

(1990) 04 MAD CK 0018
In the Madras High Court

Besant Nagar Residents

APPELLANT

Vs

Madras Metropolitan Development Authority and Others

RESPONDENT

Date of Decision : 20-04-1990

Acts Referred:

Development Control Rules for Greater Mumbai, 1967 — Rule 7

Citation : (1990) 1 MLJ 445

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Division Bench

Judgement

K.S. Bakthavatsalam, J.—The petitioner has come up to this Court praying for the issuance of a writ of certiorarified mandamus to call for

the records of the first respondent culminating in the issuance of Notification Ms.No.VI(1)/951/88/(D2(R)10970/ 87), dated 17.10.1988

reclassifying the land use of the vacant lands measuring about 7 acres comprised in Survey Nos. 46(part), 47 and 49 of Uror Village, Besant

Nagar from primary residential zone to "institutional zone" and to quash the same and consequently direct the fourth respondent not to proceed

with the proposed construction of an office complex in the said land.

2. The petitioner association is a society registered under the Societies Registration Act, 1975 formed for the purposes of protecting the Welfare of

the residents in the Besant Nagar Kalakshetra colony area in Madras. The Besant Nagar and its vicinity have been originally planned as a Primary

residential locality and the Madras Metropolitan Development Authority, the first respondent herein, as well as the Corporation of Madras, the

second respondent herein, have been sanctioning building plans on this basis. The infrastructure in that area such as sewerage, drinking water,

public health facilities, shops and public establishments etc. have all been developed only on the basis of Besant Nagar being a primary residential locality. It is alleged in the affidavit filed in support of the petition that as on date every inch of available space, except for a plot of land situated opposite to the Olcott School and measuring about 7 acres comprised in Survey Nos. 46(part), 47 and 49 of Urur village has been built upon, that this plot of land was originally acquired by the Tamil Nadu Housing Board (TNHB) along with other lands in Besant Nagar area for the specific purpose of developing it into a residential locality. Subsequently, it seems it was transferred to the Central Public Works Development (CPWD), the fourth respondent herein. It is also alleged in the affidavit that the classification of the land as "primary residential zone" was done by the first respondent herein under the provisions of the Tamil Nadu Town and Country Planning Act. It is alleged in the affidavit that according to Rule 3(A) of the Development Control Rules, "no development shall be in contravention of these rules!70. A reference to Rule 7 of the Development Control Rules has been made in the affidavit and according to Rule 7(B) of the Rules, certain uses may be permitted with the special sanction of the Authority. It is further stated in the affidavit that any development in "primary Residential Zone" should be in strict conformity with the provisions of Rule 7 of the Development Control Rules, that recently, in the Besant Nagar area, construction activities have been proceeding in a totally unplanned and reckless manner in contravention of all developmental Rules, that the fourth respondent herein proposed to construct a mammoth office complex having a floor space of about 1,50,000 sq.ft. plinth area on the vacant site measuring 7 acres in Besant Nagar in the above mentioned Survey Numbers. It is also alleged in the affidavit that the above mentioned 7 acres land in the above mentioned survey numbers is the only open space now available in Besant Nagar which serves as the lounge space of that area, that the proposed complex is the most recent and devastating example of such reckless development, that this land was originally acquired by the Tamil Nadu Housing Board from the members of the general public, that in violation of the original purpose for which the land was acquired, the Housing Board transferred the said land to the fourth respondent herein, who has now commenced construction of a large office complex, that as soon as the said project came to the notice of

the residents of Besant Nagar, strong objections were made to the respondents categorically outlining the long term effects of proceeding with the

said project, that the fourth respondent commenced the construction even without obtaining permission for putting up the aforesaid construction

from the first respondent and that the first respondent on 10.6.1985 informed the Kalakshetra Colony Welfare Association that no plan approval

had been cleared for the proposed office complex by the fourth respondent. Subsequently it seems on the representations made by the petitioner

association, the first respondent herein stopped the unauthorised construction and on 11.10.1985 through a letter, the first respondent informed the

same to the petitioner association. It is further alleged in the affidavit in support of the petition, that with the object of circumventing the rules which

prevented the construction of the office complex in the area, the fourth respondent approached the first respondent to re-classify the land with

reference to its use as "institutional zone" which in turn would permit the fourth respondent to put up the complex, that various associations

including the petitioner association made representation on 20.8.1988 opposing such reclassification of land use, and that the first respondent by

letter dated 2.9.1988 called the petitioner association for a discussion on the reasons for its objection for the proposed classification. It is stated in

the affidavit that the petitioner associations' officer bearers attended a meeting on 8.9.1988 with the Chief Planner and the first petitioner herein

and gave a detailed representation dated 8.9.1988 objecting to the reclassification. The objections raised by the petitioner association for

reclassification are to the following effect:

(a) The reclassification would result in increasing the noise and dust pollution in this residential area beyond limits, (b) The existing infrastructure of

civic amenities was made only for a "Primary Residential Zone" and would not be in a position to cater to the sudden influx of a huge floating

population on account of the proposed office complex.

The residents of Besant Nagar are entirely dependant on ground water for their needs. At present, the rate of extraction of ground water is in

excess of the replenishment of ground water. In fact in August, 1985 the Besant Nagar Citizens Forum and Kalakshetra Colony Welfare

Association, both affiliates of the Petitioner, at the request of the Tamil Nadu

Prevention and Control of Water Pollution Board vide its Lr.No.

13639/8511(4), dt.6.9.1985, conducted a survey of the rate of extraction of ground water in the Besant Nagar Area. It was established in this

survey that from a dozen larger wells, approximately 4,50,000 gallons of water was extracted per day. Apart from this an estimated 1,000 private

borewells, (1-1/2" dia) accounted for an additional 2,000 gallons per day. The R.B.I. Staff Quarters situated near the proposed project of this

fourth respondent drew approximately 1,85,000 gallons of ground water per day from two wells. The extraction of ground water on these lines at

the rate of approximately 1.23 million gallons per day as stated above unless replenished would result in the incursion of sea water from below.

Once such an incursion takes place the process is irreversible and would lead to a catastrophic situation where the entire ground water in the

Besant Nagar Area would turn brackish making it unfit for human consumption....

It seems that it was also emphasised that the prospect of sea water incursion was very much a reality particularly since most of the, catchment area

for Besant Nagar has been constructed upon with hardly any open area available for the rain water to percolate into the ground. It is further stated

in the affidavit that at the present rate of drawal of ground water it requires 150 cms for replenishment and that on the contrary, the rainfall in that

region is far below. It is also alleged in the affidavit that in March, 1986, a survey in three wells in Uroor Kuppam was conducted, and that a

chemical analysis of the samples drawn from those wells would clearly show that the sodium chloride levels in the water samples are excessive and

unfit for consumption according to ISI specifications. It will be seen that the dissolved solids maximum as per I.S.I specifications for drinking water

would be 500 ppm. Whereas the samples taken in the three wells as mentioned above, would show as 1030 ppm, 1773 ppm and 1600 ppm. It is

further alleged in the affidavit that the petitioner association recently came to know that the first respondent has reclassified the land use of the

subject land by the impugned notification, that the said order does not give any reason whatsoever for the reclassification and that it does not take

into account the objections raised by the petitioner association as well as by other associations. It is also stated in the affidavit that the "land use"

and classification of land use come under the scope of "Master Plan" as defined u/

s 18 of the Tamil Nadu Town and Country Planning Act, that it is not within the scope of a "Detailed Development Plan" as defined u/s 20 of the said Act, that the order of the first respondent reclassifying the land use of the subject land by variation to the "Detailed Development Plan" is illegal and without any jurisdiction. It is further alleged in the affidavit filed in support of the petition that the petitioner association, representing the welfare of the residents of the locality is vitally affected by the said reclassification and as such it has come up before this Court. It is further alleged in the affidavit that the reclassification of the land use of the subject land from residential zone to institutional zone is arbitrary, that the subject land which has been reclassified is in the midst of a primary residential zone where only buildings and establishments permitted in a primary residential zone can be built, that no guidelines have been prescribed for such reclassification and as such the power conferred on the first respondent for reclassification is violative of Article 14 of the Constitution of India. It is further alleged in the affidavit that the impugned notification has been issued without jurisdiction inasmuch as the reclassification of the land use can be done only by variation to the Master Plan and not by variation to the Detailed Development Plan, that the reclassification of the land use of the land in question from a primary residential zone to an institutional zone as to enable the fourth respondent to put up the office complex, will result in water shortage for the residents in Besant Nagar and its vicinity, that many parts of Besant Nagar do not have water supply by Madras Metropolitan Water Supply and Sewerage Board (MMWSSB) and that as a result of continuous construction activities by various agencies, the ground water table is already overstrained and has been constantly depleted. A reference to water table as of August, 1987 has been made in the affidavit, stating that the water table as of August, 1987 was about 22 feet below the ground level against 10 ft. only three years earlier. It is further alleged in the affidavit that even if the reclassification of the land use by the first respondent from primary use to institutional use zone is deemed to be valid, it ought to take into consideration the serious consequences that would follow, if the proposed complex is permitted and thereby refuse the plan approval for the proposed construction. It is further stated in the affidavit that due to over drawal of water, sea-water infiltration is taking

place into the ground water, and that a study conducted by various welfare associations on the ground water revealed that the water is unfit for human consumption as per I.S.I, standards. A reference to an article reported in India Today dated, 15, February, 1986 stating that vast tracks of coastal Gujarat have become unfit for habitation due to over-exploitation of ground water and that whole populations have had to be shifted is made in the affidavit. It is further stated in the affidavit that as per Urban Development Norms of the first respondent, 10% of a locality must be earmarked as open space that Besant Nagar is about 300 acres and therefore there should be 30 acres of open space, that virtually no open space is available now, and as such the little open space now available i.e. 7 acres which is in question, if it is used for constructing a massive office complex, it will deprive the minimum requirements of the residents therein, of minimum open space requirements. It is also stated in the affidavit that the access to the area at present is very limited and the Besant Nagar is very crowded and cannot take more traffic. It is further stated in the affidavit that the land in question is situate within 500 metres off the sea and that any construction activities within 500 metres from the sea is to be approved by a special co-ordinate committee and not by the first respondent herein. With these allegations, the petitioner association has come up before this Court challenging the reclassification.

3. An additional affidavit has been filed by the petitioner association. It is stated in the affidavit that a detailed technical study was made of sea water intrusion along the land in question that it was observed that sea-water intrusion has advanced drastically into the ground water aquifer and around the point where three large wells have been dug by the fourth respondent herein on the land in question the possibility of sea water intrusion is imminent as seen from the Graph attached to the Technical report, especially in view of the High rate of extraction by these wells. It is further stated in the affidavit that apart from the technical point raised by the petitioner association against the re-classification by the fourth respondent the main ground for filing this petition was that the proposed building will lead to ecological disaster inasmuch as Besant Nagar relies entirely on ground water for its water needs and any massive construction in the last available open space in Besant Nagar would not only close up

the avenues for the rain water re-charge the ground water but also increase the ground water extraction which would result in seawater intrusion. It

is further alleged that 10% open space required for a residential locality as per the norms of the first respondent herein has not been provided by

the respondents in Besant Nagar. It is also alleged in the affidavit filed in support of the petition that on an examination of the first respondent's

Map NO. 4 for "Urur Area" which compromise of Shastri Nagar, Indira Nagar, Besant Nagar etc. it is found that the total area covered by the

map inscale is 6,014.75 sq.cms. It is further stated that the total open space available as shown in the map is only 381.55 sq.cms. that this works

out to 6.34% open space as against the requirement of 10% open space and that this open space is not only required for recreational purposes but

is also required to act as a lung space and also for the purpose of percolation of rain water into the sub soil acquifer to offset drawal of

groundwater.

4. A counter affidavit has been filed by the first respondent herein. It is stated in the countr-affidavit that the lands in S.Nos. 48 part, 47 and 49 of

Uroor village, Besant Nagar is not an open space for recreation use neither in the Master Plan nor in the approved layout, that the said site is

actually meant for primary residential use in the approved layout of Tamil Nadu Housing Board, that the same was a sold to the Central Public

Works Department by the fourth respondent herein, for a valid consideration. It is further claimed in the counter-affidavit that originally the Master

Plan for Madras Metropolitan area was prepared in 1975 in accordance with Section 17 of the Town and Country Planning Act, 1971, that the

preparation of the detailed development Plans as contemplated u/s 19 would be later than that of the approval of the Master Plan and the Detailed

Development Plan will be prepared as and when required in accordance with the procedure envisaged under the Act, that the power to vary or to

and modify the Master Plan is vested with the Government u/s 32(4) of the Act, that similarly the variation, revocation or modification of any

detailed development plan is also vested with the Government as envisaged u/s 33 of the Act, that both the provisions were amended in 1978 and

that now u/s 32 of the Act, the Government has got power to vary or to modify the Master Plan, New Town Development Plan and Detailed

Development Plan. It is also claimed in the counter-affidavit that the powers thus vested with the Government are delegated to the first respondent

under the powers of the Government in G.O.Ms.No. 419, Housing and Urban Development Department, dated 1-6-1984 and as such the first

respondent by exercising the powers of the Government has reclassified S.Nos. 46 part, 47 part and 49 part of Urur village, Madras from primary

residential use zone to "institutional use zone". It is further claimed in the counter-affidavit that the Master Plan prepared and approved by the

Government could be varied at any time by the powers conferred upon the Government u/s 32(4) of the Tamil Nadu Town and Country Planning

Act, 1971 (hereinafter referred to as the "Act"), that if any Detailed Development Plan subsequently prepared and any usage in the varied Detailed

Development plan if varies with the master Plan the Detailed Development Plan shall only apply, and that the Detailed Development plan shall

prevail over the Master Plan in respect of an area when a Detailed Development plan is prepared and approved by the Government. It is further

claimed in the counter-affidavit that the area which is under challenge was notified as primary residential use zone by Map No. 4 DDP/MMDA

No. 16/78, that under the delegated powers of the Government, the first respondent has reclassified that area as institutional use zone by exercising

the powers u/s 32(4) and as such the variation took place only in the Detailed Development Plan which was prepared and approved in 1978. It is

further claimed in the counter affidavit that the act of the first respondent in reclassifying the area is only in accordance with the powers conferred

upon it by exercising the power u/s 32(4) of the Act. It is further stated in the counter-affidavit that the proposal of the fourth respondent herein for

construction of an office complex could only imply lesser congestion and lesser pressure on infrastructure than the Central Public Works

Department residential quarters for the Central Government employees, that most of the Central Government employees quarters are already in

existence near the proposed office complex and that having considered all these aspects the authority took a decision on merits to reclassify the

area from primary residential to institutional use zone. It is further stated in the counter-affidavit that as soon as the first respondent herein received

number of objections from the residents of Besant Nagar, a notice was issued to the fourth respondent on 11-10-1985 to stop the work forthwith,

that the fourth respondent herein submitted an application for reclassification of the site from primary residential use zone to institutional use zone, and that when the said application was under scrutiny the petitioner association office bearers met the respondent herein and gave a letter of objection against such a reclassification, It is further submitted in the counter-affidavit that the objection raised by the petitioner association was placed before the Technical Committee which consists of Technical Experts and to the Authority, that all the objections have been duly considered and found unreasonable as the reclassification of the area does not in any way affect any right of the citizen or any individual. It is further submitted in the counter-affidavit that if Central Public Works Department had chosen the place for residential quarters, then nobody could agitate against the residential quarters, that the Central Public Works Department has opted for office complex and as such the contention of the petitioner association is baseless and unreasonable. It is further claimed in the counter-affidavit that the writ petition has been filed on imaginary grounds and that all the averments in the writ petition are surmises in character and nothing else. It is also claimed in the counter affidavit that the petitioner association has no case since it cannot claim a right which does not exist in law or on facts.

5. A counter-affidavit has been filed by respondents 4 and 5. It is stated in the counter-affidavit that the plot has been purchased solely for Central Government use and not for providing lung space to the local residents of the locality, that according to the approved plan of the Housing Board, the open space marked as "P" along the sea-shore, east of the plot in question is to be treated as the lung space for the residents, which is still available, that as "lung space" has been provided for and is available to the residents of Besant Nagar, the Central government should be permitted to construct on the land which has been purchased by it for its own use that the construction work was taken up only after the approval of the plans by the Madras Metropolitan Development Authority and as such the sole object of the petitioner association appears to be to select the Central Government for hostile discrimination by requiring the land in question being treated as lung space for the residents of the locality. It is also claimed in the counter-affidavit that taking into account the representations received, the first respondent herein thought it fit to reclassify the land as

"institutional zone", that the total requirement of water for the residential accommodation being planned only of the order of one lakh gallons as against the meagre requirement of 15,000 gallons per day for the office building, and as such there would be reduced load on the sewerage system also. It is further claimed in the counter affidavit that the traffic will be reduced from Besant Nagar, had residential quarters been provided, that the area of plot is 7.09 acres that the department could have easily constructed 500 quarters with allowed floor space index of 1.5 for this area, that by providing these 500 quarters, the consumption of water per day could be easily one lakh gallons, that the Central Government has proposed to construct an office accommodation with useful area of 22,000 sq.m, which would accommodate only 1,500 persons, that the consumption of water would be only around 15,000 gallons per day which is only 1/6th of the consumption had the residential quarters been constructed. It is further claimed in the counter-affidavit that the reclassification will result in a reduction of strain on the drainage system, traffic etc. which will be beneficial to the residents of Besant Nagar, with regard to the quality of water. In paragraph 13 of the counter-affidavit it is stated that a gloomy picture has been given by the petitioner association. It is further claimed in the counter-affidavit that the people coming to the proposed office complex will be very meagre compared to the influx of people coming to Velankanni Church and Ashta Lakshmi temple and that there are many more multi-storied constructions either already completed or under construction in Besant Nagar area. It is further claimed in the counter-affidavit that the proposed construction cover only 1/3 of the land area, that adequate trees are proposed to be planted to improve the environment and reduce noise pollution, that between the plot and sea-shore many new structures have come up recently and that no objections have been raised by the petitioner association against those residents, responsible for the construction of M.I.G. Flats, Kalakshetra colony etc. It is further claimed in the counter affidavit that the construction of the proposed complex is for the public interest and that there are no merits in the writ petition.

6. Mr. S. Govind Swaminathan, the learned senior counsel appearing for the petitioner association refers to Sections 17A, 20 and 32(4) of the

Tamil Nadu and Country Planning Act, 1971. According to the learned senior counsel for the petitioner, u/s 32(4) of the Act, the Government

cannot pass an order for variation without following the procedure set out in Sections 26, 27, 28 and 30 of the Act. The learned Counsel further

points out that the procedure as set out in the said Act has not been followed and as such the impugned notification is liable to be set aside.

7. Mr. Sriram Panchu, the learned Counsel appearing on behalf of the Olcott Fifth Avenue Residents Welfare Association, the sixth respondent

herein, argues on the ecological imbalance aspect of the case. The learned Counsel contends that a study has been made in the year 1989 with

regard to drinking water and that it clearly shows that day by day the quality of water in that area is getting bad and especially the ground water

cannot be used for human consumption. The learned Counsel points out that there is no water supply through Madras Metropolitan Water Supply

and Sewerage Board, that the water supply in that area is only from borewells. The learned Counsel also argues that water is essential for

existence of human life and if it is going to be denied to the residents of the locality of that area, it will offend Article 21 of the Constitution of India.

The learned Counsel refers to the decisions of the Supreme Court on the point of maintaining ecological balance. The learned Counsel refers to the

decisions of the Supreme Court in Rural Litigation and Entitlement Kendra, Dehradun and Others Vs. State of U.P. and Others, , in Olga Tellis

and Others Vs. Bombay Municipal Corporation and Others, in State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others, and

in M.C. Mehta v. Union of India A.I.R.988 S.C.1037 and argues that the petitioner has got the right to object the construction of the office

complex in that area, especially when the ecological balance is not kept up and also taking into account the ground water available in that locality.

The learned Counsel stresses the point that the prospect of sea Water incursion was very much a reality in that area and that the chemical analysis

of the samples drawn from three wells in 1989 in that area will clearly show that it has become useless for human consumption. The learned

Counsel refers to Articles 48(A) and 51(A) (g) of the Directive Principles of the Constitution of India and argues that the impugned notification has

been issued without complying with the provisions of the Tamil Nadu Town and Country Planning Act, 1971. The learned Counsel further argues

that the procedure followed for reclassifying the land in question is arbitrary and that it is not a fair procedure.

8. Mr. A. Chellakumar, the learned Counsel appearing for the first respondent states that even the lay-out submitted by the Housing Board is earmarked for the fourth respondent herein, that in 1978 in a detailed development plan the first respondent herein classified the layout as primary residential use zone, that all the procedure have been followed by the first respondent herein for reclassifying the land in this case. The learned Counsel points out that the petitioner association had a discussion with the senior planner and that the technical committee had considered the objections of the petitioner association before the reclassification was made. The learned Counsel further points out that the notification, which is impugned in this writ petition, is valid as it has been issued u/s 32(4) of the Act, 1971, which has been held to be an independent power by a Division Bench of this Court, in V.G.P Golden Beach Resort Ltd. v. State of Tamil Nadu, W.P.No. 12113 of 1987 etc, dated 12.2.1988. The learned Counsel also argues that the notification, which is impugned in this writ petition, has been issued under the power delegated to the first respondent herein u/s 10 of the Act and the powers of the Government in G.O.Ms.No. 419 Housing and Urban Development Department dated 1-6-1984.

9. Mr. T. Srinivasamoorthy, the learned Additional Central Government Standing Counsel argues that Central Government would have constructed about 500 quarters in the land in question with allowed floor space index of 1.5 for this area, that by approving these 500 quarters, water requirement would have been one lakh gallons that by the proposed construction of the office building, water requirement will be only about 15,000 gallons per day which is only 1/6th of the consumption had the residential quarters been constructed and sewerage will also be about 15,000 gallons, that the flow of traffic will be in opposite directions during peak hours and as such there will not be much increase in the traffic. The learned Counsel also submits that there are two or three access to Besant Nagar. The learned Counsel further argues that the total plot area is about 30,140 sq.m. that the proposed construction would cover only 8,735 sq.m. of the plot area which is less than 1/3rd of the plot area that 2/3rd of the area is left open for car parking and three plantation and loans, that this open area will be useful in charging the water, and that with lot

of open space and trees, the ambient temperature is not going to rise appreciably. He further argues that the land in question is not an open space

for recreation, that it was not shown as a place of recreation either in the Master Plan or in the approved lay-out, that the site is actually meant for

primary residential use in the approved layout of Tamil Nadu Housing Board, that in and around Besant Nagar there are number of small parks,

play fields Tennis court apart from the huge open space at Theosophical Society which is adjacent to the land in question. The learned Counsel

further argues that the proposed construction of the building is planned by qualified architects, that the construction of the building was taken up

after getting planning clearance from M.M.D.A. and that the M.M.D.A. the first respondent herein, has conveyed its approval vide their No.C.

16507/88/ dated 30.3.1989. It is submitted by the learned Counsel that the first respondent herein has taken all factors into consideration and has

granted the planning permission. The learned Counsel argues that no mala fide has been alleged by the petitioner association and as such the

contentions raised by the petitioner association need not be countenanced.

10. Mr. Sriram Panchu, the learned Counsel appearing for the 6th respondent herein, replying to the arguments advanced by the learned Counsel

for respondents, argues that the location of the building is objectionable to the petitioner association. The learned Counsel points out that it is near

the danger area i.e. sea water pollution area and that the extent to be constructed is also huge. The learned Counsel further points out that the

change is not in the Master Plan, that it has been done in the Detailed Development Plan and that if a variation is needed with regard to use of land

it has to be done only in the Master Plan according to Sections 17(2) and 20 of the Act and not in the Detailed Development Plan. The learned

Counsel further, refers to an unreported decision of a

Division Bench of this Court in V.G.P. Golden Beach Resort Ltd. v. State of Tamil Nadu W.P.No. 12113 of 1987 etc. dated 12.2.1988 with

regard to ecological aspect. In that case, the order of the learned single Judge shows that all the authorities have gone into the records and other

objections and decided to reclassify the land. But, in this case nothing has come out from the first respondent herein. Even the counter affidavit filed

by the first respondent herein does not show that the authorities have considered

the objections of the residents of that locality, with regard to pollution of water, especially the intrusion of sea water taking into consideration that there are no corporation taps for the residents of that locality.

The learned Counsel further argues that the power of delegation is limited to the first respondent herein and that the issuance of the notification,

which is impugned herein, is beyond the power delegated. The learned Counsel further argues that the petitioner association was not at all heard by

the authorities u/s 9(A) of the Act and that only the senior planner had heard the petitioner association's representations, and that the senior

planner cannot be said to have authority u/s 9-A of the Act.

11. Mr. A. Chellakumar, the learned Counsel appearing for the first respondent herein, referring to Sections 17, 20 and 91 of the Act and also

Rule 13 of Development Control Rules for Madras Metropolitan Area states that the present variation is only in the Detailed Development Plan,

that it has been done properly u/s 32 and 91 of the Act and as such the delegation is valid and also the reclassifying the land is also valid.

12. I have carefully considered the arguments of the learned Counsel for the petitioner and also the learned Counsel for the respondents. What we

are concerned now is about the variation made u/s 32(4) of the Tamil Nadu Town and Planning Act, 1971. Section 32 of the Act provides for

variation, revocation and modification of regional plans, master plans and new town development plans. Sub-section (3) of Section 32 speaks of

the provisions of Sections 26, 28 and 30 with such modifications as may be necessary shall apply to such modified regional plan or the master

plan. But, it can be seen that Sub-section (4) of Section 32 is an independent power. Sub-section (4) of Section 2 reads as follows:

....(4) The Government may, at any time by notification in the Tamil Nadu Government Gazette, vary or revoke the regional plan, master plan or a

new town development plan, as the case maybe, prepared and approved under this Act....

Development plan is defined in Section 2(15) of the Act, which reads as follows:

development plan 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 and a new town development plan prepared under this Act....

In G.O.Ms.No. 419, Housing and Urban Development Department dated 1-6-1984, the Government has delegated the powers to the first

respondent herein and the notification reads as follows:

NOTIFICATION

In exercise of the powers conferred by Sub-section (1) of Section 91 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act

35 of 1972), the Governor of Tamil Nadu hereby delegated the powers vested with of Section 32 of the Tamil Nadu Town and Country Planning

Act, 1971 (Tamil Nadu Act 35 of 1972) to the Member-Secretary, Madras Metropolitan Development Authority, so as to enable him to vary the

land use in individual cases relating to certain survey Nos. Plots after placing the request before the Authority and obtaining its approval. This

delegation of powers shall not empower him to revoke or revise the whole or parts of Master Plan or Detailed Development Plan affecting the

broader interests of the public. The powers under Sub-section (4) of Section 32 and under Sub-section (3) of Section 33 of the Tamil Nadu Town

and Country Planning Act 1971 (Tamil Nadu Act 35 of 1972) shall continue to be exercised by the Government....

Under this power, the impugned notification is issued. Sub-section (4) of Section 32 is held to be independent of Sub-sections (1) to (3) of Section

32 of the Act, by the Division Bench of this Court in

V.G.P. Golden Beach Resort Ltd. v. State of Tamil Nadu W.P.No. 12113 of 1987 etc. date 12-2-1988. As such, there is no substance in the

argument of Mr. S. Govind Swaminathan the learned senior counsel for the petitioner association that the procedure set out in Sections 26, 27, 28,

29 and 30 of the Act has not been followed before the issuance of the impugned notification. In view of the decision of the Division Bench of this

Court in the above mentioned case, the argument of Mr. S. Govindaswaminathan, the learned Counsel for the petitioner association falls to the

ground.

13. The only other question remains to be considered is with regard to objections of the petitioner association based upon the ecological aspect,

with regard to the ground water in that area.

14. I find that a notification was issued in newspapers calling for objections/suggestions in respect of the C.P.W.D. for reclassification of the land in

question at Besant Nagar. The said notification is in the following terms:

Madras Metropolitan Development Authority Reclassification notification No.D2/R/6/88. Madras Metropolitan Development Authority has

received the following request for reclassification of land use zone and details of the same is furnished below:

Sl. No Name of the Proposal at S. Nos. Extent MMDA Ref. No. Land use applicant village. as per MP.

1. 2. 3. 4. 5. 6.

1. The Government T.S. No. 46 P1 47& 30140 M D2(R)109 70/87 Primary of India Central 49 (Block No. 16) of residentia

Public Works Urur village (Besant 1 use zone

Department. Nagar)

2. Use proposed by the Applicant Institutional use zone in order to construct in order to construct office complex.

The land use maps for all the above areas are available for inspection in this office between 2.30 p.m. and 5.00 p.m. on any working day at the

reception counter of the office of Madras Metropolitan Development Authority, 52, E.V.K. Sampath Road, Madras-600 007.

Any person who intends to make any objection or suggestion/ representation as regards the above variation proposal may do so in writing to the

Member-Secretary, Madras Metropolitan Development Authority within 21 days from the date of this notification....

I find that the petitioner association has sent a representation in the month of August, 1988 and asked for a-personal hearing to put forward its

objections before the Committee. According to the notification the objections have to be sent to Member-Secretary, M.M.D.A. Certain other

forums which form part of the petitioner association have sent their objections. It seems a discussion has been held on 8-9-1988 at 3.00 p.m. with

the petitioner association/Civic Forum regarding the reclassification. It is seen from the files that the abovementioned subject has been placed

before the technical expert committee on 22-8-1988 and the technical expert committee has recommended the reclassification of the C.P.W.D.

from primary residential use zone to institutional use zone. The reasons given by

the technical expert committee for such reclassification are as follows:

(i) Dispersal of office complex will ease the traffic in the city, (ii) The site under reference in Besant Nagar is considered suitable for their office

complex, especially because of the location of CPWD staff quarters in the adjoining area. This would reduce/shorten the work trips, (iii) Offices

would require services compared with the residential developments, usually CPWD keep a large percentage of the site as open and it may not

build upto the maximum permissible FSI. (iv) The infrastructure services already available in this area may be adequate to meet the load due to the

proposed development, (v) The site abuts two roads and the area has good road network. These will take care of the additional traffic which may

be generated due to the proposed development For the above reasons, the committee has changed the view and recommends reclassification of

the site under reference into Institutional....

15. I am not able to see anything in the file to the effect that the objections especially and the ecological imbalance which were raised by the

petitioner association was considered, before ordering the reclassification of land in question.

16. The point to be considered here is whether the principles of natural justice have been followed in so far as the objections of the petitioner

association with regard to ground water are concerned. As held by the Supreme Court in A.K. Kraipak and Others Vs. Union of India (UOI) and

Others, in The Government of Mysore and Others Vs. J.V. Bhat and Others, and in Swadeshi Cotton Mills Vs. Union of India (UOI), the

principle of natural justice apply to the facts of this case. Though the power u/s 32 of the Act, 1971 is an independent power, yet I am of the view

that before the reclassification is made, the principles of natural justice have to be followed. Even if the Statute itself does not prescribe the hearing,

it is open to the Court to incorporate the principles of natural justice as has been pointed out in A.K. Kraipak and Others Vs. Union of India

(UOI) and Others, in The Government of Mysore and Others Vs. J.V. Bhat and Others, and in Swadeshi Cotton Mills Vs. Union of India (UOI),

. A reference...to a passage "Administrative Law by Prof. De. Smith is worth mentioning and it is to the following effect;

....Can the absence of a hearing before a decision is made be adequately compensated for by a hearing ex post facto? A prior hearing may be

better than a subsequent hearing, but a subsequent hearing is better than no hearing at all; and in some cases the Courts have held that statutory

provision for an administrative appeal or even full judicial review on the merits are sufficient to negative the existence of any implied duty to hear

before the original decision is made. The approach may be acceptable where the original decision does not cause serious detriment to the person

affected or where there is also paramount need for prompt action, or where it is impracticable to afford antecedent hearings.

17. In short, the general principle as distinguished from an absolute rule of uniform, application-seems to be that where a statute does not in terms,

exclude this rule of prior hearing but contemplates a post decisional hearing amounting to a full review of the original order on merits, then such a

statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is

silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil

consequence of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to

construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the-

predecisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In

short, this rule of fair play "must not be jettisoned save in every exceptional circumstances where compulsive necessity so demands." The Court must

make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati,

J., "the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be

a genuine hearing and not an empty public relations exercise....

A passage from H.W.R. Wade's Administrative Law, with regard to the standard of reasonableness can be referred to:

The doctrine that powers must be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority

which Parliament appointed to take the decision. Within the bounds of legal reasonable is the ...area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra-vires. The Court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decision which are extravagant or capricious cannot be legitimate. But if the decision is within the confined realm of reasonableness, it is no part of the Court's function to look further into its merits. "" With the question whether a particular policy is wise or foolish the court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority. As Lord Hailsham L.C. has said, two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable....

18. In the Judgment of Mohan, J (as he then was) in W.P.No. 8257 of 1985 dated 18.12.1987, it can be seen from that the learned single Judge has gone into the files and after satisfying himself that all the objections were considered came to the conclusion that the members therein have no objection to the reasonable classification of the land. It is not so in the instant case.

19. Except the meeting held with the members of the forum, I do not see anything in the file that their objections have been considered fully by the first respondent herein. As such, in so far as I am not able to find out that their objections were duly considered, I am of the view that the impugned notification has to be set aside on that ground.

20. Coming to the important aspect of the ecological imbalance, raised by Mr. Shriram Panchu, the learned Counsel for the 6th respondent forum, it is necessary to state that there is an Act called "the environment (Protection) Act, 1986" which provides for the protection and improvement of environment and for matters connected therein. The learned Counsel refers to Articles 48A and 51 A of the Constitution of India, which are to the following effect:

48A: Protection and improvement and safeguarding of forests and wild life:- The State shall endeavour to protect and improve the environment and

to safeguard the forests and wild life of the country....

E51A: Fundamental duties:- It shall be the duty of every citizen of India --

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common-brotherhood amongst all the people of India transcending religious, linguistic and regional or

sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and

achievement....

Article 21 of the Constitution reads as follows:

No person shall be deprived of the life or personal liberty except according to procedure established by law....

21. Water is the most important of the elements of the nature. In State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others, the

Supreme Court has held that every person is entitled to life as enjoined in Article 21 of the Constitution, that he has also the right under Article 21

to his life and that right under Article 21 embraces not only physical existence of life but also the quality of life. Considering the allegations made by

the petitioner association and the complaints made with regard to the intrusion of the sea water into ground water, I am of the view that the

petitioner should have the right of using the ground water without any infiltration and without any pollution due to the construction of a huge office

complex. In view of the Constitutional imperatives, I am of the view that the denial of right would be denial of life as understood in its richness and

fullness by the ambit of the Constitution. In *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, it has been held that ""leave

aside what makes life livable, must be deemed to be an integral component of the right to life."" All the materials placed before me by the petitioner

association for consideration and the report of the Consultant dated 27.2.1990 produced by the petitioner association will clearly show that the

water sample made in three different locations shows that if in the Western part, the extraction of ground water is increased it will result in an

irreversible phenomena of sea water intrusion towards west and the whole area will be spoilt by salinity. The report of the Chief Water Analyst

dated 23.6.1989 addressed to the Assistant Engineer, Central Public Works Department, Madras only shows that the water is usable for building

construction purposes. As stated in paragraph 13 of the affidavit, ISI specification for drinking water, in dissolved solids maximum is 500 ppm, and

in the objections raised by the petitioner association, it has been clearly stated that due to overdrawal of water, sea water intrusion is taking place,

and a detailed study on the ground water resources of Besant Nagar and its vicinity was conducted and it will be seen from the result of the study

that the water is unfit for human consumption as per ISI standards. I am of the view that this aspect of the matter has not been considered.

22. I am not able to agree with the argument of Mr. Srinivasamoorthy, the learned Counsel for respondents 4 and 5 that water consumption will be

low for the proposed construction of the office complex than that of the residential plots in that area. It need not be stated that for constructing a

huge complex, water is absolutely necessary and even for the constructing the proposed office complex, the consumption of water will be on the

higher side and it will aggravate the water problem in that area. The other contention raised by the learned Counsel for respondents 4 and 5 is that

the water problem is not acute in that area alone and it is common for the city. I am not able to agree with him. The residents of that locality have a

right to object to imbalance due to more extraction of ground water. As rightly contented by Mr. Sriram Panchu, the learned Counsel for the sixth

respondent forum, that simply because the proposed building is going to be constructed for public purpose, it does not mean that it can take away

the rights of the public in that locality, as per Article 2 of the Constitution of India.

23. In view of the decisions of the Supreme Court giving importance to the ecological imbalance and also in view of the fact that the objections put forth by the petitioner association have not been examined, in the proper perspective by the first respondent herein, I am inclined to set aside the impugned notification.

24. In the result, the writ petition will stand allowed. No costs. However, it is open to the first respondent herein to examine the objections raised by the petitioner association with the assistance of the technical expert committee and pass a fresh order with regard to reclassification if they so desire. Since I am told that during the pendency of this writ petition, respondents 4 and 5 are permitted to construct 1 + 1 floor and the construction is on, a direction is to issue, till such revised order is passed, they are directed to stop the construction forthwith.