
(1986) 02 MAD CK 0032
In the Madras High Court
Case No : Writ Appeal No. 66 of 1980

Government of Tamil Nadu	Vs	APPELLANT
Chingleput Dravidar Kazhagam and Another		RESPONDENT

Date of Decision : 06-02-1986

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 61

Citation : AIR 1986 Mad 264

Hon'ble Judges : S. Nainar Sundaram, J; Natarajan, J

Bench : Division Bench

Advocate : Govt. Pleader, for the Appellant; S. Doraiswami, for the Respondent

Judgement

1. This Writ Appeal is directed against the order of Mohan, J. whereby the learned Judge quashed the proceedings of the appellant herein and the second respondent by which the request of the first-respondent to install a statue of Thanthai Periyar E.V. E.V. Ramaswami, the Founder-Leader of Dravida Kazhagam at a particular place in the Municipal Town of Kancheepuram was declined. It will be convenient if we refer to the parties as they stood arrayed in the Writ Petition.
2. The first respondent herein was the petitioner, the second respondent was the first respondent and the appellant herein was the second-respondent in the Writ Petition. In the year 1974, there was a decision by the members of the Chengalpattu District Dravida Kazhagam to install a statue of Thanthai Periyar E.V. Ramaswami and a Committee was formed in this behalf under the Chairmanship of C.P. Rajamanickam, President of the petitioner-Kazhagam, to install and erect the statue at Kancheepuram near Gangai Kondan Mandapam initially in Survey No. 1865 and

subsequently changed to in Municipal S.No. 1974/2 in, Survey Ward, No. 4, Block No. 25. The requisite application, therefor, was made through

one P.A. Rangan, a member of the Kancheepuram Municipal Council, for sanction and permission and he undertook to bear the entire expense.

On 30-9-1974 by resolution. No. 459, the Municipal Council accepted the said application and resolved to give permission for the installation of

the statue. On 7-6-1975, the Divisional Engineer, Highways, Cheengalpattu, informed the first respondent that the local body should undertake the

further maintenance of the statue, for which a resolution is required, and further the individual who intended to erect the statue should be directed to

remit 20 per cent of the cost of the statue for future maintenance. On 30-6-1975 by resolution No. 167, the Municipal Council resolved with

reference to the proposal to install the statue that the Municipality agrees for the maintenance of the statue. On 5-7-1975, the Municipal Council

directed the said Rangan to deposit 20 per cent of the cost of the statue. On 15-7-1975, a sum of Rs.200/- was deposited estimating the cost of

the statue at Rs.1,000/-. It is stated that the pedestal for the installation of the statue was erected in Dep. 1975. While so, there were certain

objections by their parties for the installation of the statue in the, concerned place. On 27-8-1976, by resolution No. 310, the Municipal Council,

taking note of the objections for the installation of the statue, resolved that no further action need be taken. On 6-5-1978, the petitioner requested

for early orders for the installation of the statue because that was the centenary year of Thanthai Periyar E.V. Ramaswami. On 28-6-1978, the

following particulars were called for from the petitioner:

(i) The cost of the statue.

(ii) The measurements and plan for the base of the statue.

(iii) The topo-sketch of the area around the site for about 300 feet.

On 8-8-1978, these particulars were furnished by the petitioner. On 22-8-1978, the petitioner deposited a further sum of Rs.540/-estimating the

cost of the statue at Rs.3,700/-. On 23-8 1978, by resolution No. 320, the Municipal Council resolved to grant permission for the erection of the

statue after obtaining the no objection certificates from the concerned authorities and after obtaining the sanction of the second respondent. On 30-

8-1978, the Divisional Engineer, Highways, Chengalpattu, addressed the

Superintending Engineer, Highways, Madras, recommending the erection of the statue. The Superintending Engineer, Highways, Madras, on 31-8-1978 also made his recommendation to the Chief Engineer, Highways, Madras, for the erection of the statue and sought permission from the second respondent. Their opinion was that the erection of the statue will not be a hindrance to the free flow of traffic and it will also not affect the future widening of the street. On 13-9-1978, the Revenue Divisional Officer, Kancheepuram, reported that there was no objection for the erection of the statue in the concerned survey number which is classified as Town Site poramboke subject to the condition that the existing two encroachments should be evicted. On 13-9-1978, the Superintendent of Police, Chengalpattu, also informed that there is no objection for the issue of a "No Objection". Certificate to the applicant from the traffic and police point of view. On 1-3-9-1978, the Collector of Chengalpattu, after referring to the above reports, made his recommendation in the following " terms;

5. The applicant Thiru C.P. Rajamanickam, President, Chengalpattu District Dravida Kazhagam has also remitted a sum of Rs.740/-being the 20% of the cost of Rs.3,700/- of the statue to the Municipal Office Kanchipuram. in the year 1975. For erection of a statue of an eminent leader at Public place prior approval of the Government should be obtained as per G.O.Ms.No. 560, Public Works Department dt.11-4-1977.

6. In the circumstances explained above I recommend the above proposal and the permission sought for, by the Municipal Commissioner, Kancheepuram for installation of statue of "Thanthai Periyar at S. No. 1974/2 of Kanchipuram may be granted by Government at an early date.

On 13-10-1978, the second-respondent passed an order stating that the place chosen for the installation of the statue was not very much suitable; two or three other alternative sites might be suggested without involving any traffic hazards and the inscriptions on the statue should be uncontroversial and in such case the matter could be considered. On the basis of this order of the second respondent the Municipal Council passed resolution No. 501 on 8-11-1978 declining the request of the petitioner for the installation of the statue at the concerned place. On 16-11-1978, this decision was communicated to the petitioner by the first-respondent. This has given room for the petitioner to come to this Court seeking to

quash the proceedings of respondents 1 and 2.

3. Before Mohan J, who heard the Writ petition, two questions were argued at length. One is, on the facts, the principle of promissory estoppel

would apply and if so applied, the respondents shall be precluded from going back on the assurances given to the petitioner with regard to the

installation of the statue. The second is that all public streets in the Municipality, with the pavements, stones and other materials thereof vest in the

Municipality under S. 61 of the Tamil Nadu District Municipalities Act 5 of 1920, hereinafter referred to as "the Act" and in the absence of

withdrawal of such vesting by the second respondent, from the control of the Municipality, the resolutions of the Municipal Council must stand and

govern. Ancillary to this submission, there was an argument that there is a power reserved for the first respondent to rescind the resolution of the

Municipal Council under S. 36 of the Act and since in the present case no such power has been exercised, the resolutions of the Municipal Council

must hold good and be implemented. In our view, all these questions are intermingled and there is no need to consider them disjointedly and in

disassociation with one another. The learned Judge opined that under S. 61 of the Act, the vesting does not admit of any qualification and in the

absence of withdrawal of the vesting under sub-sec. 2 of S. 61 of the Act, the Municipal Council should have the absolute control over the

concerned pieces of land and the Municipal Council is bound by its resolutions and the principle of promissory estoppel will come into play to the

rescue of the petitioner. The learned Judge also adverted to S. 36 of the Act and on the ground that the power under S. 36 was not exercised and

the concerned resolutions were not cancelled, held that the second-respondent had no competency to pass the impugned order dt. 13-10-1978 as

it did. In this view, the learned Judge thought fit to interfere in writ jurisdiction and accordingly the Writ Petition was allowed.

4. In this Writ Appeal directed against the order of the learned Judge Mr. R. Krishnamoorthy, learned Advocate General appearing for the

second-respondent appellant herein, would primarily concentrate on a crucial aspect. As we have already stated the questions arising in the case

are intermingled with one another and they have to be decided in composite compass. The primary aspect argued by the learned Advocate

General is that a municipality does not own public streets and the ownership continued with the State and the vesting of public streets. and

appurtenances in the Municipal Council under S. 61 of the Act is only for the purpose of maintenance, repairs and improvements of public streets

as street and nothing more and the Municipality is not the sovereign owner of the public streets and it must act strictly within the scope of its power;

and installation of a statue in a public street either by itself or through another agency will not come within the scope of its powers for maintenance,

repairs and improvements of public streets, and the State as the sovereign owner thereof can always withhold its consent for such acts. It is pointed

out that in the instant case, the State never gave its seal and sanction to the installation of the statue at the place concerned, and it cannot be held to

be bound by the proceedings of the Municipality, whereby it is stated that*the petitioner was given an assurance that the statue could be erected at

the place concerned, and hence the principle of primary estoppel could not be put against the State so as to negate the order which the State has

rightly passed on 13-10-1978.

5. To appreciate the submissions made by the learned Advocate General there is a necessity to advert to the nature and scope of the rights of the

Municipality in public streets which come to vest in it under the Act. Generally, it must be stated that there could be properties owned by the

Municipality as such and in contrast there could also be properties vested in the Municipality for specified purposes.

6. The Municipalities are constituted under Statutes. The first-respondent was constituted under the Act. There is a power reserved for the State to

create self-governing units. It is only pursuant to this power, the first-respondent has been constituted. The first-respondent functions under the Act

and its powers, duties and liabilities are regulated by it. Certain provisions of the Act need advertence to ""Public Street"" stands defined in S. 3(2 1)

as follows : -

Public street :- "Public street" means any street, road, square, Court, alley, passage or riding-path (over which the public have a right of way)

whether a thoroughfare or not, and includes -

(a) the roadway over any public bridge or causeway;

(b) the footway attached to any such street, public bridge or causeway; and

(c) the drains attached to any such street, public bridge or causeway and land, whether covered or not, by any pavement, verandah, or other

structure, which lies on either side " of the roadway up to the boundaries of the adjacent property whether that, property is private property or

property belonging to the Government.

There is no dispute before us that the erection of the statue in the present case is in a public street and it is comprised in survey No. 1947/2 of

Kancheepuram Municipal limits and it is classified as town site poramboke and the land belongs to the State. S. 4 speaks about the creation of

Municipalities. S. 5 speaks about the abolition of Municipalities Sub-sec. (2) of S. 5 contemplates that on such abolition of Municipalities the

balance of the Municipal fund and all other property vested in the Municipal Council and all its liabilities shall stand transferred to the State

Government or to such local or other authority. or to such Officer or other person as they by order direct. S. 6 enumerates the Municipal

Authorities charged with carrying out the provisions of the Act and a Municipal Council is one such authority. S. 34 speaks about the power of the

State Government and Collector for purposes of control of the Municipality. S. 36 gives the power to the State Government to suspend or cancel

resolutions, etc., under the Act. Chap. V of the Act deals with powers of Municipal Authorities in respect of property, contracts and

establishments. S. 61 in that Chapter needs extraction since it speaks about vesting of public streets and appurtenances in Municipal Council and

the said provisions read as follows : -

61. Vesting of public streets and apurtenances in the Municipal Council : -

(4) All public streets in any Municipality, with the pavements, stones and other materials thereof, and all (works), materials and other things

provided for such streets, all sewers, drains, drainage works, tunnels and culverts, whether made at the cost of the Municipal fund or otherwise, in,

alongside or under any street, whether public or private, and all works, materials and things appertaining thereto shall vest in the Municipal council.

(2) The State Government may by notification withdraw any such street, sewer, drain, drainage works, tunnel or culvert from the control of the council.

S.61-A sets out the duty of Municipal Council in respect of public streets

withdrawn from its control and it also needs extraction as follows : -

6 1-A. Duty of municipal council in respect of public streets withdrawn from its control : -

Where any public street has been withdrawn from the. control of a municipal council under sub-sec. (2) of S. 61 and placed under the control of

the Highways Department of the State Government, it shall be the duty of the Municipal Council to provide at the cost of the Municipal fund, to

such extent as the State Government may by general or special order direct, -

(a) for the lighting, watering, scavenging, and drainage of such street;

(b) for the provision, maintenance and repair of the water-supply mains, drains and sewers in, alongside or under such street;

(c) for the provision, maintenance and repair of footways attached to such street;

Provided that where in the discharge of such duties, it is necessary for the council to open and break up the soil or pavement of any such street, the

council shall obtain the previous consent of such officer of the Highways Department, as the State Government may by general or special order

specify,

Provided further that in cases of emergency, the council, may, without such consent, open and break up the soil or pavement of any such street,

but shall, as far as practicable, restore such soil or pavement to the condition in which it was immediately before it was opened and, broken up;

and a report of the action so taken and the reasons therefore shall be sent forthwith to the officer specified under the foregoing

proviso.

S. 67 speaks about acquisition of immovable property for the Municipality and the vesting of it in the Municipal Council. Such is not the case here.

Further, it is not claimed here that the land over which the public street exists is owned by the Municipality. As we have already noted, the land is a

Town site Poramboke and it belongs to the State. We are called upon to decide this case only on this basis and not on any other basis, Chap. IX

deals with streets. S. 162 relates to maintenance and repair of public streets and it reads as follows : -

162. Maintenance and repair of streets : -

(1) The Municipal council shall, at the cost of the Municipal fund, cause the public

streets and bridges to be maintained and repaired and may from the same fund meet the cost of all improvements to the same which are necessary or expedient for the public safety or convenience.

(2) The council may entrust to any other local authority with the consent of such authority the maintenance of any public street or portion thereof, the cost of maintenance being provided by the council.

Section 163 speaks about the powers of Municipal authorities to lay out and make new public streets, etc. and it also can be extracted as follows

163. Powers of municipal authorities:-

1) The council may -

a) lay out and make new public streets;

b) construct bridges and sub-ways;

c) turn, divert or with the special sanction of the State Government permanently close any public street or part thereof;

d) widen, open, extend or otherwise improve any public street. ,

2) Reasonable compensation shall be paid to the owners and occupiers of any land or buildings which are required for or affected by any such purposes.

Section 164 is about the power of the Municipal Council to dispose of permanently closed streets and the language of the provision runs as

follows:-

164. Power to dispose of permanently closed streets : -

(1) When a public street is permanently closed under S. 163, the Municipal council may, with the sanction of the State Government dispose of the site or of so much thereof as is no longer required, in such manner as may be approved by the State Government, provided that due compensation is made to any person injured by such closing.

(2) In determining such compensation, allowance shall be made for any benefit accruing to the same premises or any adjacent premises belonging to the same owner from the constructions or improvement of any other "public street at or about the same time that the public street, on account of which the compensation is paid, is closed.

7. So far as public streets are concerned, they vest in the Municipal Council by

virtue of S. 61 of the Act. But there is a power reserved for the State Government to withdraw a public street from the control of the Municipal Council, as we could see from S. 61(2). If a public street is withdrawn from the control of a Municipal Council under sub-sec. (2) of S. 61 and placed under the control of the Highways Department or the State Government, the Municipal Council is cast with the duty to provide for its maintenance and repairs, etc. at the cost of the Municipal fund to such extent as the State Government may by general or special order direct. This has been laid down by S. 61A. Section 162(I) enjoins upon the Municipal Council to maintain and repair public streets at the cost of the Municipal fund. It also contemplates that the Municipal Council may from the same fund meet the cost of all improvements to the same, which are necessary or expedient for the public safety or convenience. Section 162(2) enables the Municipal Council to entrust to any other local authority with the consent of such authority the maintenance of any public street or portion thereof, the cost of maintenance being provided by the Municipal Council. Section 163 amongst other things enables the Municipal Council to lay out and make new public streets and to close down any public street with the special sanction of the State Government. Section 164 speaks about the power of disposal of the site or so much thereof of a permanently closed public street subject to the approval of the State Government. From none of these provisions, it is possible to spell out that the Municipal Council has got absolute rights in the public streets which get vested in it under the provisions of the Act for it to deal with it in any manner as it likes, without the concurrence and sanction of the State Government, the owner of the site and soil.

8. On the question of the nature of the right, title and interest vested in respect of public streets in a Municipal Council under the Madras District

Municipalities Act (Act IV of 1984) as amended by Act III of 1887 even as early as 1901 in *S. Sundaram Ayyar v. Municipal Council of Madura*

and the Secretary of State for India in Council. (1902) ILR 25 Mad 635 a case decided by Division Bench of this Court consisting of Benson and

Bhashyam Ayyangar JJ. Benson. J. summed up the position as follows : -

The whole current of authority both in England and in India shows that such vesting does not transfer to the Municipal authority the rights of the

owner in the site or soil over which the street exists. It does not own the soil from the centre of the earth *useque ad coelum* but it has the exclusive

right to manage and control the surface of the soil and so much of the soil below and of the space above the surface as is necessary to enable it to

adequately maintain the street as a street.

9. We consider it useful to refer to some of the English pronouncements in which the question as to the extent of property and the nature of the

right, title and interest possessed by public authorities in properties vested in⁷ them by analogous enactments were, considered and settled. Lord

Cranworth in *Richardson v. Robertson*, (1862) 6 LT 75, has observed:

..... the word "vest" is a word, at least of ambiguous import. *Prima facie* "vesting" in possession is the more natural meaning. The expressions

"investiture" "clothing" and whatever else be the explanation as to the origin of the word, point *prima facie* rather to the enjoyment than to the

obtaining of a right. But I am willing to accede to the argument that was pressed at the bar, that by long usage "vesting" ordinarily means the having

obtained an absolute and indefeasible right, as *contra-distinguished* from not having so obtained it. But it cannot be disputed that the word "vesting

may mean, and often does mean, that which is its primary etymological signification, namely, vesting in possession.

Willes J. in *Hinde v. Chorlton* (1866) 2 CP 104 : 36 U CP 79, observed:

.....there is a whole series of authorities in which words, which in terms vested the freehold in persons appointed to perform some public duties,

such as canal companies and boards of health, have been held, satisfied by giving to such persons the control over the soil which was necessary to

the carrying out the objects of the act without giving them the freehold.

In *Coverdale v. Charlton*, (1878) 4 QBD 104: 48 U QB 128, with reference to vesting of streets in the local Board, by force of S. 149 of the

Public Health Act, 1875, Bramwell, U, observed as follows:

I am disposed to hold that this "street" vests without any property, in the freehold of the soil. The word "vest" may have two meanings. It may

mean that a man acquires the property *useque ad coelum* and to the centre of the earth but I do not think that to be its meaning here. One

construction of the word "vest" here is that it gives the property in the soil, the freehold, the surface and all above and below it, but that would be

such a monstrous thing to say to be necessary for the proper control of the streets by the local board, that I cannot suppose it to mean such a thing.

Suppose the soil of the freehold passes, and consequently it carries the right to the land to an indefinite extent upwards, and to the centre of the

earth below the surface; I cannot make up my mind to say that is the meaning of the word "vest" in S. 149What then is the meaning of the

word "vest" in this action? The Legislature might have used the expression "transferred" or "conveyed", but they have used the word "vest". The

meaning I should like to put upon it is that the street vests in the local board qua street; not that any soil or any right to the soil or surface vests, but

that it vests qua streetThe meaning I put upon the word "vest" is, the space and the street itself, so far as it is ordinarily used in the way that

streets are used, shall vest in the local boardThat would show that "street" comprehends what we may call the surface, that is to say" not a

surface bit of no reasonable thickness, but a surface of such a thickness as the local board may require for the purposes of doing to the street that

which is necessary to it as a street and also of doing those things which commonly are done, in or under the streets; and to that extent they had a

property in it.

In *The Mayor of Tunbridge Wells v. Baird*, 1896 AC 434, with reference to vesting of certain streets in the Urban authorities under S-149 of the

Public Health Act, 1875, Lord Herschell observed:

My Lords, it seems to me that the vesting of the streets vests in the Urban Authority such property and such property only as is necessary for the

control, protection and maintenance of the street as a highway for public use.

The above principle was followed in and applied by the Court of Appeal to a case arising under S. 96 of the Metropolis Local Management Act,

1855 in *Battersea Vestry v. County of London, etc. Electric Lighting Company* (1899) 1 Ch 474 and Lord Morris in delivering the judgment of

their Lordships of the Privy Council stated:

Now it has been settled by repeated authorities, which were referred to by the learned Chief Justice, that the vesting of a street or public way

vests no property in the municipality, beyond the surface of the street and such portion as may be absolutely necessarily incidental to the repairing

and proper management of the street, but it does not vest the soil or the land in

them as owners. If that be so, the only claim they could make would be for the surface of the street, as being merely property vested in them qua street, and not as general property

In the case of *Finchley Electric Light Co. v. Finchley Urban District Council*. (1903) 1 Ch 437: 72 U Ch 297, adverting to the provisions of S. 149

of the Public Health Act, 1875, Romer LJ has made the following observations:

Now that section has received by this time an authoritative interpretation by a long series of cases, it was not by that section intended to vest in the

urban authority what I may call the full rights in fee over the street, as if that street was owned by an ordinary owner in fee having the fullest rights

both as to the soil below and as to the air above. It is settled that the section in question was only intended to vest in the Urban Authority so much

of the actual soil of the street as might be necessary for the control, protection, and maintenance of the street as a highway for public use. For that

proposition it is sufficient to refer to what was said by Lord Halsbury LC and By Lord Herschell in *Tunbridge Wells Corporation v. Baird*,

1896AC 434 (F).....That section has nothing to do with title, it is not considering a question of title. No matter what the title is of the person who

owns the street, the section is only considering how much of the street shall vest in the Urban authority

The Supreme Court in *Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust*, with reference to Ss.46, 47 and 48 of the U. P. Town

Improvement Act (8 of 1819) observed as follows:

Section 46 deals with the vesting in the Trust of properties like a street or a square as are not vested in a Municipality or Notified Area

Committee. These sections, as also Ss.47 and 48 make provision for compensation and for empowering the Trust to deal with such property

vested in it. The vesting of such property is only for the purpose of executing any improvement scheme which it has undertaken and not with a view

to clothing it with complete title. As will presently appear, the term "vesting" has a variety of meaning which has to be gathered from the context in

which it has been used. It may mean full ownership or only possession for a particular purpose, or clothing the authority with power to deal with

the property as the agent of another person or authority.

The Supreme Court after adverting to the English pronouncements further held

as follows:

That the word "vest" is a word of variable import is shown by provisions of Indian Statutes also. For example, S. 56 of the Provincial Insolvency

Act (5 of 1920) empowers the Court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of

the insolvent and further provides that "such property shall thereupon vest in such receiver". The property vests in the receiver for the purpose of

administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not

for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, Ss.

16 and 17 of the Land Acquisition Act (Act I of 1894), provide that the property so acquired, upon the happening of certain events, shall "vest

absolutely in the Government free from all encumbrances". In the cases contemplated by Ss. 16 and 17 the property acquired becomes the

property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the

property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation, meaning in all

cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a

limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act,

particularly Ss. 45 to 49 and 54 and 54A when they speak of a certain building or street or square or other land vesting in a municipality or other

local body or in a trust, do not necessarily mean that ownership has passed to, any of them.

Not only the ratio of the pronouncements referred to above, but also the provisions of the Act themselves clearly demonstrate that the vesting of

public streets under it in a Municipal Council is not to the effect of conferring absolute rights thereof in the Municipal Council. The vesting is only

for a limited extent and for a specified purpose of maintenance, repairs and improvements of such streets. What gets vested in the Municipal

Council in the public streets under the Act is not absolute rights in the land over which such streets are laid, but the street qua street. It is not

general property right that gets vested in the Municipal Council, for it to deal with as absolute owner thereof.

10. This is the basic proposition upon which, the further question of the power of the Municipal Council to erect a statue in a public street has to be

examined. The law in this regard is also a well settled one that a statutory body like a Municipality, acting under a Statute, must keep strictly within

its statutory powers. In *The Municipal Council, Kumbakonam v. Abbahs Sahib* ILR(1913) Mad 113, Ayling and Spencer JJ. held that the powers

of a corporation must be strictly construed and it is hardly too much to say that what is not permitted to such a body is forbidden. In *Chhaganlal*

Sakerlal Vs. The Municipality of Thana, Baker and Nanavati, JJ. adverted to the leading case on the point in *Young & Co. v. Mayor C. of Royal*

Leamington Spa (1883) 8 AC 517 and held,

statutory body like a Municipality acting under a statute must keep strictly within its statutory powers.

In Halsbury's Laws of England - Fourth Edition - Volume 9 in para 1326 the powers and liabilities of statutory and non-statutory corporation

stand defined in the following terms:

Statutory and non-statutory Corporation:

Corporations may be either statutory or nonstatutory, and a fundamental distinction exists between the powers and liabilities of the two classes.

Statutory corporations have such rights and can do such acts only as are authorised directly or indirectly by the statutes creating them; non-

statutory corporations, speaking generally, can do everything that an ordinary individual can do unless restricted directly or indirectly by statute.

Coming to statutory corporations, para 1333 runs as follows : -

Statutory corporations. The powers of a Corporation created by statute are limited and circumscribed by the statutes which regulate it, and

extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its incorporation,

or may be fairly regarded as incidental to, or consequential upon, those things which the legislature has authorised. What the statute does not

expressly or impliedly authorise is to be taken to be prohibited.

11. On an analysis of the provisions of the Act, we are not able to say that erection of a statue in a public street could be brought in within the

purview of maintenance repairs and improvements of a public street, so as to clothe a power for the first-respondent to make a decision of its own

to that effect without reference to and without obtaining the sanction of the owner of the site and soil, namely the State the second respondent. It is

not the stand of the petitioner that such a statutory provision exists, clothing the Municipal council to erect or permit erection of statues in public

streets vesting in it under the Act. The ownership of the site and soil continues with the State and the first-respondent has got only the right to

maintain the surface of the soil as a public street and manage and control the same as such only. As pointed out by the Bench in *S. Sundaram*

Ayyar v. The Municipal Council of Madras and the Secretary of State for India in Council ILR(1902) Mad 635 the Municipal Council does not

own the soil from the centre of the earth *useque ad coelum*, and it has only the right to manage and control the surface of the soil and so much of

the soil below and of the space above the surface as is necessary to enable it to adequately maintain the street as a street. Maintenance of the

street must be as a street. Repairs and improvements must be only repairs and improvements to street as such. Certainly, it will not extend to

erecting a statue in a public street by the Municipal Council by itself or through some other agency and in that contingency the sovereign owner the

State must be consulted and its sanction must be obtained. In the absence, of any statutory provision enabling a Municipal Council either directly or

indirectly to erect statues in public streets vesting in it under the Act, the rule "what the statute does not expressly or impliedly authorise is to be

taken to be prohibited" must be applied. Any indulgence by the Municipal Council in this regard must be subject to the right of the State: the owner

of the site or the soil, over which the street exists.

12. Then the question is how could the proceedings of the first respondent would. preclude the State the second respondent from asserting its right

of ownership in the site or soil over which the public street exists. Such proceedings certainly cannot bind the State with reference to its rights as a

owner of the site, and the principle of promissory estoppel could not be put against the State. It has been already noted that the State as such

never gave sanction or approval for the erection of the statue at the place concerned and the petitioner could after all rest its claim on the

proceedings of the first-respondent alone, which, as pointed out above, cannot bind the State the second respondent, with reference to its rights as

the owner of the site, over which the public street exists.

13. We find that before the learned Judge reliance was placed on S. 36 of the Act to state that the power reserved for the State Government to

cancel the resolutions of the Municipal Council was not invoked and hence the resolutions must stand to be implemented. That is a different

contingency with which we are not at all concerned on the facts of the present case. Once it is admitted that the State is the sovereign owner of the

site or the soil over which the public street exists and the Municipal Council has no right to indulge in erection of a statue either by itself or through

any agency in such a public street, the resolutions of the Municipal Council in the absence of the approval and sanction for its action by the State

Government have no sanctity in the eye of law and they are there to be ignored by the State as lacking in jurisdiction. There is no need to resort to

the" power reserved under S. 36 of the Act to cancel such a resolution. What has been done by the Municipal Council is one, which it is not

authorised either directly or indirectly by the Statute to do and if at all it could gain sanctity only if the ultimate approval or sanction of the State is

given. It is only in this context on behalf of the State, reliance was placed on certain Government Orders G.O. Ms. No. 1915, LA. dated 2-12-

1960 and G.O.Ms., No. 560, P.W.D. dt. 11-4-1977. There is a clear delineation that the State is having its power of say with regard to erection

of statues at public places. The vesting of public streets in the Municipal Council is for specified purposes and the Municipal Council must act

within the scope of such vesting and the purposes for which the vesting has taken place and viewed from this angle the withdrawal of the vesting

contemplated under S. 61(2) of the Act need not be resorted to when the Municipal Council acts outside the scope of such vesting. For all these

reasons, we are not able to subscribe or support to the reasonings advanced before the learned Judge and accepted by him for impugning the

proceedings of the second-respondent when it withheld its sanction for the erection of the statue at the place concerned. The discussion of the legal

position which has proceeded obliges us to interfere in Writ Appeal and accordingly the Writ Appeal is allowed. The order of the learned Judge in

the Writ Petition is set aside and the Writ Petition will stand dismissed. We make no order as to costs both in the Writ Petition and in the Writ

Appeal.

We are told that immediately after the order was pronounced by the learned single Judge in the writ petition on 19-2-1980, the statue, as such, has

been installed in the pedestal already erected and it is there since then. We have also noted that all the public authorities have expressed the view

that the erection of the statue in the place concerned is unobjectionable. We are also told that no objection has been heard from any section of the

public after the erection of the statue. The second respondent in the writ petition the State and the first respondent therein the Municipality, may

take note of these features and consider the question of permitting the statue already erected to be there in the place, notwithstanding our judgment

pronounced today.

14. Appeal allowed.