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Court : Chennai

Decided On : Sep-25-2012

Judge : V. Ramasubramanian

Appeal No. : WRIT PETITION NO. 14670 OF 2010 & M.P. NOS. 1 OF 2010 & 1 OF 2012

Appellant : M. Krishnasamy

Respondent : The Member Secretary of Chennai Metropolitan Development Authority Gandhi Irwln Road, Egmore and Another

Advocate for Pet/Ap. : For the Petitioner: G. Masilamani, SC. for S. Vijayakumar, Advocates. For the Respondent: R1 - V.S. Sethuraman, Additional Advocate General for N. Sampath, R2 - V. Bharathidasan, Advocate.

Judgement :

(Prayer: Petition under Article 226 of the Constitution of India praying for a writ of Certiorari, calling for the records relating to the first respondent vide Letter No.C3/22148/08 dated 25.6.2010 and to quash the same.)

ORDER

The petitioner has come up with the above writ petition, challenging a communication issued by the first respondent rejecting the request of the petitioner to waive Open Space Reservation Charges (OSR Charges) for consideration of his application for the grant of planning permission.

2. I have heard Mr.G.Masilamani, learned Senior Counsel for the petitioner, Mr.V.S.Sethuraman, learned Additional Advocate General appearing for the first respondent and Mr.V.Bharathidasan, learned Standing Counsel for the second respondent.

3. The petitioner, his wife and son purchased a property bearing Plot Nos.41, 42, 53 and 54 comprised in R.S.No.4288/71, Satyadev Avenue, MRC Nagar, Raja Annamalaipuram, Chennai-28, under a Sale Deed dated 11.7.2005, registered as document No.1894/2005. On 26.12.2008, the petitioner, his wife and son jointly applied for planning permission, to put up a multi storeyed building on the land.

4. By a letter dated 21.1.2010, the first respondent informed the petitioner and his wife and son that the application for planning permission was under consideration and that the applicants had to pay certain charges namely (i) development charges for the land and building, quantified at Rs.1,32,000/- (ii) security deposit for the building, quantified at Rs.4,70,000/- (iii) security deposit for display board, quantified at Rs.10,000/- (iv) Regularisation charges, quantified at Rs.1,20,000/- (v) OSR charges, quantified at Rs.58,50,000/- (vi) Infrastructure and Amenities charges, quantified at Rs.17,20,000/- (vii) IDC for metro water, quantified at Rs.3 lakhs and (viii) balance of scrutiny fee, quantified at Rs.10,000/-.

5. The petitioner complied with the demand made in the said letter dated 21.1.2010, in respect of all charges except OSR charges of Rs.58,50,000/-. In so far as the said demand is concerned, the petitioner pointed out that those charges could be levied only if the land of an extent equivalent to 10% of the total area of the layout was not reserved for open space and conveyed to the local body. In so far as the layout in which the plots of the petitioner are located is concerned, his predecessors in title had already earmarked 10% of the total area measuring about 6 grounds and 170 sq. ft., and also handed over the same to the Corporation of Chennai. Though a draft deed of conveyance was submitted by the

predecessor-in-title of the petitioner, the document could not be executed and registered, on account of the lethargy on the part of the Corporation. However, the Corporation took possession of the land way back on 11.2.1976.

6. Therefore, on the strength of the above facts, the petitioner submitted a representation dated 2.2.2010, pointing out that the demand for OSR charges was not sustainable. Since there was no response, the petitioner submitted a reminder on 2.3.2010, followed by a representation dated 18.3.2010.

7. In the meantime, the first respondent sent a communication dated 2.3.2010 to the second respondent, seeking clarification as to whether 10% of the total area in the layout had been handed over to the Corporation as open space reservation or not. But the response of the second respondent to the said communication was not known.

8. On the ground that the respondents were dragging their feet without taking a decision, the petitioner filed a writ petition in W.P.No.7899 of 2010. The writ petition was disposed of by an order dated 21.4.2010, directing the first respondent to consider and dispose of the representation of the petitioner. In pursuance of the said order, the first respondent issued the impugned communication dated 25.6.2010, claiming that OSR charges cannot be waived. Hence the petitioner is before this Court.

9. The first respondent has filed a counter affidavit. In brief, it is contended therein (i) that the total extent of land in the parent layout, as it existed prior to 5.8.1975 was more than 10,000 sq. meters; (ii) that the site in question (belonging to the petitioner) falls in an unauthorised layout, formed prior to 31.12.1989; (iii) that the OSR area representing 10% of the parent site was not gifted or handed over to the Corporation; and (iv) that even if OSR area had been handed over to the Corporation, OSR charges are payable, if the layout is unapproved.

10. In the light of the impugned order and the counter affidavit filed by the first respondent, the primary contention of Mr.G.Masilamani, learned Senior Counsel for the petitioner is that as per the Development Control Rules and Regulations issued by the Chennai Metropolitan Development Authority and various

Government Orders in force, 10% of the total area covered by a proposed layout is liable to be reserved for public purposes as open space and that if a land is developed without adhering to this prescription, the owner is liable to pay OSR charges in lieu thereof. In the case on hand, it is not in dispute that the land of an extent of about 6 grounds and 170 sq. ft., representing 10% of the total extent of land in the layout, was already handed over by the promoter to the Corporation of Chennai. The land has also been developed into a park and it is in the possession of the Corporation with the public having unrestricted access. But due to administrative delay and procedural entanglements on the part of the Corporation, the mere formality of executing and registering a deed of gift, was not completed. Therefore, it is the contention of the learned Senior Counsel that the first respondent cannot demand OSR charges, after the Corporation has already taken over possession of the OSR land.

11. In the light of the above pleadings and contentions, two questions arise for consideration. They are (i) Whether OSR land was in fact handed over to the local body or not and (ii) If so, whether the first respondent is entitled to demand OSR charges in addition to the OSR land already handed over to the local body or not.

12. Though in paragraph 10 of the counter affidavit, the first respondent has claimed that OSR land was neither gifted nor handed over to the Corporation, the same appears to be an incorrect statement. The Corporation has categorically confirmed that the land of the extent of 6 grounds 170 sq. ft., had been handed over by the original owner. This is also corroborated by (i) a letter of the Assistant Engineer of the Corporation of Chennai dated 29.1.1976 and (ii) the handing over-taking over certificate dated 11.2.1976 signed by an Officer of the Deputy Collector's office and the Corporation of Chennai. The fact that the said land has been developed into a park and that it is now maintained by the Corporation of Chennai, is beyond any pale of doubt. But it is equally true that no deed of conveyance/gift was executed and registered by the original promoter in favour of the Corporation. Nevertheless, the land is in public domain for the past 36 years and no one except the local body, can today lay a claim on the said land of the extent of 6 grounds and 170 sq. ft. Therefore, on the first question, it has to be held that OSR land has already been handed over to the local body.

13. Incidentally it must be pointed out that in Pt. Chet Ram Vashist vs. Municipal Corporation of Delhi {1995 (1) SCC 47}, the Supreme Court held that the effect of reserving any site for open space, park etc., in a layout is that the owner ceases to be a legal owner of the land in dispute and that he would hold the said land for the benefit of the society or the public in general. It was further held in the said decision that the entitlement of the Corporation or the local body to demand the transfer of the land to them, is not made out from the provisions of any Act or on any principle of law. The Court pointed out that the Corporation may get a right as custodian of public interest to manage it in the interest of the society in general. However, the right to manage as a local body, was held by the Supreme Court in the said decision, to be not the same thing as to claim transfer of the property to itself. The decision in Pt. Chet Ram Vashist, was followed in Chairman, Indore Vikas Pradhikaran vs. Pure Industrial Coke and Chemicals Ltd {2007 (8) SCC 705}. Again in Babulal Badriprasad Varma vs. Surat Municipal Corporation {2008 (12) SCC 401}, the Supreme Court pointed out that a statute of town planning ex facie is not a statute for acquisition of a property. The Court further observed that every step taken by the State does not involve application of the Doctrine of Eminent Domain.

14. This takes us to the next question as to whether the demand for OSR charges, in addition to OSR land, is permissible in law or not.

15. In paragraph 11 of the counter affidavit, the first respondent has asserted that even if OSR land had been handed over to the Corporation, OSR charges have to be paid, if the layout was unapproved. The fact that the land in respect of which the present writ petition is filed, falls in an unapproved layout, is conceded by the petitioner. Therefore, I have to see whether OSR charges are payable in addition to OSR land, in so far as unapproved layouts are concerned.

16. At this juncture, a small prelude is necessary, to understand how the liability to earmark open space for public and recreational purposes, in a land developed into a layout and how the liability to pay OSR charges, came into existence. Hence it is presented as follows:-

(i) Section 9-C, Chapter II-A of the Tamil Nadu Town and Country Planning (Amendment) Act, 1973 (Tamil Nadu Act No.22 of 1974) prescribed that the Madras Metropolitan Development Authority shall carry out a survey of Madras Metropolitan area and prepare a Master Plan as referred to in Section 17.

(ii) Accordingly, MMDA carried out necessary surveys and studies and prepared the First Master Plan for the Chennai Metropolitan Area in 1975. The Government approved the same in G.O.Ms.No.2395, Rural Development and Local Administration dated 4.12.1976.

(iii) The First Master Plan covered an extent of approximately 1170 sq. kms. It included within the City of Chennai, a part of Ambattur Taluk, Tambaram Taluk, Tiruvallur Taluk, Chengalpet Taluk, Sriperumbudur Taluk, Ponneri Taluk and Poonamallee Taluk.

(iv) Under the said Plan, all lands in the Metropolitan Area were categorised into 10 zones such as Primary Residential Use Zone, Mixed Residential Use Zone, Commercial Use Zone, Light Industrial Use Zone, General Industrial Use Zone, Special and Hazardous Industrial Use Zone, Institutional Use Zone, Open Space and Recreational Use Zone, Agricultural Use Zone and Non-Urban Use Zone.

(v) Along with the First Master Plan, a set of rules known as Development Control Rules were issued by the Government. These rules dealt with (i) permission for development (ii) use zones and (iii) general provisions.

(vi) Rule 19 of the Development Control Rules, which comes under Part III, under the heading "General Provisions" deals with layout and subdivision.

(vii) The liability to reserve a portion of the site in a layout as open space, arose out of Rule 19 of the Development Control Rules, till these rules were in operation.

17. Rule 19 of the Development Control Rules contains a Table which prescribes the minimum width of the streets and roads in different types of layouts. Just below the Table under Rule 19, there is a Note. The said Note contains 3 prescriptions. The third prescription in the said Note contains a Table indicating the extent of land to be reserved for communal and recreational purposes in a layout or

subdivision for residential, commercial, industrial or combination of such uses.

18. The Table under the Note under Rule 19 appears to have undergone several changes in the past about 3 decades. In the year 1977-78, the open space to be reserved in a layout for communal and recreational purposes, was prescribed as follows:-

Exent of layout (1)	Reservation (2)
(i) Upto 2500 sq. meters	Nil
(ii)Between 2500 square meters and 10,000 square meters	10% of the area excluding roads or in the alternative, he shall pay 1-1/2 times the market value of equivalent land as per the valuation of the Registration Department.
(iii)Above 10,000 sq. meters	10% of the area excluding roads shall be reserved and this space shall be maintained as Communal and Recreational open space to the satisfaction of the Authority or transferred to the Authority for maintenance.

19. But by G.O.Ms.No.743, Housing and Urban Development Department, dated 10.5.1979, the above Table was modified as follows, with retrospective effect from 5.8.1975:-

Exent of layout (1)	Reservation(2)
(i) Upto 3000 sq. meters	Nil

(ii)Between 3000 square meters and 10,000 square meters	10% of the area, excluding roads or in the alternative, he shall pay single rate of market value of equivalent land as per the valuation of the Registration Department.
(iii)Above 10,000 sq. meters	10% of the area, excluding roads shall be reserved and this space shall be maintained as communal and recreational open space to the satisfaction of the Authority or transferred to the Authority for maintenance. It is obligatory to reserve 10% of the layout area.

20. In para-4 of G.O.Ms.No.743, Housing and Urban Development Department, dated 10.5.1979, the Government directed that all layouts/ subdivisions approved or effected before 5.8.1975 will be exempted from the above requirements without insisting upon Open Space Reservation. It was also further clarified in the same paragraph 4 that no Open Space Reservation Charges need be collected in subdivisions in areas earmarked for residential use in approved layouts provided the minimum prescribed plot extent is maintained. This paragraph 4 of G.O.Ms.No.743, Housing and Urban Development Department, dated 10.5.1979, may throw light upon the core question that arises for consideration in this case. Therefore, it is extracted as follows:-

"4. The Government also direct that the above modification of the open space reservation rule be given effect to from 5th August 1975 (date of coming into force of Development Control Rules). Consequently, all layouts /subdivisions approved or effected before 5.8.1975 will be exempted from the above requirements without insisting upon open space reservation. The Government also direct that no open space reservation charges need be collected in subdivisions in areas earmarked for residential use in approved layouts provided the minimum prescribed plot extent is maintained."

21. It may be of interest to note that at the time when the First Master Plan was conceived in 1975, the concept of "Group Development" or "Flats", had not gained momentum in the City of Chennai. Therefore, the Development Control Rules did not contain specific provisions to regulate the same. But when developers started promoting flats, the issue was taken up by the Madras Metropolitan Development Authority with the Government, in a letter dated 22.3.1981. On the basis of the said letter of the Member Secretary and the recommendations of the Technical Committee of MMDA and the response of the public to the proposed amendment to the Rules, the Government issued G.O.Ms.No.940, Housing and Urban Development, dated 8.10.1982, approving the Draft Rules for incorporation in the Development Control Rules with certain modifications. They were issued by the Government in exercise of the power conferred by Section 32(4) of the Tamil Nadu Town and Country Planning Act, 1971.

22. By the Amendment so made to the Development Control Rules, sub-rules (b) and (c) were inserted under Rule 19. While sub-rule (b) dealt with "Special Buildings", sub-rule (c) dealt with "Set Back" for residential and commercial. Under Clause (v) of sub-rule (c) of Rule 19, the extent of land to be reserved for communal and recreational purposes, was indicated in a tabular column. It reads as follows:-

Exent of layout (1)	Reservation (2)
(i) For the first 3000 sq. meters	Nil

(ii)Between 3000 square meters and 10,000 square meters	10% of the area excluding roads or in the alternative, he/she shall pay the market value of the equivalent land excluding the first 3000 square meters as per the valuation of the registration department. The space so reserved shall be maintained as communal and recreational spaceand shall remain private.
(iii)Above 10,000 sq. meters	10% of the area excluding roads shall be reserved and this space shall be transferred to the Authority or to the local body designated by it, free of cost, through a deed. It is obligatory, to reserve the 10% space of the site area and no charges can be accepted in lieu.

23. But in so far as "Group Development/Flats" are concerned, the open space to be reserved for communal and recreational purposes was indicated in a separate Table in the same Government Order G.O.Ms.No.940, dated 8.10.1982, as follows:-

Exent of layout(1)	Reservation(2)
(i) For the first 3000 sq. meters	Nil

(ii)Between 3000 square meters and 10,000 square meters	10% of the area excluding roadsor in the alternative, he shall pay the market value of the equivalent land excluding the first 3000 square meters as per the valuation of the registration department. The space so reserved shall be maintained as communal and recreational space and shall remain private.
(iii)Above 10,000 sq. meters	10% of the area excluding roads shall be reserved and this space shall be transferred to the Authority or to the local body designated by it, free of cost, through a deed. It is obligatory to reserve the 10% of the site area and no charges can be accepted in lieu.

24. Rule 19 (a) and (b) was amended further by G.O.Ms.No.35, Housing and Urban Development, dated 9.1.1989. But the Amendments introduced by the said Government Order covered only layouts of the extent between 3,000 sq. meters and 10,000 sq. meters. In other words, layouts of larger extents above 10,000 sq. meters, were not covered by the said Amendment.

25. There appears to be a subsequent amendment. Though the year of such amendment is not clear, the Development Control Rules hosted in the Internet by the CMDA, as amended upto September 2004, contains two Tables, one in respect of normal buildings under Rule 19 (a) and another in respect of "Special Buildings and Group Developments" under Rule 19(b). The Table under Rule 19 (a) is as follows:-

Exent of layout (1)	Reservation (2)

For the first 3000 square meters	Nil
Between 3000 square meters and 10,000 square meters	10 percent of the area excluding roads or in the alternative he shall pay the market value of equivalent land excluding the first 3000 square meters as per the valuation of the registration department. "No such area reserved shall measure less than 100 square meters with aminimum dimension of 10 meters". The space so reserved shall be transferred to the Authority or to the Local body designated by it, free of cost, through a deed, and in turn the Authority or the Local body may permit the residents Association or Flat owners 'Association for maintaining such reserved space as park. In such cases public access for the area as earmarked shall not be insisted upon'.

Above 10,000 square meters	10 percent of the area excluding roads shall be reserved and this space shall be maintained as communal and recreational open space to the satisfaction of the authority or transferred to the authority for maintenance. It is obligatory to reserve 10 percent of the layout area.

26. The Table under Rule 19(b) in respect of Special Buildings, is as follows:-

Exent of layout (1)	Reservation (2)
For the first 3000 square meters	Nil

Between 3000 square meters and 10,000 square meters	10 percent of the area excluding roads or in the alternative shall pay the market value of the equivalent land excluding the first 3,000 square meters as per the valuation of the Registration Department only where it is not possible to provide open space due to physical constraints. No such area reserved shall measure less than 100 square meters with a minimum dimension of 10 meters. The space so reserved shall be transferred to the Authority or to the Local Body designated by it, free of cost, through a deed, and in the turn the Authority or the local body may permit the Residents Association or Flat owner's 'Association for maintaining such reserved space as park. In such cases, public access for the area as earmarked shall not be insisted upon.

Above 10,000 square meters	10 percent of the area excluding roads shall be reserved and this space shall be transferred to the authority or to the local body designated by it, free of cost,through a deed. It is obligatory to reserve the 10 percent space of this site area and no charges can be accepted in lieu, in case of new developments or redevelopments.

27. After a spurt in developmental activities, the CMDA felt a need for a Second Master Plan for the Chennai Metropolitan Area. Therefore, a Draft Second Master Plan 2011 was prepared and submitted to the Government and the Government gave its consent to it under G.O.Ms.No.59, Housing and Urban Development Department, dated 30.6.1995. After public consultation, it was submitted to the Government in December 1995 for approval. But approval could not be granted on account of an interim prohibitory order granted by this Court in a writ petition. Though the writ petition W.P.No. 14819 of 1995 was eventually dismissed on 10.7.2001, the Government returned the Draft Second Master Plan to the CMDA for suitable modifications. This was under G.O.Ms.No.408, dated 5.10.2001.

28. Thereafter, a revised Draft Second Master Plan with the year 2026 as the horizon year, was prepared and submitted to the Government in December 2005. The Government again returned it under G.O.Ms.No.331, Hand UD Department, dated 5.12.2006, with a direction to incorporate certain developments in the field and to submit a fresh proposal for consent. This was done in February 2007 and the Government gave its consent on 30.3.2007.

29. Thereafter, copies of the Draft Second Master Plan were made available to the public and also hosted in the official website of the first respondent. Subsequently public consultations were conducted in April and July 2007 and a two day workshop was also held in August 2007. Thereafter, the draft was finalised and submitted to the Government. Finally, the Second Master Plan for Chennai

Metropolitan Area was approved by the Government of Tamil Nadu in G.O.Ms.No.190, Housing and Urban Development, dated 2.9.2008 and it was notified in the Gazette on the same day. As part of the Second Master Plan, a set of Regulations known as "Development Regulations" were issued and they came into force on 2.9.2008.

30. Regulation 26 of the Development Regulations 2008, contains stipulations regarding "Special Buildings". A Special Building is defined in Regulation 2(40) to mean (i) a residential or commercial building with more than two floors or (ii) a residential building with more than 6 dwelling units or (iii) a commercial building exceeding a floor area of 300 sq. meters.

31. Regulation 27 deals with "Group Developments". It covers accommodation for residential or commercial or a combination of such activities housed in two or more blocks of buildings in a particular site, irrespective of whether these structures are interconnected or not. Similarly, Regulation 28 contains special rules for multi storeyed buildings.

32. Regulation 29 deals with layout and subdivision Regulations. This Regulation 29 of the Development Regulations (of 2008) actually corresponds to Rule 19 of the erstwhile Development Control Rules. Sub Regulation (6) of Regulation 29 contains a Table similar to the one prescribed under the erstwhile Rule 19 of the Development Control Rules. Sub Regulation (6) of Regulation 29 and the Table contained thereunder, read as follows:-

"(6) Reservation of land for recreational purposes in a layout or subdivision for residential, commercial, industrial or combination of such uses shall be as follows:

Extent of layout (1)	Reservation (2)
For the first 3,000 square meters	Nil

Between 3,000 square meters and 10,000 square meters	10 percent of the area excluding roads or in the alternative he shall pay the market value of equivalent land and excluding the first 3,000 square meters as per the valuation of the registration department. "No such area reserved shall measures less than 100 square meters with a minimum dimension of 10 meters".
Above 10,000 square meters	10 percent of the area excluding roads. It is obligatory to make the reservation and no equivalent land cost in lieu of the same is acceptable.

33. Regulation 27 which deals with Group Developments, also contains a stipulation under Sub Regulation (10) that the reservation of land for community recreational purposes such as park or playground, required in these Regulations, shall be as given in the Annexure XX. Annexure XX contains a Table which is as follows:-

"ANNEXURE XX

Reservation of land for community recreational purposes in cases of special buildings/Group Developments/multistoreyed building developments

(1) The reservation of land for community recreational purposes such as park /playground shall be as given below at ground level in a shape and location abutting a public road to be specified by Chennai Metropolitan Development Authority:

Extent of site	Reservation
(a) For the first 3,000 square meters	Nil

	10 percent of the area excluding roads or in the alternative he shall pay the market value of the equivalent land excluding the first 3,000 square meters as per the valuation of the Registration Department, only where it is not possible to provide open space due to physical constraints. No such area reserved shall measure less than 100 square meters with a minimum dimension of 10 meters. The space so reserved shall be transferred to the Authority or to the Local body designated by it, free of cost, through a registered gift deed. In cases of residential developments, the Authority or the local body concerned may permit the Residents Association or Flat Owner's Association for maintaining such reserved space as park / playground and in such cases where the Authority decides to permit the Resident's Association or Flat Owner's Association for maintaining it, direct access from a public road for the reserved area may not be required, and right of access to the Authority or the local body concerned through set back space shall be transferred through a registered gift deed along with the reserved space.
(b) Between 3,000 square meters and 10,000 square meters	

(c) Above 10,000 square meters	Ten percent of the area excluding road shall be reserved and this space shall be transferred to the Authority or to the local body designated by it, free of cost, through a gift deed. It is obligatory to reserve the 10 percent of the site area and no charge can be accepted in lieu in case of the new developments or redevelopments.

34. A careful survey of (i) the provisions that existed from 1975 till 2008 under the First Master Plan and the Development Control Rules and (ii) the provisions that exist with effect from 2008 under the Second Master Plan and the Development Regulations, would show that layouts had always been classified into 3 categories. They are, (i) those whose total land extent is upto 3,000 sq. meters, (ii) those whose total land extent is between 3,000 sq. meters and 10,000 sq. meters and (iii) those whose total land extent is above 10,000 sq. meters.

35. Consistently, the Development Control Rules which were in force till 2008 and the Development Regulations which are in force from 2008, have exempted layouts whose total extent of land is upto 3,000 sq. meters, from the obligation to reserve any open space. Similarly, the Rules have consistently given two options, either to hand over 10% of the area excluding roads or to pay the market value of equivalent land, in so far as layouts whose total extent of land is between 3,000 sq. meters and 10,000 sq. meters.

36. But, in respect of layouts whose total extent of land is above 10,000 sq. meters, the Rules have always insisted upon handing over of Open Space Reservation land to the extent of 10% of the total area. In respect of layouts whose total extent is above 10,000 sq. meters, it was made clear by the successive Government Orders that no charges in lieu of 10% of the area can be accepted. This is borne out by--

(1) G.O.Ms.No.743, Housing and Urban Development, dated 10.5.1979,

(2) G.O.Ms.No.940, Housing and Urban Development, dated 8.10.1982,

(3) the Development Control Rules as of September, 2004 (hosted in the official website) and the Table contained therein under Rules 19(a) and 19(b) and

(4) Regulation 29 and Annexure XX under the Development Regulations of the year 2008.

37. The above discussion containing the entire history of development of the legal obligations imposed upon developers of layouts under the Tamil Nadu Town and Country Planning Act, would show two things, namely, (i) that in respect of layouts where the total extent of land is above 10,000 sq. meters, it is not permissible to collect charges in lieu of 10% of the Open Space Reservation land; and (ii) that in respect of layouts where the total extent of land is between 3,000 sq. meters and 10,000 sq. meters, there was an option either to leave Open Space Reservation land or to pay charges in lieu thereof.

38. In so far as the case on hand is concerned, the first respondent-CMDA has taken a categorical stand that the land belonging to the petitioner is in a layout whose original extent of site was above 10,000 sq. meters. Therefore, the obligation of the original promoter was to carve out Open Space Reservation land to the extent of 10% of the total area. No charges could be or could have been accepted in lieu thereof.

39. The fact that no Deed of Conveyance was executed in respect of OSR land already handed over to the Corporation, cannot really stand in the way, since the law is well settled by the Supreme Court in the decisions which I have referred to in paragraph 13 above. Therefore, I am of the considered view that the demand for OSR charges from the petitioner, on the ground that OSR land was not conveyed, cannot be sustained for 3 reasons namely---

(i) that 10% of the area had actually been handed over to the local body about 36 years ago;

(ii) that no charges in lieu of OSR land can be accepted if the parent site of the layout is more than 10,000 sq. meters; and

(iii) that in any case, the legitimacy of the demand for conveying of the OSR land by a registered deed is doubted by the Supreme Court in Pt. Chet Ram and other cases. Therefore the impuged demand is liable to be set aside and the petitioner is entitled to succeed. Hence, this writ petition is allowed and the impugned order is set aside. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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