
(2002) 08 MAD CK 0069

In the Madras High Court

Case No : Writ Petition No. 1712 of 1996 and W.M.P. No. 2632 of 1996

Besant Nagar Residents Forum

APPELLANT

Vs

The Member Secretary, Madras Metropolitan Development
Authority, Egmore, Madras, The Chief Engineer, Central Public
Works Department, Egmore, Madras and Union of India (UOI)

RESPONDENT

Date of Decision : 16-08-2002

Acts Referred:

Development Control Rules for Greater Mumbai, 1967 — Rule 13

Citation : (2002) 08 MAD CK 0069

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : R. Sivakumar, for K.M. Vijayan, for the Appellant; V. Perumal, for R1
and Madanagopal Rao, SCGSC for R2 and R3, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Besant Nagar Residents Forum through its Secretary has filed the above writ petition seeking to issue a writ of

Declaration declaring the impugned Resolution No. 137/95 dated 13.9.1995 of the Member Secretary, Madras Metropolitan Development

Authority reclassifying the zone in site S.No. 46 Part, 47 Part and 49 Part, Urur Village as illegal, excess of jurisdiction against the statutory

guidelines of reclassification, and causing inconvenience to the free and peaceful living of the residents of the Besant Nagar area.

2. The case of the petitioner forum is briefly stated here under.

The petitioner forum is a registered body of the residents of Besant Nagar, registered under the Societies Registration Act. The petitioner's main

grievance is that Besant Nagar, being a ""Primary Residential Zone"", the decision of the 1st respondent to reclassify the zone into ""Institutional

Zone"" and thereby permitting huge Central Government office complex to be built in S. No. 46 (Part), 47 and 49 of Urur Village is in gross

violation of the statutory guidelines required under the relevant Act. The decision of the first respondent caused grave concern to the residents

regarding threat to their peaceful life in all respects for which the original classification of their zone was made. They took appropriate legal

measures to the original resolution which has been since confirmed and ratified the impugned resolution in W.P. No. 5678 of 1988 and followed

by W.A. No. 396 of 1989. The petitioners were successful before this Court in their challenge against the respondent's resolution of

reclassification. The first respondent took a SLP before the Apex Court in December, 1991 which was finally disposed of on 25.10.1995. The 1st

respondent in abuse of process of Court, taking advantage of the pendency of the matter in the Apex Court, permitted the 2nd respondent to

complete the construction even before deciding the dispute and conducted a farce enquiry into the petitioners' claim against reclassification and

passed a non-speaking impugned resolution. The enquiry into their objection was not conducted in the manner as required by the Apex Court. The

initial decision on reclassification was made when there was no guidelines at all available. Further, the "Institutional zone" does not permit a Central

Government office activity. Besides that the assurance regarding water facility was made in respect of the two water schemes (Veeranam, and

Krishna), the feasibility of which being as infinite as the possibility of happening of so many immortal things, hence the writ petition.

3. The 1st respondent has filed a counter affidavit disputing various averments made in the petition. It is stated that the 1st respondent carried out

necessary surveys and studies and prepared the master plan which includes Development Control Rules and the same was approved by the

Government in G.O.Ms.No. 2395, Rural Development and Local Administration Department dated 4.12.1976, as per the provisions of the Tamil

Nadu Town and Country Planning Act 1971 (Tamil Nadu Act No. 35 of 1972) (in short ""the Act"") Power to vary an approved master plan by the

Government has subsequently been delegated to the 1st respondent in G.O.Ms.No. 419 Housing and Urban Development Department dated

1.6.1984. This enables the Member Secretary, the 1st respondent to vary the land use in individual cases relating to certain survey numbers/plots.

After placing the request before the 1st respondent authority, individuals used to obtain its approval.

4. While so, the Central Public Works Department, the 2nd respondent applied to the 1st respondent for varying the lands in Survey Nos. 46 Part

47 and 49, Urur Village, Besant Nagar from residential use to institutional use for putting up its general pool office accommodation for Central

Government. The variation proposal of the CPW Department was notified in the news papers calling for objections/suggestions if any from the

public over the proposal. After consideration of all the materials, the variation proposal was approved in the 1st respondent authority meeting held

on 16.9.1988 in A.R. No. 161/88. The variation notification was published in Tamil Nadu Government Gazette dated 7.12.1988. After variation

was allowed, the first respondent issued planning permission for construction of office complex. It is true that the writ petition No. 5678 of 1989

challenging the variation notification of the 1st respondent was allowed holding that it was open to the 1st respondent to examine the objections

raised by the petitioner with the assistance of the Technical Expert Committee and to pass a fresh order. The Writ Appeals against the order in

W.P. NO. 5678 of 1989 preferred by both the respondents and the petitioner herein were dismissed by the Division Bench of this Court on

25.6.1991 with a direction to the 1st respondent to issue fresh notice to all concerned, giving opportunity to file their objections and take fresh

decision to reclassify the land against the Order.

5. The Central Public Works Department and the Union of India filed SLP No. 15955 of 1991 before the Hon"ble Supreme Court against the

Order dt.25.6.1991. The S.L.P was taken on 24.8.1995 and as per the direction of the Supreme Court, the matter was placed before the 1st

respondent authority meeting held on 13.9.1995. The authority considered the entire materials viz., the objections and evidence of the parties

concerned along with the opinion of the Technical Expert Committee for a decision. After considering the whole issue, once again giving the

petitioners enough opportunity to represent their case, and after holding that there is no reason to change its earlier decision in having reclassified

the site in S. No. 46 Part 47 and 49 Urur Village from Primary Residential Use Zone to Institutional Use Zone and resolved to adhere to its earlier

decision. Since the petitioners and others were given adequate opportunity, the matter in issue was considered with the technical experts and

passed the impugned resolution, there is no merit in the claim made by the petitioner. Hence, the respondents prayed for dismissal of the writ

petition.

6. In the light of the above pleadings, I have heard the learned counsel for the petitioner as well as the respondents.

7. The only point for consideration is, whether the 1st respondent is justified in passing the impugned resolution confirming the earlier decision

reclassifying the site in S. No. 46 Part, 47 Part and 49 Part from Primary ""Residential Use Zone"" to ""Institutional Use Zone"".

8. It is true that the petitioner-association fighting for the cause of residents of Besant Nagar questioning the earlier decision of the 1st respondent

reclassifying the Besant Nagar's Primary Residential Zone into Institutional Zone in respect of Site S. No. 46 Part, 47 Part and 49 Part of Urur

Village in W.P. No. 5678 of 1988 and the same was allowed by this Court on 20.4.1990. It is also stated that the said order of the learned single

Judge has been confirmed in Writ Appeal No. 548 of 1990 etc., dated 25.6.1991. Thereafter the matter was taken up to the Supreme Court by

C.P.W. Department of the Government of India. When the matter was pending before the Supreme Court, it was clarified that the authorities free

to decide the matter finally. The Apex Court further observed that after taking a decision by the authority, the decision may be placed before them.

9. The learned counsel appearing for the 1st respondent has brought to my notice that as per the direction of the Supreme Court dated 24.8.1995

in SLP No. 15955/91, the entire matter was placed before the 1st respondent authority in the meeting held on 13.9.1995. In the counter affidavit

filed by the Senior Planner of the 1st respondent, Madras Metropolitan Development Authority, the 1st respondent herein, it is specifically stated

that in the meeting held on 13.9.1995, the objections and evidences of the parties concerned along with the opinion of the Technical Expert

Committee were considered for a decision. On re-examining the whole issue including the objections raised by the residents and the voluntary

organisations and after detailed deliberations, the 1st respondent authority held that there is no reason to change its earlier decision in having

reclassified the site in S. NO. 46, 47 and 49 Part of Urur Village in Primary Residential Use Zone to the Institutional Use zone resolved to adhere

to its earlier decision. It is clear from the information furnished by the 1st respondent that the whole issue has been examined afresh again, enough

opportunity was given to the petitioners and other social organisations to present their case in the meeting held on 8.10.1992 and on 24.2.1994

based on the directions of this Court. There is no dispute that the 1st respondent has power to reclassify the area in question. However, the

grievance of the petitioners is that before taking initial decision to reclassify, they were not given opportunity to put forth their case more particularly

with regard to ground water and free air.

10. In this regard, Mr. V. Perumal, learned counsel appearing for the 1st respondent has brought to my notice the stand taken by the Madras

Metropolitan Development Authority before the Supreme Court. The following statement made in the counter affidavit of the Member Secretary of

the Madras Metropolitan Development Authority is pressed into service. They are:

a) Much ground water will be drawn and the water consumption bill be quite high which will reduce the water supply to the local residents.

b) Will generate much traffic since the proposal is for office complex and the abutting roads cannot handle the traffic to be generated.

c) Local residents will be deprived of such a huge open space available.

The above objections have been examined in depth by the Technical Committee. It is viewed that

Water Supply:

Water consumption for office purpose is much less when compared to residential use. The total water requirement for residential purpose per

month is 70 lakhs litres and for institutional purpose is 6 lakhs litres as per Madras Metropolitan Water Supply and Sewerage Board standards.

Further, water supply will not be a major problem in view of implementation of two huge water supply projects namely ""Veeranam Water Supply

project"" and ""Krishna Water Supply project"".

Traffic:

The area under reference has a very good road network which is capable of handling traffic. However, strict vigil may be enforced by

Commissioner of Traffic to handle the traffic to be generated.

Open Spaces:

The plot under reference is not an open space in the Tamil Nadu Housing Board layout and it is incorrect to presume that the site was zoned for

open space and is being rezoned for institutional use. The reclassification request is from Primary Residential use zone to Institutional use Zone and

not from Open Space and Recreational use Zone. Therefore, nothing has been done to reduce any existing open space by the present

reclassification proposal.

The subject was placed before the authority for decision.

AUTHORITY MEETING HELD ON 13.9.1995

AUTHORITY RESOLUTION No. 137/95.

Resolution: The Authority took note of the High Court's Order dated 25.6.1991 and the Supreme Court's Order dated 10.12.1991 and

24.8.1995. On re-examining the whole issue including the objections raised by residents and voluntary organisations and after detailed

deliberations, the Authority saw no reason to change its earlier decision in having reclassified the site in S.Nos.46 Part and 47 Part and 49 Part of

Urur Village from Primary Residential use Zone to Institutional use Zone and hence resolved to adhere to its earlier decision and to inform the

Hon"ble Supreme Court suitably"".

11. I have already referred to the fact that the 1st respondent has ample power to effect variation to the land use. Further it is demonstrated before

me that the action of the 1st respondent is valid under Sections 32 and 33 of Act and guidelines for effecting variation to the land use. I am also

satisfied that Rule 13 (a)(i) and 13(b)(i) of the Development Control Rules to enable the Government and Quasi Government Officers to locate

their offices in Institutional Use Zone. The respondents have also highlighted the effective steps taken by them for adequate supply of water and

handling traffic in the area in question. They also explained case of the reclassification. There is no question of reduction of open space as

apprehended. Further, the petitioners forum and other organisations were heard in person and their objections have been examined by the

Technical Expert Committee of the 1st respondent and thereafter decision was

taken by the 1st respondent.

12. In the result, I do not find any merit in the claim made by the petitioners" forum; consequently, the writ petition fails and the same is dismissed.