

(2010) 08 MAD CK 0306

In the Madras High Court

Case No : Writ Petition No. 4647 of 2010 and M.P. No's. 1 and 2 of 2010

R. Chandran

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21
Development Control Rules for Greater Mumbai, 1967 — Rule 4, 4(3)
Tamil Nadu Parks, Play fields and Open Space Act, 1959 — Section 5, 6, 7, 8
Tamil Nadu Town and Country Planning Act, 1971 — Section 113A, 114, 2(34)

Citation : AIR 2010 Mad 189 : (2010) 4 LW 385

Hon'ble Judges : M.Y. Eqbal, C.J.; T.S. Sivagnanam, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for C.A. Sharmila Victor, in W.P. No. 4647 of 2010, T. Mohan, in in M.P. 2/10 and P.N. Radhakrishnan, in Impleading Petition, for the Appellant; J. Raja Kalifulla, Govt. Pleader for Respondent - 1 and P. Wilson, A.A.G. for Mohammed Gouse, for Respondent - 2, for the Respondent

Judgement

M.Y. Eqbal, C.J.—In this writ petition, by way of public interest litigation, the petitioner seeks a mandamus or any other writ or order in the nature of a writ forbearing the respondents herein, their agents or servants from constructing an underground Car Park in the Corporation Playground situated on Venkata Narayana Road, in the City of Chennai or for converting it for any other purpose.

2. According to the petitioner, a news item was published in the newspapers that the Corporation Play ground is being converted into an underground Car Park to facilitate parking of cars. Though Venkata Narayana Road is a busy thoroughfare, there has never been any traffic congestion in view of the restricted number of commercial buildings in the area. According to the petitioner, the respondents are contemplating to sacrifice the play ground, which has been in existence for the last 50 years. It is stated that taking advantage of its classification of Open Space and Recreational Area, they have now decided to locate the car park in the Corporation play ground. The petitioner's case is that the play ground has a

concrete flood lit basketball court with a gallery. Along side the gallery there is a changing room with toilet facilities. The other part of the play ground has an outdoor gymnasium and a provision has been made for the local residents to play volley ball, shuttle and badminton. There are about 10 clubs managed by enthusiasts like the petitioner to provide free coaching to young children and students belonging to different schools and colleges. The basket ball court in the playground has been the venue of State Level Basketball Tournaments by Public Sector Undertakings and Educational Institutions for the last 50 years. The Clubs have produced State Level players at varying age groups and belonging to middle and lower income families. It is contended by the petitioner with the depletion of open spaces in the City, due to construction of multi storeyed buildings, most of them in an around T. Nagar, the conversion of the playground into a Car Park would result in grave injustice to the residents of the locality. The petitioner's case is that earlier, the Corporation decided to have an underground car park in Natesa Mudaliar Park, but the same was dropped and ultimately it was decided to convert the present park into an underground car parking and for that there had never been any consultation with the people, who have been residing there. In that view of the matter, the underground car parking shall be constructed only in open space and by no stretch of imagination, the corporation play ground be converted into underground car parking by treating the park and the play ground as a open space. It is, further, stated that the proposed action of the respondents smacks of arbitrariness, fairness and favoritism and it cannot be in public interest. The petitioner, therefore, challenges the proposed action of the respondents, inter alia, on the following grounds:

- a) The unilateral decision of the respondents to convert a play ground into a car park is arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India.
- b) The respondents have failed to consider that this action is contrary to the provisions of the Town and Country Planning Act, 1971.
- c) The petitioner and the residents of the locality have a legitimate expectation to enjoy the facilities provided in the play ground.
- d) The respondents are estopped from changing the user of the play ground since it forms an integral part of the residential lay out and it was on the belief that the play ground would exist that residents have purchased plots and constructed residential houses.
- e) The respondents have no right to take a unilateral decision on the change of user without affording an opportunity to the petitioner and the other residents of the locality.
- f) The decision of the respondents to convert the playground into a car park has been taken to serve the vested interests of a few powerful personalities doing business in the area.

g) The respondents have not made a practical/scientific evaluation of the parking requirement in the area and have decided to construct an underground car park at a substantial price only to enable a few businessmen in the area to augment their business.

h) In fact, the car park will serve as an amenity for the business houses in the area and will in no way further the interests of the residents of the locality.

i) the decision to construct an underground car park transgresses on the rights of the petitioner and other residents thereby violating Articles 14 and 19 of the Constitution of India.

j) The respondents have failed to see that their proposal has been formulated without affording the residents an opportunity of being heard on the matter, which is not only a statutory right considering the fact that the playground is a notified one but also a constitutional right.

k) The provisions contained in Sections 5, 6, 7 and 8 of the Tamil Nadu Parks, Playfields and Open Space Act, 1959 have not been complied with.

3. In the counter affidavit filed by the 2nd respondent namely, the Corporation of Chennai it is stated that there has been tremendous growth in number of vehicles in the Chennai City in the last twelve years. The total number of motor vehicles in the Chennai City has increased manifold. Thiagaraya Nagar also known as T. Nagar is the busiest and largest commercial centre in the Chennai City. Numerous Jewellery, Textile Shops, Mega Departmental Stores, etc., is located in this area which attracts shoppers not only from other parts of Chennai but also from the other parts of Tamil Nadu and other parts of the country. The attractiveness of T. Nagar as the ultimate shopping destination has brought with it problems of congestion, pollution, parking and traffic problems. Due to the insufficient vehicular parking space in T. Nagar, the visitors park their two wheelers and four wheelers on the road side thereby causing traffic congestion in the entire area. Hence, the Corporation of Chennai proposed to examine the feasibility of providing under ground multi level car parking in the play ground at Venkata Narayana Road, T. Nagar belonging to the Corporation of Chennai. Since, only under ground parking system needs to be considered without disturbing the present use i.e. playground, the Corporation of Chennai has appointed a consultant for carrying out traffic survey as well as feasibility study for the proposed underground parking lot at the play ground at Venkata Narayana Road, T. Nagar without affecting/disturbing the present use of the land i.e., playground. It is further stated that the Corporation is contemplating to construct a underground Multi-level Car Parking system in the basement floors only, and therefore, the existing playground activity in the ground level will not get affected due to this project. The 2nd respondent's case is that the land comprised in Town Survey No. 5900 of Mambalam Village is a corporation private land situated at Venkata Narayana Road, T. Nagar, Chennai, and the Corporation of Chennai had, in the interest of public, developed the said land as a

playground, and since the proposed car parking facility will be in the basement floors only, it will not affect the playing activities on the ground level in any manner. The land under Survey No. 5900 of Mambalam Village is a Corporation private land and the Corporation of Chennai had developed it as a playground in the interest of public. A similar land opposite to the playground has been developed as a public park by the Corporation of Chennai and well utilized by the public. In the same vision the Corporation of Chennai is proposed to construct an underground Car Parking facility below the ground level without affecting the present status i.e., playground. It is stated that the Corporation of Chennai is developing and maintaining parks and playgrounds at various location in the Chennai City in the interest of public and the same are wholeheartedly welcomed by the public. The peak hour demand of parking requirement in and around 500 meters of the play ground area, as per the traffic survey conducted by the consultant, is 279 Cars and 1185 Two Wheelers.

4. From the extract of Permanent Land Register filed by the respondent the land has been shown as Government - Park Site. The land in question has also been shown as play ground under Rule 4(c)(3) of the Development Control Rules. In the Traffic Survey Report the following facts have been highlighted:

T. Nagar (Thiagaraya Nagar) is the busiest and largest commercial centres in Chennai. Major commercial streets in T. Nagar are Pondy Bazaar, North Usman Road, South Usman Road, Ranganathan Street and G.N. Chetty Street. The silk saree shops like Pothy's, Nalli, Sri Kumaran and jewellery shops likes Lalitha Jewellers, GRT, etc. and mega departmental stores like Saravana Stores and Ratna Stores in T. Nagar attracts shoppers not only from other parts of Chennai but also from other cities in Tamil Nadu and also from other parts of the country. The attractiveness of T. Nagar as the ultimate shopping destination has brought with it problems of congestion, pollution, parking and traffic problems. Hence, there is a need to address the problem areas in a holistic way and in the right earnest Corporation of Chennai proposes to examine the feasibility of providing under ground Multi Level Car Parking on DBOT Basis (Design, Build, Operate and Transfer) in a playground belonging to the Corporation at Venkata Narayana Road in Division 126, Zone-VIII.

5. In reply to the application filed under the Right to Information Act the Public Information Officer gave the following information:

"From To The Public Information Officer, Thiru. N. Shankar, Corporation of Chennai, Advocate, Zone -VIII, 309, Linghi Chetty Street, No. 117 N.S.K. Salai, First Floor, Kodambakkam, Chennai - 600 001. Chennai - 600 024.
----- Z.O.VIII C. No.
8840/2010 Date: 7.1.2010 Sub: Zone VIII - Unit 22 - Division 127 - Petition received under Right to Information Act, 2005 - Reply furnished - reg. Ref: Letter from Thiru. N. Shankar, dated 26.11.2009

In this regard, it is submitted the particulars from point 1 and 2 as given below:

Sl. No. Petition Details Reply 1. The Survey Number of the Survey Number Corporation Playground on of the Venkatanarayana Road, Corporation T. Nagar, Chennai - 600 017. Playground is 5900 of T. Nagar. 2. The designated purpose of user Playground shown in the Master purpose Plan/Layout

6. Now the question that falls for consideration is as to whether a Corporation land which is shown and used as Park and play ground for the last several decades can be converted into an underground car parking. Earlier several writ petitions were filed as public interest litigations by different petitioners including Consumer Action Group challenging the constitutional validity of the amended provision of Section 113A of the Tamil Nadu Town and Country Planning Act, 1971 empowering the government to exempt any land or building developed immediately before the date of commencement of the Amending Act from all or any of the provisions of the Act or Rules or Regulations made thereunder by collecting regularization fee. Another Public Interest Litigation was also filed highlighting the violations of the Rules in construction of shopping complexes at T. Nagar and at N.S.C. Bose Road in multi-storied buildings. A direction was sought for to the authorities to enforce the provisions of Tamil Nadu Multi-storied Buildings Act, 1973 and the Rules made thereunder to ensure public safety and effective free flow of traffic. The grievance of the petitioner was that in spite of the order of the Court, no administrative schemes to enforce Town Planning law and to demolish deviations have been formulated till date. On the contrary, the Governor of Tamil Nadu promulgated Tamil Nadu Ordinance No. 7 of 2000 (Tamil Nadu Act 31 of 2000) to amend Section 113A of the Tamil Nadu Town and Country Planning Act for regularization of all those illegal constructions. The said writ petitions were disposed of by a Division Bench of this Court by appointing a Monitoring Committee with sufficient staff and infrastructure to oversee the demolition of unauthorized constructions put up in violation of the planning permit. Paragraph - 31 of the judgment reads as under:

31. We are inclined to appoint a Monitoring Committee with sufficient staff and infrastructure to oversee the demolition of unauthorized construction put up in violation of the planning permit, master plan, CRZ and other laws. It is also necessary to identify professional builders of such buildings so as to enable the flat purchasers to proceed against the builders for recovery of damages. It is also high time that the CMDA and the Corporation should identify the officers responsible for the failure to enforce the FSI laws and to initiate disciplinary action against them. It is also necessary to direct that the regularization fee collected should be kept aside in a separate fund and not merged with the general account of the State of Tamil Nadu and its agencies. These funds should be used for the purpose of alleviating the sufferings caused to the public by the violations committed by the builders. Further certain violations like failure to provide adequate car parking area, fire safety measures within the building premises, should be viewed seriously as it has a larger societal impact and these violations cannot be ordinarily condoned by collecting the fees, especially in regard to the commercial buildings. Owners of such premises must be directed to

demolish the unauthorized construction and provide parking area and fire safety measures within the premises. Similarly, violations in FSI potentially impact the larger community and must not be condoned particularly in commercial complexes. Violation in FSI result in a massive strain on the existing infrastructure facilities like road network, drainage, water, etc. and also impact the neighbourhood. Similarly, the violations in Open Space Reservation (OSR) or illegal buildings put up on lake-beds, water catchments, flood plains, CRZ areas, etc. have ecological repercussions and must not be condoned and violations in such cases must be demolished.

The Division Bench inter alia issued the following directions:

(i)

(ii)

(iii)

(iv)

(v) Special buildings should be categorized as those with actual construction of ground plus three floors. In the case of commercial special buildings, the same measures that apply to multi-storied buildings as above should be followed. In the case of residential multistoried buildings and special buildings, the monitoring committee may suggest less stringent measures, bearing in mind the impact of retaining the building.

(vi) The professional builders of illegal multi-storied and special buildings should be identified for imposition of heavy penalties. This amount should be used to compensate the unwary purchasers and to take remedial measures for alleviating the harm caused to the society.

(vii) The Committee shall identify the officers at the CMDA and the Corporation, who are responsible for the failure to enforce the planning laws and make appropriate recommendation for prosecution and/or disciplinary action.

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7. It, is therefore, evidently clear that all illegal and irregular construction of buildings, shops and multi-storied complexes in T. Nagar, without providing adequate space by the builders or by the owners for car parking, resulted in traffic congestion, thereby using the road as car parking. In order to overcome these traffic congestions, the respondent-corporation has decided to use the land meant for park and play ground as underground car parking.

8. In the case of M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, a similar question came up for consideration before the Supreme Court. In that

case, the Lucknow Nagar Mahapalika also called Nagar Nigam or Corporation permitted a builder known as M.I. Builders Pvt. Ltd. to construct underground shopping complex in the Jhandewala Park situated at Aminabad Market, Lucknow. The High Court of Lucknow quashed the resolution of the Corporation permitting such construction and also the agreement entered into between the Corporation and the builder. The matter ultimately came to the Supreme Court in appeal filed by the builder. The Supreme Court dismissing the appeal held as under:

Para-59: Jhandewala Park, the park in question, has been in existence for a great number of years. It is situated in the heart of Aminabad, a bustling commercial-cum-residential locality in the city of Lucknow. The park is of historical importance. Because of the construction of underground shopping complex and parking it may still have the appearance of a park with grass grown and path laid but it has lost the ingredients of a park inasmuch as no plantation now can be grown. Trees cannot be planted and rather while making underground construction many trees have been cut. Now it is more like a terrace park. Qualitatively it may still be a park but it is certainly a park of different nature. By construction of underground shopping complex irreversible changes have been made. It was submitted that the park was acquired by the State Government in the year 1913 and was given to the Mahapalika for its management. This has not been controverted. u/s 114 of the Act it is the obligatory duty of the Mahapalika to maintain public places, parks and plant trees. By allowing underground construction Mahapalika has deprived itself of its obligatory duties to maintain the park which cannot be permitted. But then one of the obligatory functions of the Mahapalika u/s 114 is also to construct and maintain parking lots. To that extent some area of the park could be used for the purpose of constructing underground parking lot. But that can only be done after proper study has been made of the locality, including density of the population living in the area, the floating population and other certain relevant considerations. This study was never done. Mahapalika is the trustee for the proper management of the park. When true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by this Court in *M.C. Mehta Vs. Kamal Nath and Others*, . Public Trust doctrine is part of Indian Law. In that case the respondent who had constructed a motel located at the bank of river Beas interfered with the natural flow of the river. This Court said that the issue presented in that case illustrated the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change.

Para-60: In the treatise: "Environmental Law and Policy: Nature, Law and Society by Plater Abrams Goldfarb (American Casebook series 1992) under the Chapter on Fundamental Environmental Rights, in Section 1 (The Modern

Rediscovery of the Public Trust Doctrine) it has been noticed that: long ago there developed in the law of the Roman Empire a legal theory known as the "Doctrine of the Public Trust". In America Public Trust doctrine was applied to public properties, such as shore-lands and parks. As to how doctrine works it was stated: "the scattered evidence, taken together, suggests that the idea of a public trusteeship rests upon three related principles. First, that certain interests - like the air and the sea - have such importance to the citizenry as whole that it would be unwise to make them the subject of private ownership. Second, that they partake so much of the bounty of the nature, rather than of individual enterprise, that they should be made freely available to the entire citizenry without regard to economic status. And, finally, that it is a principle purpose of government to promote the interests of the general public rather than to redistribute public goods from broad public uses to restricted private benefit...." With reference to a decision in *Illinois Centrlk Railroad Company v. Illinois*, (1892) 146 US 387, it was stated that "the Court articulated in that case the principle that has become the central substantive thought in public trust, litigation. When a state holds a resource which is available for the free use of the general, a Court will look with considerable skepticism upon any governmental conduct which is calculated either to reallocate the resource to more restricted uses or to subject public uses to the self-interest of private parties". This public trust doctrine in our country, it would appear, has grown from Article 21 of the Constitution.

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71. It is not disputed that there is a Master Plan applicable to city of Lucknow. This Master Plan is prepared under the Development Act. It was submitted by the builder that the park could be exploited for commercial purposes as Aminabad has been shown to be a commercial area. No doubt Aminabad is a commercial area but that does not mean that the park can be utilized for commercial purposes. Rather using the park for commercial purposes would be against the Master Plan. However, in letter dated October 16, 1993 by Vice-Chairman, LDA to the Mahapalika did say:

I am to inform you in this regard that the land use of the Jhandawala Park situated in Aminabad is commercial one as per the Master Plan. This department has no objection on the layout plan submitted accordingly

9. Their Lordships further observed in paragraph 78 as follows:

78. The facts and circumstances when examined point to only one conclusion that the purpose of constructing the underground shopping complex was a mere pretext and the dominant purpose was to favour the M.I. Builders to earn huge profits. In depriving the citizens of Lucknow of their amenity of an old historical

park in the congested area on the specious plea of decongesting the area Mahapalika and its officers forgot their duty towards the citizens and acted in a most brazen manner.

10. In the case of Pt. Chet Ram Vashist (Dead) by Lrs. Vs. Municipal Corporation of Delhi, the question that fell for consideration was as to whether the Municipal Corporation of Delhi in absence of any provision in the Delhi Municipal Corporation Act, 1957 was entitled to sanction the plan for building activities with condition that the open space for parks and schools be transferred to the Corporation free of cost. The Supreme Court held that the Corporation shall have no right to change the user of the land which shall be for beneficial enjoyment of the people. Their Lordships further held that the Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of society, but it has no right to transfer the land. Their Lordship's held in paragraph - 6 as follows:

6. Reserving any site for any street, open space, park, school, etc in a lay-out plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned lay-out plan. But the question is, does it entitled the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred in the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for parks and school was an order for transfer without there being any sanction for the same in law.

11. In the case of Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others, Delhi Development Authority permitted a nursery school to be opened in Park No. 6 of Pocket "A" of Sarita Vihar in complete violation of the provisions of Delhi Development Act, 1957. The said decision of the Authority was challenged. In that case the Supreme Court observed:

8. We, therefore, hold that the land which was allotted to respondent No. 2 was part of a park. We further hold that it was not open to the DDA to carve out any space meant for park for a nursery school. We are of the considered view that the allotment in favour of respondent No. 2 was misuse of power, for reasons

which need not be adverted. It is, therefore, a fit case, according to us, where the allotment in favour of respondent No. 2 should be cancelled and we order accordingly. The fact that respondent No. 2 has put up some structure stated to be permanent by his Counsel is not relevant, as the same has been done on a plot of land allotted to it in contravention of law. As to the submission that dislocation from the present site would cause difficulty to the tiny tots. We would observe that the same has been advanced only to get sympathy from the Court inasmuch as children, for whom the nursery school is meant, would travel to any other nearby place where such a school would be set up either by respondent No. 2 or by any other body.

12. It has not been disputed by the 2nd respondent-Corporation that the land in question has been used as park and playground for the last several decades. There is a basket ball ground in the said park, which is said to be an historical ground for many aspiring basketball players of the country. Many basketball training sessions and tournaments have been conducted there, and several high dignitaries visited the place and distributed prizes to the winners of such tournaments. Similarly, public at large had been using the park since several decades. Learned Counsel for the petitioner drawn our attention to Section 2(34) of the Tamil Nadu Town and Country Planning Act inter alia defines "public open space", which means any land whether enclosed or not belonging to the Central or any State Government or any local authority or any body corporate, owned or controlled by the Central or any State Government on which there is no building or of which not more than one twentieth part is covered with buildings, and the whole or the remainder of which is used for purpose of recreation, air or light. Therefore, evidently the playground and the park could not be brought within the definition of public open space. It has also not been disputed that the playground at Venkata Narayana Road, T. Nagar has been listed as the playground both under the Tamil Nadu Parks, Play Fields and Open Spaces (Preservation and Regulation) Act, 1959 and the Development Control Rules. Rule - 4(a) of the Development Control Rules provides that where the use of the site or the premises is specifically designated as open space, it shall be used only for that purpose for which it has been so designated.

13. From the Report it appears that T. Nagar has been shown primarily as commercial locality in Chennai. But, it appears that initially T. Nagar was primarily a residential area and only during the past few years there has been development in mushroom growth of commercial establishments. Many illegal constructions have been made for commercial purposes without providing space for car parking, as a result the regular stream of customers visiting these shopping complexes cause traffic congestion. In order to facilitate the customers' visit in those shopping complexes and commercial establishments the respondents have decided to provide underground car parking by changing the character of the land which has been used as playground and park for the last six decades.

14. Prima facie we have no hesitation in holding that such decision of the respondent for using the park and the playground for the purpose of providing car parking and to facilitate the customers and the visitors for the shopping complexes and commercial establishments is illegal, arbitrary, unwarranted and unjustified.

15. It was strenuously contended by the learned Counsel appearing for the 2nd respondent - Corporation of Chennai that this writ petition cannot be treated as a public interest litigation inasmuch as the petitioner in order to protect his vested interest over the land in question has moved this Court by way of public interest litigation. We are unable to accept the contention made by the learned Counsel for the 2nd respondent for two reasons. Firstly, the petitioner is not claiming any personal interest over the land in question which has been used as a park and the playground by the general public and not by a particular community. Secondly, because of the mushroom growth of illegal construction of commercial establishments and shopping complexes there has been traffic congestion, which necessitated the provision for car parking. These commercial establishments and shopping complexes have been constructed without keeping any provision for car parking.

16. As noticed above, the land in question has been used by the public as park and playground for the last more than five decades and this is only the place of enjoyment for the public of that locality. It is well settled 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 greeneries, which is meant for the public at large.

17. During the course of argument the learned Counsel for the second respondent would submit that apart from underground parking facility a commercial complex is also proposed, inter alia providing restaurants and other facilities to cater to the needs of the persons who use the car parking facility. It is further submitted that by establishing a commercial complex it would add to the revenue, as the revenue generated from the car parking alone would not be sizable. Therefore, it is contended that the entire project as conceived is in the interest of the general public. We however fail to see any public interest as projected by the second respondent. In fact this commercial complex proposed was not mentioned originally. Significantly, even in the notice issued for public hearing no such proposal was projected. Thus it appears that the impugned proposal includes commercial venture; which is impermissible in a site which has been reserved for recreational purpose. An attempt was made by the second respondent to justify their proposal by drawing an analogy to that of the Metro Rail Project, at New Delhi, the Palika Bazaar at New Delhi etc. In our view the submission is misconceived. The sole determinative factor in a case like the present one, shall be classification of the land in question. It is not in dispute that the land in question has been classified as "play ground", notified as such in Annexure III of the Development Control Rules, which lists out the areas included in open space and recreational use zone. As observed by their Lordships

of the Supreme Court in the Case Pt. Chet Ram Vashist, (supra) by virtue of the law, if an area is specified as open space the Corporation may at best get a right as a "custodian of public interest" to manage it in the interest of the society in general. Any breach of this custodianship and any attempt to change the "use" of such land would be impermissible under law and would be against public interest.

18. After giving our anxious consideration in the matter, and considering the fact that the land used as park and play ground for the last 50 years, the Corporation cannot be allowed to use the said play ground for construction of underground car parking. The decision of the Corporation to that effect is, therefore, declared illegal and unjustified.

19. We, therefore, allow this petition and restrain the respondents, their agents or servants from constructing an underground car park in the play ground in question situated at Venkata Narayana Road, in the city of Chennai or for converting it for any other purpose. No costs. Consequently, miscellaneous petitions are closed.