

IN THE H IGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2011

CORAM

THE HONOURABLE Mr. JUSTICE T.RAJA

W.P.Nos.8867 and 32896 of 2007 and  
M.P.Nos.1,1 and 2 of 2010

SIDCO Nagar Welfare Association,  
Rep. By its Secretary,  
P.K.Chitti Babu,  
C-3/298, SIDCO Nagar,  
38<sup>th</sup> street, Villivakkam,  
Chennai - 600 049.

... Petitioner both  
petitions.

Vs.

State of Tamil Nadu,  
Rep. By Secretary to Government,  
Housing and Urban Development (UD-I) Dept.,  
Fort St. George, Chennai - 600 009.

... 1st Respondent in  
W.P.No.32896/2007

1.Chennai Metropolitan Development Authority,  
Rep. By its Member Secretary,  
Thalamuthu Maligai,  
Chennai - 600 008.

2.Chennai Corporation,  
Rep. By its Commissioner,  
Ribon Buildings,  
Chennai - 600 003.

3.Tamil Nadu Housing Board,  
Rep. By its Chief Executive Engineer,  
Nandanam, Chennai - 600 035.

... Respondents in writ  
petition W.P..8867/07  
and Respondents 2 to 4  
in W.P.32896/07

PRAYER IN W.P.No.8867 of 2007: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of mandamus (i) to direct the 2<sup>nd</sup> respondent to maintain the approved park and play ground situated near Government Girls Higher Secondary School, 4<sup>th</sup>

Main Road, Ward No.63, Corporation Zone IV, Villivakkam, Chennai city which is handed over by the 3<sup>rd</sup> respondent to the 2<sup>nd</sup> respondent and (ii) to issue direction to the 3<sup>rd</sup> respondent to hand over park and play ground situated near Government Girls Higher School, 4<sup>th</sup> Main Road, Ward No.63 Corporation zone IV, Villivakkam, Chennai City if the 2<sup>nd</sup> respondent took a stand that the same is not handed over by 3<sup>rd</sup> respondent till date, so as to enable the 2<sup>nd</sup> respondent to implement the directions prayed for in the prayer above and (iii) to grant such further orders.

PRAYER IN W.P.No.32896 of 2007: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records in G.O.3(D)No.8, Housing and Urban Development (UD-I) Department, dated 24.08.2004 on the file of the 1<sup>st</sup> respondent and quash the same and pass such further orders.

For Petitioner  
in both petitions :Mr.N.S.Nandakumar  
For Respondents  
in both petitions :Mr.P.S.Raman, AG  
Assisted by Mr.A.Vijayakumar  
for R3 in W.P.No.8867/2007 and  
for R4 in W.P.No.32896/2007  
Mr.C.Kathiravan  
for R1 in W.P.No.8867/2007 and  
for R2 in W.P.No.32896/2007  
Mr.V.Bharathidasan  
for R2 in W.P.No.8867/2007 and  
for R3 in W.P.No.32896/2007  
Mr.S.Sivashanmugam, GA  
for R1 in W.P.No.32896/2007

COMMON ORDER

As the facts involved in both the writ petitions are identical, they are disposed of by this common order.

2. The petitioner is a registered Association for the welfare of the residents of SIDCO Nagar, Villivakkam, having 5000 residential units and population of about 25,000. From the date of the registration on 19.06.1985, the petitioner's Association claims to be functioning and looking after the welfare and civic amenities of the residents of SIDCO Nagar. A master plan was approved by the 1st respondent for the entire neighbourhood as Phase 1, Phase-II and Phase-III providing different types of user zones for residents, commercial activities, schools, parks and play ground etc. After the approval of the master plan by the 1st respondent, in conformity with the provisions of Town and Country Planning Act and Development Control Rules, the 3rd respondent/the Tamil Nadu Housing Board has laid out park and play ground to an extent of 12 grounds in Phase -

1, 4th Main Road, adjoining Government Girls Higher Secondary School, situated in Ward No.63, Zone No.IV, Villivakkam, which is coming within the 2nd respondent jurisdiction. In the year 1999, when the 2nd respondent Chennai Corporation failed to maintain the park and playground properly, the antisocial elements started converting the same as a dumping yard circled by natural growth of wild bushes and vegetation. Due to the non-maintenance of the of the aforesaid approved park and playground, the petitioner has sent many representations to the respondents about the maintenance of the said park and playground. Therefore, the 3rd respondent/the Tamil Nadu Housing Board, in their communication dated 04.08.1999, requested the 2nd respondent to take over the aforesaid park and playground. Again, on 30.12.2003, the petitioner made a representation to the respondents 2 and 3 to establish and maintain the park and playground and as such, the area is reserved in the master plan. The said representation was also followed by the reminder representations dated 16.08.2004, 12.07.2005, 08.08.2005 and 30.09.2005 to the respondents. The 1st respondent, by taking note of the petitioner's representation dated 12.07.2005, requested the petitioner to approach the 2nd respondent in this regard. However, the 2nd respondent turned its deaf ear in not addressing the grievance of the petitioner. Therefore, another representation dated 31.01.2006 was addressed to the Government by marking a copy to the 2nd respondent. The 2nd respondent, after receiving the representation on 03.02.2006, even followed by remainder representation dated 10.06.2006, has not taken any fruitful steps for the same. Again, after giving another representation dated 04.01.2007 by registered post with acknowledgement due, finding no fruitful response, on the grievance day on 12.01.2007, the petitioner gave another complaint to the 2nd respondent, though it was acknowledged, none of the respondents took any steps to maintain the park and playground. Subsequently, when an attempt was made by the 3rd respondent to allot a part of the playground to the transport corporation for its Villivakkam bus depot, the same was objected by the petitioner association, as a result, the respondent dropped the same. Subsequently, after pongal festival in the year 2007, when the announcement came to convert the park and playground for use of commercial purpose by the 3rd respondent by way of sale with a consent of the respondents 1 and 2, the petitioner came to this Court by filing the present writ petition with the aforesaid prayer.

3. Mr.N.S.Nandakumar, learned counsel appearing for the petitioner placed three fold submissions. Firstly, it was vehemently argued that the respondents have no authority to convert or allot or take steps to convert, allot, assign, sell or otherwise deal with for any other purpose, other than as the approved park and playground situated near Government Girls Higher Secondary School, 4th Main Road, Ward No.63, Zone IV, Villivakkam. Secondly, it was contended that the 2nd respondent is statutorily duty bound to maintain aforesaid park and playground by abating nuisance, cleaning wild



bushes and vegetation. Thirdly, it was submitted that if the respondents are allowed to alienate the park and playground approved in the master plan, this will amount to violation of developmental control Rules, which ultimately will destroy the environmental and ecological balance in the form of open place available to the residents of the area.

4. In support of his submissions, he has also relied upon a judgment of the Division Bench of this Court in the case of R.Chandran Vs. State of Tamil Nadu (2010 (4) CTC 737) for a proposition that right to life is not only fundamental right but also right to lead a decent life and to enjoy fresh air and water by using parks and ground, which is meant for public at large and if the development control rules provides that where use of site or premises is specifically designated as open space, it shall be used only for that purpose for which it has been so designated. On that basis, the decision of the Corporation to convert the approved park and playground into an underground car park was rejected by the Apex Court.

5. In his further submission, he has also relied upon yet another judgment in the case of Dr.G.N.Khajuria Vs. Delhi Development Authority (AIR 1996 SC 253), wherein it has been held that it is not open to the DDA to carve out any space meant for park for a nursery school. On that basis, the Hon'ble Apex Court has held that the allotment of a site in favour of the nursery school was held to be misuse of power for reasons which need not be adverted.

6. In reply, Mr.P.S.Raman, learned Advocate General appearing for the respondents 3 and 4 submitted that the subject matter of land is a part of an extent of 47 grounds 1657 sq.ft. (2.63 acre), which was an approved layout earmarked for High School and playground and the same was allotted and handed over to the Educational Department. While executing the development works, the site office reserved for store cum site office. After settlement by the allottees, the petitioner's welfare association requested this site for bus stand use and examining the said request, the CMDA prepared a part layout with four commercial plots and remaining area reserved for bus stand site in the area reserved for store cum office. Thereafter, Dr.Ambedkar Transport Corporation Limited was requested to offer their willingness for providing a bus terminus at Villivakkam. But, the Transport Corporation refused to take over the bus stand site, therefore, the Tamil Nadu Housing Board has taken action to dispose of the above said commercial sites of convenience shops site in the above said part layout No.L.P.S&S No.8/94, dated 30.08.94, through sealed cum open auction. Mr.K.Venkatesan, Mr.B.Vasu and Mr.Gangadara were declared as successful bidders of the site No.4, 1 and 2 respectively and subsequently, they have also paid their respective bid amounts to the Tamil Nadu Housing Board. Thereupon, the TNHB decided to construct commercial cum residential complex in the said

site and has cancelled the sealed cum open auction. Subsequently, the successful bidders filed W.P.Nos.8112 to 8114 of 1997 before this Court and this Court, by order dated 30.06.1999, considering the facts and circumstances of the case, directed the respondents to proceed with construction of the commercial and residential complex and however, on completion of the same, the respondent Board shall give preference to each of the petitioners in the above writ petitions by allotting them one shop of 62 sq.mtr. each at the prevailing market rate. Therefore, the site reserved for bus stand and 4 convenience shops were decided to be converted as mixed residential use. So much so, a resolution dated 10.02.1998 was passed approving the conversion of the site into commercial use for construction of commercial cum residential complex. On that basis, the learned Advocate General further argued that the 3rd respondent has not laid any park and playground in an extent of 12 grounds in Phase I, now situated in 4th main road, adjoining Government Girls Higher Secondary School. In fact, in the original layout, the land to an extent of 12 grounds was earmarked for store cum site office and out of which, an extent of measuring 3 grounds of land has been handed over to Chennai Metropolitan Water Supply and Sewage Board and balance land to an extent of 9 grounds was used as store cum site office while executing the development works. Therefore, the learned Advocate General further submitted that there was no park and playground adjoining the Government Girls Higher Secondary School in the approved layout of the SIDCO Nagar.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. The only issue raised in the present writ petition is whether any specific land earmarked for park and playground in the original approved layout sanctioned by the municipal authority, cannot be altered subsequently by the Government by issuance of a Government Order de-reserving such plots.

9. In the original layout, the land measuring an extent of 12 grounds 0839 sq.ft., including the land in question, was earmarked for store cum site office and out of which, an extent of land measuring 3 grounds 0702 sq.ft. has been handed over to the Chennai Metropolitan Water Supply and Sewage Board and the balance land measuring 9 grounds 0137 sq.ft. used as a TNHB store cum site office. In the original approved layout, an extent of 47 grounds 1657 sq.ft. (2.63 acre) was earmarked for High School and Play Ground and the same was allotted and handed over to the Educational Department. While executing the development works, after the settlement by the allottees, the welfare association have requested the present site in question for use of public bus stand. After considering the said request, the Chennai Metropolitan Development Authority prepared a part layout with four commercial plots and remaining area was reserved for bus stand site in the area reserved for store cum

office. In fact, this part layout was approved by the CMDA in L.P.S & S No.8/94. When the Tamil Nadu Housing Board, by its letter No.SSII/SS/360/96, dated 08.08.1996 requested the Dr.Ambedkar Transport Corporation Limited to offer their willingness for taking over the site for providing a bus terminus at Villivakkam, Dr.Ambedkar Transport Corporation, by its letter No.1120/DMO/DATC/96, dated 15.02.1997, refused to take over the site for use of bus stand. Thereafter, the Tamil Nadu Housing Board has taken action to dispose of the above commercial sites of convenience shops site in the above said part layout through sealed cum open auction. In the said public auction, Mr.K.Venkatesan, Mr.B.Vasu and Mr.Gangadaran were declared as successful bidders of the Site Nos.4, 1 and 2 measuring to an extent of 62 sq.mtr. respectively and subsequently, they have also paid their respective bid amounts to the Tamil Nadu Housing Board. Thereafter, the Tamil Nadu Housing Board decided to construct commercial cum residential complex in the said site. Subsequently, when the sealed cum open auction was cancelled, the above mentioned successful bidders filed W.P.Nos.8112 to 8114 of 1997 before this Court challenging the said auction and this Court, by order dated 30.06.1999, directed the TNHB to proceed with construction of the commercial and residential complex and after the completion of the same, the TNHB was further directed to give preference to each of the petitioner in the above mentioned writ petitions by allotting one shop of 62 sq.mtr. each at the prevailing market rate.

10. From the above said proceedings and other records, the fact remains that the site reserved for bus stand and four convenience shops have been decided to be converted as mixed residential use and the Sites and Service committee has also passed resolution No.12/1998, dated 10.02.1998, approving the conversion of the site into commercial use for construction of commercial cum residential complex and only after the S & S Committee's approval, planning permission of the conversion of public purpose into mixed residential purpose at Villivakkam Site and Service Scheme Phase-I was submitted to the MMDA and thereupon, the MMDA has forwarded the request of the same to the Government. The Government has also accepted the request of the conversion of the site for public purpose at S.No.335/2, part of Konnur Village and 249/3A1A3B of Villivakkam Village into a mixed residential purpose at Villivakkam Site & Service Scheme Phase-I and thereupon, passed an order in G.O.3(D).No.8, Housing & Urban Development (UDI) Department, dated 24.08.2004.

11. Therefore, the claim of the petitioner that there was a park and playground adjoining the Government Higher Secondary School in Ward No.63 already earmarked in the approved layout, has not been supported by any document showing that there was a park and playground in the approved layout. Therefore, seeking to quash the said GO, for the reason that the GO is running contrary to the approved development plan, wherein the site is earmarked for park and playground for SIDCO Nagar, has no basis, for the simple reason that



there is no record produced by either parties showing that there was a park and playground originally lying adjoining the Government Girls Higher Secondary School. Even the GO also does not say that the Government is seeking to convert the park and playground into one of commercial purpose.

12. Even one of the correspondences dated 15.09.2005 addressed to the Secretary of the petitioner's association from the Member Secretary, CMDA, also does not speak anything in favour of the petitioner to say that there was a park and playground adjoining the said school. Even another communication dated 24.09.2004 from the Member Secretary, CMDA, to the Chief Engineer, Tamil Nadu Housing Board, also does not say that there was a proposal for conversion of park and playground into a commercial purpose. Therefore, when there was a prayer from the petitioner side not to convert the playground already approved in the layout into commercial purpose, this Court directed the respondent TNHB to produce the original layout and accordingly, the TNHB has produced a copy of the layout of Madras Urban Development Project Sites and Services Programme, Villivakkam Site, wherein a playground also shown in the Villivakkam Village, which according to the learned Advocate General, is being properly utilized by the public at large. Therefore, the question of one more area reserved for park and playground adjoining the Government Girls Higher Secondary School has been approved in the layout, is far from record and acceptance.

13. It is well settled that once a land is reserved for public purpose, it cannot be released for any purpose other than the one for which it was earmarked. The First Bench of this Court, while considering the legality of the challenge made to the action of the Corporation in converting the park and playground into a car parking area, has categorically held that where use of site or premises is specifically designated as open space, it shall be used only for that purpose for which it has been so designated. Further, it has been held that right to life is not only fundamental right but also right to lead a decent life and to enjoy fresh air and water by using parks and ground, which is meant for public at large.

14. In yet another judgment, the Hon'ble Apex Court in the case of M.C.MEHTA Vs. KAMALNATH AND OTHERS ((1997) 1 SCC 388), by noting importance to maintain the ecological system, has held as under:-

23. The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled An ecological perspective on property : A call for judicial protection of the public's

interest in environmentally critical resources published in Harvard Environmental Law Review, Vol. 12 1988, p.311 is in the following words:

"Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained.

'[H]uman activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service ... growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.'

25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

"Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even



for a fair cash equivalent; and third the property must be maintained for particular types of uses."

Of course, the above principles as laid down in the above case laws are not in dispute. But, in the present case, what has to be seen is whether, in fact, there was any park and playground shown in the approved layout as sanctioned by the CMDA. On perusal of the records and other connected papers, it is seen that the entire Villivakkam area, several parks and playgrounds are shown, but the place the petitioner seeks to retain as a park and playground adjoining Government Girls Higher Secondary School have not been approved in the approved layout.

15. Further, in a decision reported in 2001 (3) LW 828 (Krishna Nagar Residents Welfare Association v. The Director of Town and Country Planning and etc.), this Court has observed that it may be open to the Town and Country Planning Authorities to convert the use of the land for any public purpose other than the purpose for which the land was earmarked. By further observing that normally, a park can be converted into a place for hospital, school or kalyana mandapam etc. for common use, it was held that the purpose, should continue to remain so only for the public at large and for the benefit of the entire colony. In the case on hand, the issue raised in the present writ petition that the disputed park and playground already earmarked in the approved layout sanctioned by the municipal authority, came to be concluded in the earlier W.P.Nos.8112 to 8114 of 1997, wherein when the respondent after holding public auction to dispose of the said commercial site of convenient shops, subsequently, decided to cancel the concluded auction, this Court directed the Tamil Nadu Housing Board/the 4th respondent herein to proceed with construction of the commercial and residential complex in the said site and after completion of the construction to give preference to each of the petitioners in the above writ petitions by allotting them one shop each at the prevailing market rate. In the said writ petitions, when there was a direction given to the TNHB to make use of the site in question for constructing commercial cum residential complex, this Court cannot give a direction to the respondents to reserve the site for park and playground. This will run contrary to the earlier order passed in W.P.Nos.8112 to 8114 of 1997. So much so, the petitioner's association did not even challenge the proposed public auction and move of the TNHB to construct commercial cum residential complex. Having not challenged the earlier proceedings of the TNHB, it is not open to the petitioner to seek a declaration of the site in question as park and playground on the basis that the same has been shown in the layout approved by the 2nd respondent.

16. The judgments relied upon by the learned counsel for the petitioner cited supra are to the effect that an area approved as a playground or park cannot be converted later on by the Government for commercial purpose. But, in the case on hand, the petitioner's association has not produced any document to show that the area was originally earmarked in the approved layout as park and playground. Therefore, I do not find any reason to interfere with the said impugned GO.

17. In the result, the Writ Petitions are dismissed as devoid of any merit. However, there will be no order as to costs. Consequently, all the connected miscellaneous petitions are closed.

Files received from the learned counsel for the respondents are returned to the counsel in the open Court.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

rkm  
To

- 1.The Secretary to Government,  
Housing and Urban Development (UD-I) Dept.,  
Fort St. George, Chennai - 600 009.
- 2.The Member Secretary,  
Chennai Metropolitan Development Authority,  
Thalamuthu Maligai, Chennai - 600 008.
3. The Commissioner, Chennai Corporation,  
Ribon Buildings, Chennai - 600 003.
4. The CEO, Tamil Nadu Housing Board,  
Nandanam, Chennai - 600 035.

+ 2 ccs to Mr. N. S. Nanda Kumar, Advocate SR.14325

+ 1 cc to Mr.C. Kathiravan, Advocate SR.14941

+ 1 cc to Mr.A. Vijayakumar, Advocate SR.14958

W.P.Nos.8867 and 32896 of 2007

MRD(CO)  
Eu 11.3.11