputy Director of Town and Country Planning of the region concerned and others.

Functions and powers of the appropriate planning authorities are envisaged under Section 12. Under Section 12(1), the functions of Regional Planning authority inter alia shall be to prepare a regional plan. Similarly the function of local planning authority shall be inter alia to prepare a master plan or a detailed development plan and to carry out or cause to carry out such works contemplated in the master plan and detailed development plan.

Under Section 20(1) a detailed development plan may propose or provide for all or any of the following matters indicated therein. Clause (k) relates to the allotment or reservation of land for streets, roads, squares, houses, buildings for religious and charitable purposes, open spaces, gardens, recreation grounds, schools, markets, shops, factories, hospitals, dispensaries, public buildings and public purposes of all kinds and defining and demarcating of, the reconstituted plots or the areas allotted to or reserved for, the above mentioned purposes.

Under Section 21, the local planning authority shall prepare and submit a detailed development plan to the Director and under Section 23, the Director may require the local planning authority to prepare detailed development plan. Under Section 25, consent of the Director to the publication of notice of preparation of the detailed development plan is envisaged and is quoted hereunder :-

"25. Consent of the Director to the publication of notice of preparation of the detailed development plan.- (1) As soon as

may be,

after the detailed development plan has been submitted to the Director but not later than such time as may be prescribed, the Director may direct the local planning authority to make such modifications in the detailed development plan as he thinks fit in the public interest and thereupon the local planning authority shall make such modifications and resubmit it to him.

(2) The Director shall, after the modifications, if any, directed by him, have been made, give his consent to the local planning authority to the publication of a notice under sub-section (1) of section 27, of the preparation of the detailed development plan."

Section 27 is as follows :-

"27. Notice of the preparation of the detailed development plan. - (1) As soon as may be, after the local planning authority has received the consent of the Director under sub-section (2) of section 25 to the publication of the notice, the local planning authority shall publish the notice in the Tamil Nadu Government Gazette, and in leading daily newspapers of the region of the preparation of the detailed development plan and the place or places where copies of the same may be inspected, inviting objections and suggestions, in writing, from any person in respect of the said plan within such period as may be specified in the notice:

Provided that such period shall not be less than two months from the date of the publication of the notice in the Tamil Nadu Government Gazette.

(2) After the expiry of the period mentioned in sub-section (1), the local planning authority shall allow a reasonable opportunity of being heard to any person including representatives of Government departments and authorities, who have made a request for being so heard and make such amendments to the detailed development plan as it considers proper and shall submit the said plan with or without modifications to the Director."

Under Section 29, the Director is empowered to approve the detailed development plan or may approve with such modifications as considered necessary or may return the plan to the local planning authority to modify the same.

Section 31 is as follows :-

31. Coming into operation of the detailed development plan.-

(1) Immediately after the detailed development plan has been approved by the Director, the local planning authority shall publish a notice in the Tamil Nadu Government Gazette and in the leading daily newspapers of the region of the approval of the detailed development plan and such notice shall state the place or places and time at which the said plan

shall be open to the inspection of the public.

(2) A notice published under sub-section (1) shall be conclusive evidence that the detailed development plan has been duly made and approved. The said plan shall come into operation from the date of publication of such notice in the Tamil Nadu Government Gazette.

Under Section 33, a detailed development plan may be varied or revoked by a subsequent plan prepared and approved under the Act. Section 34 is as follows:-

"34. Detailed town planning schemes prepared under the Tamil Nadu Town Planning Act, 1920, deemed to be detailed development plans under this Act.- Every detailed town planning scheme notified, submitted or sanctioned under the Tamil Nadu Town Planning Act, 1920 (Tamil Nadu Act VII of 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 the Act."

Chapter IV relates to acquisition and disposal of land. Under Section 36 any land required, reserved or designated in a detailed development plan shall be deemed to be land needed for a public purpose. Under Section 37(1), appropriate planning authority is empowered to take steps for acquisition of such land. Thereafter under Section 37(2), the Government may take steps as contemplated in the Land Acquisition Act. Section 38 is to the following effect:-

"38. Release of land.- 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 sub-section (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."

14. The provisions contained in the Tamil Nadu Town and Country Planning Act, therefore, envisages that if any private land is included in the detailed development plan for any public purpose, ultimately such land is required to be acquired in accordance with the provisions contained in the said Act read with the Land Acquisition Act and if such steps are not completed within the stipulated period under Section 38, the land shall be deemed to be released from such reservation, allotment or designation.

15. These provisions form the main plank of the learned Senior Counsel appearing for Respondent No.4. Learned Senior Counsel has also

placed reliance upon a decision of the Supreme Court reported in (2005)11 SCC 222, wherein it was observed :-

"3. ... It is true that when it was shown as a garden in the draft development plan, no objection was raised and final notification declaring this land as earmarked for garden was published. It is true that a development plan can be prepared of a land comprising of a private person but that plan cannot be implemented till the land belonging to the private person is acquired by the Panning Authority. It is not that the Planning Authority was ignorant of this fact. It acquired some land from Plot No.437 for developing garden but the land from Plot No.438 was not acquired for garden. Therefore, the question is whether the Government can prepare a development plan and deprive the owner of the land from using that land? There is no prohibition of including private land in a development plan but no development can be made on that land unless that private land is acquired for development. The Government cannot deprive the persons from using their private property. We quite appreciate the interest of the residents of that area that for the benefit of the ecology, certain areas should be earmarked for garden and park so as to provide fresh air to the residents of that locality. In order to provide such amenities to the residents of the area private land can be acquired in order to effectuate their public purpose but without acquiring the private land the Government cannot deprive the owner of the land from using that land for residential purpose."

Referring to the decision of the Supreme Court in (1991) 4 SCC 54 (BANGALORE MEDICAL TRUST v. B.S. MUDDAPPA) and (2005)3 SCC 61 (BALAKRISHNA H: SAWANT v. SANGLI MIRAJ & KUPWAD CITY MUNICIPAL CORPORATION), it was observed :-

"3. ... In the case of Bangalore Medical Trust the open space reserved for park under the development scheme was converted into a hospital in favour of a private body by the Development Authority at the instance of the Chief Minister of the State. Therefore, this Court examined the provisions of the Bangalore Development Authority Act, 1976 and after considering all those provisions, this Court held that this unilateral act of the Bangalore Development Authority at the instance of the Chief Minister of the State cannot be countenanced. In that case, the area was reserved for park and playground. Section 38-A of the Bangalore Development Authority Act, 1976 specifically prohibited that the authority shall not sell or otherwise dispose of any area reserved for public parks and playgrounds and civic amenities for any other purpose and any disposition so made shall be null and void. Firstly, there is no such provision under the Maharashtra Regional and Town Planning Act, 1966 and secondly, the area which is earmarked for the purpose of park and playground was not owned by a private person. In the present

case, though the development plan has been prepared in the year 1966 and the area has been earmarked for the purpose of garden but no proceeding for acquisition of the present plot was ever initiated by the respondent Municipal Corporation or by the State Government. There is no prohibition for preparing the development plan comprising of private land but that plan cannot be implemented unless the said private land is acquired by the Government for development purpose. In the present case, the area comprising in Plot No.438 belonged to the appellants and that no steps were taken to acquire the said land by the State Government or by the Municipal Corporation of Pune and the Municipal Corporation had already expressed their inability to acquire that land and therefore, the said land has been dereserved by the State Government. Therefore, the present case has no semblance to that of Bangalore Medical Trust case. The question is whether without acquiring the land the Government can deprive a person of his use of the land. This in our opinion, cannot be done. It would have been possible for the Municipal Corporation and the Government of Maharashtra to acquire the land in order to provide civic amenities. But the land in question has not been acquired. We are quite conscious of the fact that the open park and garden are necessary for the residents of the area. But at the same time we cannot lose sight of the fact that a citizen is deprived of his rights without following proper procedure of law."

16. Keeping in view the provisions contained in the Tamil Nadu town and Country Planning Act and ratio of the decision of the Supreme Court, the contention raised by the learned Senior Counsel for Respondent No.4 is to the effect that the private land not having been acquired shall be deemed to have been released.

17. The effect of Section 250 of the Madurai City Municipal Corporation Act, 1971 is, however, required to be examined. Section 250 is extracted hereunder :-

"250. Owners Obligation to Make a Street When Disposing of Lands as Building Sites

(1) If the owner of any land utilizes, sells, leases or otherwise disposes of such land or any portion or portions of the same as sites for the construction of buildings, he shall save in such cases as the site or sites may abut on an existing public or private street, layout and make a street or streets giving access to the site or sites and connecting with an existing public or private street.

(2) In regard to the laying out or making of any such street or streets, the provisions of section 251 shall apply, subject to the conditions that the owner shall remit a sum not exceeding 50 per cent of the estimated cost of lay-out improvements in the land and that the owner shall also reserve not exceeding 10 per

cent of the lay-out for the common purpose in addition to the area provided for laying out streets. If any owner contravenes any of the conditions specified above, he shall be liable for prosecution

(3) If in any case, the provisions, of sub-sections (1) and (2) have not been complied with, the Commissioner may, by notice, require the defaulting owner to layout and make a street or streets on such land and in such manner and within such time as may be specified in the notice.

(4) If such street or streets are not laid out and made in the manner and within the time specified in the notice the Commissioner may lay-out and make the street or streets, and the expenses incurred shall be recovered from the defaulting owner

(5) The Commissioner may in his discretion, issue the notice referred to in sub-section (3) or recover the expenses referred to in sub-section (4) to or from the owners of any buildings or lands abutting on the street or streets concerned but any such owner shall be entitled to recover all reasonable expenses incurred by him or all expenses paid by him, as the case may be, from the defaulting owner referred to in sub-section (3)."

18. From the materials on record, it is apparent that the area in question became part of the Madurai Corporation with effect from 1974. Thereafter an application was filed for approval of the layout plan. According to the case of the Respondent No.4, even though it was not so required under the law, Respondent No.4 was forced to make such application. It is not possible to countenance such a plea that Respondent No.4 was forced to seek for approval of the layout plan. However, it has already been found in the earlier litigations that while the disputed land did not form part of the Madurai Corporation, PR.21/1972 had been approved by Tallakulam Town Panchayat by resolution dated 18.5.1972, which was communicated on 19.5.1972. It is claimed by Respondent No.4 that in such approved plan 40 plots in question were not shown as reserved for any public purpose or for common purpose or for school and since the Madurai Corporation became a successor of Tallakulam Town Panchayat after the area became part of Madurai Corporation, such Corporation is bound by such approved layout plan.

19. We do not think the submission made by the learned Senior Counsel for Respondent No.4 can be accepted in such broad terms. To the extent Respondent No.4 had acted upon the approved plan of Tallakulam Town Panchayat, obviously such action cannot be found fault with because of any subsequent development such as coming of such area within the Madurai Corporation area. The provisions contained in Madurai City Municipal Corporation Act would be made applicable with effect from the date on which any area becomes part of the Corporation and any action taken before such date obviously cannot be challenged or re-opened. Filing of an application before the Madurai Corporation, which was ultimately approved

and became Plan No.1 of 1975, cannot be considered as a mere formality. To the extent any alienation or construction had been made by virtue of Tallakulam Town Panchayat PR 21/1972, such acts are of course required to be protected.

20. In the present case, however, it appears that alienation of the property has taken place only after the area became part of the Madurai Corporation. There is no dispute that, in such Plan No.1 of 1975, which was filed and approved by the appropriate authorities after the area in question became part of Madurai Corporation, the land in question had been shown as meant for school and public purpose or common use. Section 250(2) of the Madurai City Municipal Corporation Act envisages that area upto 10% of the layout is required to be reserved for common purpose in addition to the area provided for laying out streets. If the owner contravenes any of the conditions stated in Section 250, he shall be liable for prosecution. Once such lay-out is filed and approved it must be taken that such area is required to be used for common purpose and the owner cannot subsequently wriggle out of such a situation.

21. Possibly to over come such hurdle envisaged under Section 250 (2), learned Senior Counsel appearing for Respondent No.4 has relied upon the principle of res judicata by referring to the decisions of the High Court as well as by pointing out that the suit filed had withdrawn.

22. First in point of time is O.S.No.1106 of 1986. Such suit was filed by A. Shanmughavel and S. Raju for themselves as well as representatives of the residents of Karpaganagar, K. Pudur, Madurai 7. In such suit, purportedly filed in representative capacity, the prayer was for restraining the present Respondent No.4 from selling or using the suit property for any purpose other than for the purpose for which it was reserved in L.P.(MR)1/75 dated 3.9.1975 and directing the third defendant, the Special Officer & Commissioner, Madurai Corporation, to take over the roads and common places as per the provisions of the Madurai City Municipal Corporation Act. Ultimately a memo was filed on 16.8.1980 by the two plaintiffs to the effect that they do not want to prosecute the case and the suit may be dismissed. From Page No.85 of the typed set filed by the petitioner it appears that such memo was recorded by the Additional District Munsif. The rival parties now contend that either the suit was deemed to be withdrawn or dismissed as not pressed. The question is what is the legal effect of such dismissal/withdrawal of the suit. The suit was purportedly in the representative capacity under Order 1 Rule 8. There is no material produced to indicate whether initially the permission to sue in representative capacity had been granted and the procedure contemplated under Order 1 Rule 8 had been followed. For the purpose of the present case, we are prepared to assume that such procedure has been followed. However, it is apparent that when the suit claim was abandoned, the procedure contemplated under Order 1 Rule 8(4) has not been followed. Order 1 Rule 8(4) is to the following effect :-

"(4) No part of the claim in any such suit shall be

abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule(3), of Rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under Rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2)."

Since at the stage of ultimate abandonment the provisions contained in Order 1 Rule 8(4) had admittedly not been followed, dismissal or abandonment can be held to be binding on the two plaintiffs in the said case, but it cannot be said to be binding on all the persons who were sought to be represented.

23. The present round of litigations have been filed by the welfare society. It is no doubt true that Plaintiff No.1 in the said case is also the Secretary of the Society. However, in the present litigations, the said Plaintiff No.1 is in a different capacity and it cannot be said that there is identity in two capacities. In our opinion, therefore, the bar envisaged under Order 9 Rule 9 or Order 23 Rule 1(4) would not be applicable.

24. The next in point of time comes W.P.No.1565 of 1987 and the orders passed therein. Such writ petition was filed by the present Respondent No.4. In the said writ petition, the present petitioner was not initially impleaded as a party, the prayer in such writ petition was to issue writ of certiorarified mandamus for quashing the proceedings dated 16.12.1986 and directing the Madurai Municipal Corporation to grant permission to the Trust (present Respondent No.4) to put up constructions in the land in Plot Nos.276 and 369 in Survey No.122 Of Tallakulam Village, forming part of Layout Plan In P.R.No.21/72 dated 19.5.1982, approved by Talakulam Town Panchayat.

25. In that writ petition, reliance was placed upon D.D.P.(MR) No.12/80. The contention was to the effect that in view of P.R.No.21/72 of Tallakulam Panchayat and the subsequent D.D.P.(MR)No.12/80, plots in question could be developed for the purpose of construction. The further contention was that the Plan No.1/75 was not binding or valid. In the said writ petition, a petition was filed on behalf of the present petitioner represented by Shanmugavel, who had become the Secretary of the Karpaga Nagar Welfare Association and by S. Raju, to get themselves impleaded as parties to the writ petition and it appears that they were so impleaded. After noticing the contentions, the learned single Judge disposed of the matter by observing as follows:-

"3. The lethargic manner in which the matter is being dragged on for years together without the citizens being made aware what is happening, and whether a building could be put up in a particular area or not, and whether the Master Plan already prepared bearing No.12/80 can be acted upon or not, presents a

very dismal picture. In all such matters, expeditious action is absolutely necessary. There is scarcity of building areas in Cities and Towns and in the peripheral areas. There is overcrowding which does not behave well. The Town and Country Planning authorities should, therefore, exercise due diligence and expedite matters for preparation of Master Plans, Detailed Development Plans, etc., so that planned development can take without any hindrance. In this view, there will be an Order in this writ petition quashing the refusal order made by the Corporation of Madurai for putting up buildings in Plot No.276 and Plot No.369 under identical impugned orders K3/Ka.vi.838/86, both dated 16-12-1986. The application made by the petitioner for sanction of building plan in the above plots shall stand restored to the file of the Madurai Corporation and shall be disposed of within the statutory period. If no orders are made within three months from today, on the said application, the application will be deemed to have been granted. It is made clear that the Application can be rejected only in case in the Detailed Development Plan for this area, the above plots come under the classification 'Reserved for Public Purpose'. It is needless to state that the petitioner will be given an opportunity to be heard in person, if he so desires, in the matter of sanction of plan."

26. Subsequently an application has been filed numbered as W.M.P.No.3338 of 1992 for extension of time to take appropriate decision in terms of the direction of the High Court, but, such application, was rejected. The Madurai Corporation at that stage took steps for filing appeal, which was barred by limitation. The petition for condonation of delay numbered as CMP.No.5044 of 1992 in WA.SR.No.32558 of 1992 was dismissed by the Division Bench by order dated 30.4.1992. The net result, therefore, was that the order of the learned single Judge became final.

27. Since no specific order was passed within three months as specifically directed in the order of the learned single Judge dated 21.11.1991 in W.P.No.1565 of 1987, it must be taken that permission was granted to Respondent No.4 Trust to put up construction in Plot Nos.276 and 369.

28. It is no doubt true that in the said order it was observed that application for grant of permission for construction of building can be rejected only in case in the Detailed Development Plan for this area, the two plots came under the classification "reserved for public purpose". In such view of the matter, neither the present petitioners nor the respondent Madurai Corporation can claim that two plots in question can still be said to be held as part of the public purpose or for common use and willy-nilly those two plots must be excluded from the purview of the present consideration. However, it cannot be said that the said order of the learned single Judge, which had not specifically decided any of the

question raised but had merely given a direction to Madurai Corporation to consider the application for grant of planning permission, operates as res judicata.

29. The next in point of time comes W.P.No.8692 of 1998. Such writ petition was filed by the present Respondent No.4 initially impleading only Madurai Corporation, but subsequently the present writ petitioner got impleaded. The said writ petition was against the notice issued by the Madurai Corporation calling upon the present Respondent No.4 to pay 50% of the sum of Rs.80,69,768/-, being the total cost for laying roads in the area. The only question raised therein was as to whether the roads shown in the layout plan had been handed over to Tallakulam Town Panchayat. Learned single Judge ultimately came to the conclusion that the roads had been laid and had been handed over to Tallakulam Town Panchayat for the purpose of maintenance and, therefore, the roads had vested with the Panchayat and thereafter vested with Madurai Corporation, consequent on the inclusion of Tallakulam area in Madurai City Municipal Corporation limits. In view of such conclusion, the learned single Judge observed that Madurai Corporation had no jurisdiction to invoke the provisions contained in Section 250 of the Madurai City Municipal Corporation Act.

30. The question as to whether some lands had been kept apart for common use was not in issue in the said writ petition. The decision in the writ petition had been, of course, upheld by a Division Bench of this Court in W.A.No.412 of 1995 dated 4.9.1997. However, since the question arising from the scope of Section 250 of the Madurai City Municipal Corporation Act, relating to earmarking of certain area as for common purpose, was neither directly in issue nor it was specifically decided, we are unable to accept the contention of Respondent No.4 that the said decision also operates as res judicata.

31. Keeping in view the scheme of the Tamil Nadu Town and Country Planning Act, it is obvious that if any private land is to be included in the Development Plan as contemplated in the Tamil Nadu Town and Country Planning Act, steps are required to be taken as contemplated in Section 37 or 38. However, this conclusion cannot come to the rescue of Respondent No.4. It cannot be contended that Section 250 of the Madurai City Municipal Corporation Act is either impliedly or expressly repealed by the Tamil Nadu Town and Country Planning Act, 1971. In our considered opinion, the provisions contained in both the Acts are to be read together and not in derogation to each other. Both the Acts operate on different fields. Requirement under Section 250 regarding reserving certain land as common for the purpose of sanction of a layout plan stands on its own. The aim and object of the Tamil Nadu Town and Country Planning Act is on a different sphere. Section 250 of the Madurai City Municipal Corporation Act is a specific provision relating to a particular contingency and required to be given effect to. For obtain approval of any lay-out, the owner is required to earmark certain area as for common use as envisaged

under Section 250(2). Only upon such basis, the plan would be approved by the appropriate authority and in such an event such land is dedicated for the same use. The purpose of Tamil Nadu Town and Country Planning Act is different. It is for the purpose of land development and if the authorities come to the conclusion that any particular area or land is required to be earmarked for the purposes envisaged in the Tamil Nadu Town and Country Planning Act, they are required to acquire such land in accordance with the provisions contained in the Land Acquisition Act read with Section 37 of the Tamil Nadu Town and Country Planning Act. However, Section 250 of the Madurai City Municipal Corporation Act does not envisage any such procedure. While obtaining sanction of a layout plan by reserving certain area as common use, it can be said that the owner gives up such promise to the person interest and once such promise fortifies in an approved layout plan, obviously the person cannot be permitted to take a different stand. It is therefore immaterial as to whether the proceedings as contemplated in the Tamil Nadu Town and Country Planning Act are completed or not inasmuch as the land, which had been dedicated for the common use, after acceptance of such plan by the appropriate authorities would continue to be dedicated for the common use.

32. In the above view of the matter, we allow the writ petitions and direct that the plots covered in L.P./MRI/75 cannot be used for any purpose other than the public purpose mentioned in such L.P./MRI/75. However, this direction would not be applicable to two plots, namely, Plot Nos.276 and 369, which were the subject matter of W.P.No.1565 of 1987. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ga/dpk

To

1.The Municipal Administration and
Water Supply Department
Rep.by its Secretary,Chennai -2

2.The Director of Town and Country
Planning, Madras - 2

3.The Commissioner of Corporation
Madurai - 625 002

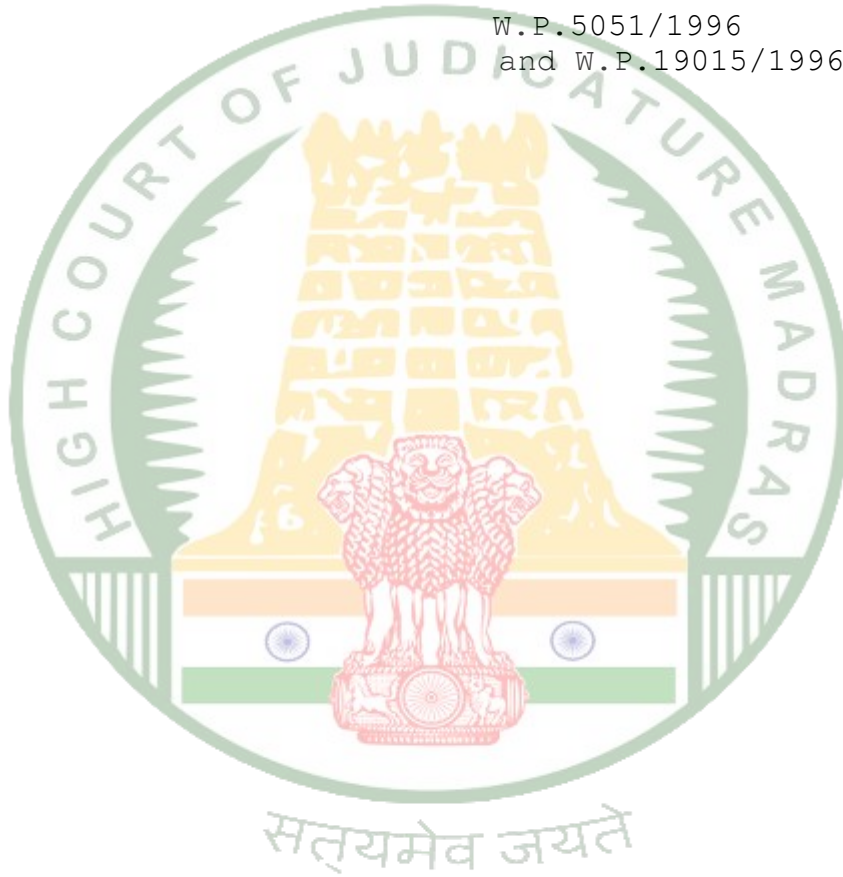
+ 2 CCs to Mr.AL.Gandhimathi, Advocate SR NO 30078

+ 1 CC To Mr. N.L.Rajah, Advocate SR NO.29378

+ 1 CC To Mr. P.Srinivas, Advocate SR NO.29586

W.P.5051/1996
and W.P.19015/1996

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