
(2016) 04 MAD CK 0172

In the Madras High Court

Case No : Second Appeal (MD)No. 189 of 2007 and M.P(MD)No. 1 of 2015

S. Balakrishnan

APPELLANT

Vs

Virudhunagar Municipality

RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 179, 3(21)

Citation : (2016) 5 CTC 661 : (2016) 3 MadWN(Civil) 32 : (2016) 6 MLJ 657

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : Mr. M.S. Sureshkumar, Advocate, for the Appellants; Mr.Pon. Senthilkumaran, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

R. Mahadevan, J.—This Second Appeal is directed as against the judgment and decree dated 20.12.2005 passed in A.S.No. 25 of 2004 on the file of the Subordinate Court, Virudhunagar, in reversing the judgment and decree dated 23.12.2003 passed in O.S.No. 279 of 2000, on the file of the District Munsif Court, Virudhunagar.

2. For the sake of convenience, the parties are referred to, according to their litigative status before the trial Court.

3. It is the case of the plaintiffs that they have inherited about 3.24 acres of land in ward No. 18, Survey No. 834 and 835. A lay out was formed in the year 1960, by leaving necessary space for the AA road proposed by the defendant Municipality. On 22.11.1960, the defendant purchased 12,807 square feet from the plaintiffs in Survey Nos. 833 and 834 and the AA road was laid on that land. Further, the defendant Municipality acquired the additional land through exchange deeds in 1964, because the proposed A1A1 road was to be laid to link with Aruppukottai road from the existing AA road. In those circumstances, the defendant Municipality notified the acquisition of land for the proposed A1A1 road

and sought the objections from public. It is the stand of the plaintiffs that since the consent of three fourths of the land owners was not obtained for the proposed acquisition, they had filed their objections on 31.07.2000, however, the same was rejected by the defendant Municipality. Hence, the plaintiffs filed the suit for permanent injunction, besides seeking a direction to the defendant Municipality to pay compensation, if they acquired the lands for the road project by way of a mandatory injunction.

4. In the written statement filed by the defendant, it is, inter alia, averred that the plaintiffs have to establish that they had developed a lay out and sold plots, wherein A1A1 road was in use by the public for more than 20 years. Based on the representations from the public, the defendant Municipality decided to notify the said road as a public road, in which, objections from the public were invited and compensation for the proposed acquisition was also decided to be given, however, the plaintiffs ignored the same. Therefore, the defendant Municipality prayed for dismissal of the suit.

5. Before the trial Court, P.W.1 was examined and Exs.P.1 to P.13 were marked on the side of the plaintiffs. On the side of the defendant Municipality, D.W.1 was examined and Exs.D.1 to D.19 were marked.

6. The trial Court framed four issues and on consideration of the pleadings and evidence, the trial Court partly decreed the suit.

7. Aggrieved by the same, the plaintiffs filed the appeal in A.S.No. 25 of 2004. The first appellate Court dismissed the appeal while setting aside the judgment and decree of the trial Court in partly decreeing the suit.

8. Challenging the judgment and decree passed by the first appellate Court, the plaintiffs have preferred the present second appeal.

9. At the time of admitting this Second Appeal, this Court framed the following substantial questions of law:

"(i) Whether the first appellate Court is right in coming to the conclusion that the plaintiffs are not the owners of the property despite of several documents filed on the side of the plaintiffs?

(ii) Whether the action of the defendant is illegal due to the absence of any land acquisition proceedings?"

10. The learned Counsel for the appellants/plaintiffs, drawing the attention of this Court to the judgments of both the Courts below, has contended thus:

10.1. The Courts below failed to appreciate the fact that the appellants/plaintiffs are the owners of the suit property and in such an event, they have to be compensated by the respondent/defendant Municipality.

10.2. The first appellate Court ought to have framed necessary issues before passing the impugned judgment and thereby, erred in dismissing the appeal.

10.3. The alleged scheme developed by the respondent/defendant Municipality is barred by limitation as per the provisions of the Tamil Nadu Town and Country Planning Act, 1971.

10.4. Though the trial Court granted the relief of injunction only to the extent of 30 feet, the appellants/plaintiffs filed the appeal before the first appellate Court seeking the relief to the entire extent of 60 feet of the road, however, the first appellate Court, without analysing the evidence adduced by the appellants/plaintiffs, rejected their claim and dismissed the suit itself, which warrants interference by this Court in exercise of Section 100 of the Code of Civil Procedure.

10.5. The Courts below ought to have rejected the evidence adduced by the respondent/defendant Municipality by way of Exs.B.2 to B.17, since there is no authenticity to rely the same, but, the Courts below placed reliance on them, which is not tenable in law.

10.6. The respondent/defendant cannot plead that they are not liable to pay compensation to the appellants/plaintiffs, for the reason that they have already admitted the title of the appellants/plaintiffs.

10.7. Regarding the principle of "estoppel", the learned Counsel for the appellants relied on the following decisions:

(i) Century Spinning & Manufacturing Co. Ltd., and another v. The Ulhasnagar Municipal Council and another reported in AIR 1971 Supreme Court 1021, wherein, it is held as follows:

"10. There is undoubtedly a clear distinction between a representation of an existing fact and a representation that something will be done in future. The former may, if it amounts to a representation as to some fact alleged at the time to be actually in existence, raise an estoppel, if another person alters his position relying upon that representation. A representation that something will be done in the future may result in a contract, if another person to whom it is addressed acts upon it. A representation that something will be done in future is not a representation that it is true when made. But between a representation of a fact which is untrue and a representation-express or implied - to do something in future, there is no clear antithesis. A representation that something will be done in future may involve an existing intention to act in future in the manner represented. If the representation is acted upon by another person it may, unless the statute governing the person making the representation provides otherwise, result in an agreement enforceable at law; if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting therefor but the law is not powerless to raise in appropriate cases an equity against him to compel performance of the obligation arising out of his representation.

11. Public bodies are as much bound as private individuals to carry out

representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced *ex contractu* by a person who acts upon the promise:

when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation if the contract be not in that form may be enforced against it in appropriate cases in equity. "In *Union of India & Ors. v. M/s. Indo Afghan Agencies Ltd.* (1968) 2 SCR 366 = AIR 1968 SC 718, this Court held that the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the Government. This Court held that the following observations made by Denning, J., in *Robertson v. Minister of Pensions* (1949) 1 KB 227 applied in India.

"The Crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to better its future executive action. We are in this case not concerned to deal with the question whether Denning, L.J., was right in extending the rule to a different class of cases as in *Falmouth Boat Construction Co. Ltd. v. Howell*, (1950) 1 All ER 538, where he observed at page 542 :

"Whenever Government officers in their dealings with a subject take on themselves to assume authority in a matter with which the subject is concerned, he is entitled to rely on their having the authority which they assume. He does not know, and cannot be expected to know, the limits of their authority, and he ought not to suffer if they exceed it."

It may be sufficient to observe that in appeal from that judgment (*Howell v. Falmouth Boat Construction Co. Ltd.*) Lord Simonds observed after referring to the observations of Denning, L.J.

"The illegality of an act is the same whether the action has been misled by an assumption of authority on the part of a Government officer however - high or low in the hierarchy..... The question is whether the character of an act done in force of a statutory prohibition is affected by the fact that it had been induced by a misleading assumption of authority. In my opinion the answer is clearly : No."

12. If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice."

(ii) *Dr. Ashok Kumar Maheshwari v. State of U.P and another* reported in (1998) 2 Supreme Court Cases 502, wherein it is held thus:

"8. Doctrine of "Promissory Estoppel" has been evolved by the courts, on the principles of equity, to avoid injustice.

9. "Estoppel" in Black's Law Dictionary, is indicated to mean that a party is prevented by his own acts from claiming a right to the detriment of other party who was entitled to rely on such conduct and has acted accordingly. Section 115 of the Indian Evidence Act is also, more or less, couched in a language which conveys the same expression.

10. "Promissory Estoppel" is defined as in Black's Law Dictionary as: "that which arises when there is a promise which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of promisee, and which does induce such action or forbearance, and such promise is binding if injustice can be avoided only by enforcement of promise."

11. These definitions in Black's Law Dictionary which are based on decided cases, indicate that before that Rule of "Promissory Estoppel" can be invoked, it has to be shown that there was a declaration or promise made which induced the party to whom the promise was made to alter its position to its disadvantage.

12. In this backdrop, let us travel a little distance into the past to understand the evolution of the Doctrine of "Promissory Estoppel."

13. Dixon, J., an Australian Jurist, in *Grundt v. The Great Boulder Pty. Gold Mines Ltd.* (1938) 59 CLR 641, laid down as under :-

"It is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to misunderstanding, it does not bring out clearly the basal purpose to the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment harm from which the law seeks to give protection is that which would flow from the change of position if the assumption were deserted that led to it."

14. The principle, set out above, was reiterated by Lord Denning in *Central London Properties Ltd. v. High Trees House Ltd.* 1947 KB 130, when he stated as under :-

"A promise intended to be binding, intended to be acted upon, and in fact acted upon is binding...."

15. Lord Denning approved the decision of Dixon, J.(supra) in *Central Newbury Car Auctions Ltd. v. Unity Finance Ltd.* (1956) 3 ALL ER 905. Apart from propounding the above principle on the judicial side, Lord Denning wrote out an article, a classic in legal literature, on "Recent Developments in the Doctrine of Consideration", *Modern Law Review*, Vol. 15, in which he expressed as under :-

"A man should keep his word. All the more so when the promise is not a bare

promise but is made with the intention that the other party should act upon it. Just as a contract is different from tort and from estoppel, so also in the sphere now under discussion promises may give rise to a different equity from other conduct. The difference may lie in the necessity of showing "detriment". Where one party deliberately promises to waive, modify or discharge his strict legal rights, intending the other party to act on the faith of promise, and the other party actually does act on it, then it is contrary, not only to equity but also to good faith, to allow the promisor to go back on his promise. It should not be necessary for the other party to show that he acted to his detriment in reliance on the promise. It should be sufficient that he acted on it."

16. So far as this Court is concerned, it invoked the doctrine in *Union of India v. Anglo-Afghan Agencies & Ors.* AIR 1968 SC 718 = (1968) 2 SCR 366, in which it was, inter alia, laid down that even though the case would not fall within the terms of Section 115 of the Evidence Act which enacts the Rule of Estoppel, it would still be open to a party who had acted on a representation made by the Government to claim that the Government should be bound to carry out the promise made by it even though the promise was not recorded in the form of a formal contract as required by Article 299 of the Constitution. To the same effect are the decisions in *Century Spinning Co. v. Ulhasnagar Municipal Council*, AIR 1971 SC 1021 and *Radhakrishna Agarwal v. State of Bihar*, AIR 1977 SC 1496. In *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.* (1979) 2 SCR 641 = 1979 (2) SCC 409 = AIR 1979 SC 621, while reiterating the above principles and quoting with approval the passage of Dixon, J., extracted above, it was observed as under :-

"We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which could result if the promisor were to recede from his promise then detriment would certainly come in as a necessary ingredient, The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisees, if the promisor were allowed to go back on the promise."

(iii) *Mahavir v. Lakhmi* and another reported in 2007(2) CTC 574, wherein it is held as follows:

"8. A perusal of the impugned judgment passed by the High Court does not show that any substantial question of law has been formulated or that the second appeal was heard on the question, if any, so formulated. That being so, the judgment cannot be maintained.

9. In *Ishwar Dass Jain v. Sohan Lal* (2000 (1) CTC 359 = 2000 (1) SCC 434) this Court in para 10, has stated thus:

"10. Now under Section 100 CPC, after the 1976 Amendment, it is essential for the High Court to formulate a substantial question of law and it is not permissible

to reverse the judgment of the first appellate Court without doing so."

10. Yet again in *Roop Singh v. Ram Singh* (2000 (3) SCC 708) this Court has expressed that the jurisdiction of a High Court is confined to appeals involving substantial question of law. Para 7 of the said judgment reads:

"7. It is to be reiterated that under section 100 CPC jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction under section 100 CPC. That apart, at the time of disposing of the matter the High Court did not even notice the question of law formulated by it at the time of admission of the second appeal as there is no reference of it in the impugned judgment. Further, the fact findings courts after appreciating the evidence held that the defendant entered into the possession of the premises as a batai, that is to say, as a tenant and his possession was permissive and there was no pleading or proof as to when it became adverse and hostile. These findings recorded by the two courts below were based on proper appreciation of evidence and the material on record and there was no perversity, illegality or irregularity in those findings. If the defendant got the possession of suit land as a lessee or under a batai agreement then from the permissive possession it is for him to establish by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of the real owner. Mere possession for a long time does not result in converting permissive possession into adverse possession (*Thakur Kishan Singh v. Arvind Kumar* (1994 (6) SCC 591). Hence the High Court ought not to have interfered with the findings of fact recorded by both the courts below."

11. The position has been reiterated in *Kanahaiyalal and Ors. v. Anupkumar and Ors.* (2002 (5) CTC 591 = 2003 (1) SCC 430) and *Ram Sakhi Devi (Smt.) v. Chhatra Devi and Others* (2005 (3) CTC 577 : 2005 (6) SCC 181).

12. The matter is remitted to the High Court, which shall formulate substantial questions of law, if any, and then deal with the matter. Needless to say if there is/are no question(s) of law, the appeal has to be dismissed. We express no opinion in that regard."

10.8. To contend that as per deeming provision of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, the lands are deemed to have been released from the acquisition, if no steps have been taken by the authorities concerned as provided in the Act, either to acquire the land or make publication within three years from the date of initial notification, the learned Counsel for the appellants placed reliance on the decision of this Court in *V. Nagamani and another v. The Director of Town and Country Planning, Chennai and others* reported in 2010 Writ L.R. 96, wherein it is observed as under:

"10. As per Section 36 of the Act, any land required or reserved or designated in the regional plan, master plan, detailed development plan or a new town

development plan, shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act and may be acquired under the said Act and it is further provided under Section 37(2) of the Act no such declaration in respect of the lands covered under Sections 26 and 27 of the Act, shall be made after the expiry of three years from the date of notification and as per Section 38, if within three years from the date of publication of the notice in the Tamil Nadu Government Gazette under Section 26 or 27 no declaration as per Section 37(2) shall be published in respect of any land reserved of any land reserved, allotted or designated for any purpose, such land shall be deemed to be released from such reservation, allotment or designation.

11. Mr.M. Ajmal Khan, the learned counsel appearing for the petitioners submitted that admittedly, initial notice was made in the year 1991 and as no action has been taken within three years, the Government has to release the land from the acquisition as per the Section 38 of the Act. Mr.M. Ajmal Khan, the learned counsel appearing for the petitioners also relied upon two judgments reported in 2008 (2) MLJ 184 and 2008 (8) MLJ 994 in support of his contention. In the reported judgment rendered in 2008 (2) MLJ 994 the learned Judge after considering the various provisions of the Tamil Nadu Town and Country Planning Act, 1971, set aside the impugned order, by invoking the provisions of 38 of the Tamil Nadu Town and Country Planning Act. In that judgment, the learned Judge has held in para 26 as follows:

"Considering Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 which deems the release of property in the event of not acquiring within the stipulated time of three years as per proviso to Section 37(2), based on the overall scheme and object of the Act and also on the factual circumstances, when the authority, viz., the Trichy Corporation has categorically decided that due to want of funds, there is no proposal to acquire the same, there is no difficulty to come to the conclusion that the deemed provisions comes into effect automatically."

Therefore, having regard to the fact that no steps have been taken by the respondents as provided in that Act, either to acquire the land or make publication within three years from the date of initial notification. As per the deeming provision of Section 38, the lands are deemed to have been released from the acquisition and hence, the respondent cannot reject the approval on the ground that the land has been included in the 100 Feet AA Road Scheme."

10.9. Insofar as declaration of any street as public street as per the provisions of the Tamil Nadu District Municipalities Act, the learned Counsel for the appellants relied on the decision of this Court in Karur Municipality v. Gousunnissa Bibi and others reported in 2007 (1) TNCJ 591 (Mad) (MB), wherein it is laid down thus:

"10. As per Section 179 of the Tamil Nadu District Municipalities Act, where any street has been levelled, paved, metalled etc., shall be declared as public street. Section 179 of the Act reads as follows:

"179. Right of owners to require street to be declared public.- If any street has been levelled, paved, metalled, flagged, channeled, drained, conserved and lighted under the provisions of section 178, such street shall, on the requisition of not less than three-fourths of the owners thereof, be declared a public street."

11. The Municipality has issued the declaration under Section 179 of the Tamil Nadu District Municipalities Act, at the instance of the majority of owners of house in respect of the East-West pathway as the public street. As per Section 180-A of the Act, all streets vested in or to be vested or maintained by Municipal Council shall be open to the public. Section 180-A, Public street open to all.- All streets vested in or to be vested in or maintained by a municipal council shall be open to persons of whatever caste or creed.

12. As per Section 179 of the Act, when the road is declared by the Municipality as the public street, whatever rights, which the owner had, earlier to the notification has become extinguished.

13. The lower-Appellate Court proceeded on an erroneous footing that the Municipality ought to have initiated acquisition proceedings for forming the road. When the road was already in existence used by the public and on the representation of the public, the road was declared as the public street, the question of initiating acquisition proceedings does not arise. The lower Appellate Court has committed a serious and substantial error of law in interfering with the findings of the trial Court and erred in reversing the judgment of the Trial Court as the road has been in existence for more than 30 years and the road has also been declared as the public street. Plaintiff can not put any fence obstructing the public pathway. The plaintiff is not entitled to the equitable relief of declaration and injunction. The judgment of the lower Appellate Court is set aside restoring the judgment and decree of the trial Court."

10.10. Regarding of the issue of compensation, the learned Counsel for the appellants placed reliance on the unreported judgment of this Court in K.P.S.Velaih Nadar v. The District Collector [W.P.No.8740 of 2005, decided on 01.09.2006] and in paragraphs 15 to 18, it is held as follows:

"15. On the other hand, the facts and circumstances of this case show that as regards the ownership of the property comprised in Survey No. 147/7C, absolutely no dispute has been raised by the respondents that the same does not belong to the petitioner. The only contention raised on behalf of the respondents is that the same has been used by the public for a long time. If that is so, it is only for the respondent to approach the appropriate forum and that does not mean that the citizen who is admittedly the owner of the property should be driven to the Civil Court, especially in the circumstance that admittedly no due process of law has been followed for the purpose of permitting the public to use the property belonging to the petitioner as a public path way. This is more so in the circumstance that it is not even the case of the respondent that the petitioner has voluntarily given up the said portion for being used by the public

as public road and there is no tangible record from the respondents who are public authorities to show that the said property has been gifted away either by the petitioner or by any person authorised by the petitioner on his behalf.

16. In view of the said facts and circumstances of the case, I am of the considered view that the conduct of the respondent in permitting the property comprised in Survey No. 147/7C to the extent of 59 cents to be used by public as road is not merely unauthorised, but it has also to be taken as an infringement of the legal right of a citizen in the most improper and illegal manner. The authorities can exercise their powers only in a manner known to law either by acquisition by following due process under relevant laws relating to acquisition or by voluntary gifting of the property by the owner. In the absence either of these things, I have no hesitation to come to the conclusion that the writ petitioner is entitled for the relief claimed. Accordingly, the writ petition stands allowed.

17. There is one another circumstances in this case, viz., the communication of the third respondent namely the Commissioner, Panchayat Union, Dindigul dated 20.07.2005. The third respondent has chosen to specifically state in the counter affidavit in the following terms namely:

"During the year 1983 itself this path way was used by, the general public covering the patta lands of various house site plots owners and this writ petitioner's patta land bearing the Survey No. 147/7C is also one among them."

18. However, the 3rd respondent has chosen to state in the said proceedings dated 20.07.2005 that the said road belongs to the State Highways Department, and the petitioner was directed to approach the fourth respondent which is a clear contradictory stand. Therefore, the respondents 1 to 4 are directed to take appropriate action for payment of compensation to the petitioner in respect of the property of the petitioner to the extent of 59 cents in Survey No. 147/7C, Balakrishnapuram Village, Dindigul Taluk, Dindigul District and such action shall be taken expeditiously. No costs. Hence the writ petition stands allowed in the above terms."

11. Per contra, the learned Counsel for the respondent/defendant Municipality submitted that the first appellate Court, on appreciation of oral and documentary evidence in depth, found that the appellants/plaintiffs are not entitled to the relief of injunction as sought by them. Further, he submitted that the first appellate Court has given a cogent finding that when no objections were raised by anyone including the appellants/plaintiffs after the publication of the notification, the case of the appellants/plaintiffs would fail and accordingly, rejected their plea, by affirming the stand of the respondent/defendant Municipality. The first appellate Court has clearly found that the contention of the appellants/plaintiff that though the said 60 feet road was proposed in the year 1960 and even after purchasing the same for the purpose of development scheme, once the scheme got delayed, the respondent/defendant Municipality has no right to notify afresh for A1A1 road, is unsustainable and therefore, he

prayed for the dismissal of the present second appeal.

12. I have considered the rival submissions and perused the entire materials available on record, including the original records.

13. The prime contention raised by the appellants/plaintiffs is that the respondent /defendant Municipality did not obtain any consent of three-fourths of the owners of land before the issuance of the notification for the acquisition of land to lay a road in question. However, the first appellate Court has rightly held that the said plea raised by the appellants/plaintiffs was not supported by any material evidence, as no objections were received by the respondent/defendant Municipality and in such circumstances, they cannot plead for the relief of injunction. Though the trial Court found that the said contention of the respondent/defendant Municipality has to be established by them and in the absence of the same, the appellants/plaintiffs are entitled to the relief of injunction to an extent of 30 feet, the first appellate Court, on appreciation of evidence on record, has rightly held that when no objections were received on the side of the appellants/plaintiffs, the case of the respondent/defendant Municipality cannot be disbelieved.

14. Placing heavy reliance on the provisions of Section 175 of the Tamil Nadu District Municipalities Act, 1920, the learned Counsel for the respondent/defendant Municipality contended that the appellants/plaintiffs cannot seek for compensation, as they have an obligation to make a street when disposing of the land as building sites and thus, the first appellate Court rightly rejected their claim, which, in the opinion of this Court, is tenable.

15. Moreover, the respondent/defendant Municipality took a stand that the claim of the appellants/plaintiffs for compensation is liable to be brushed aside for the simple reason that there is no whisper about the compensation either in the plaint or in the evidence adduced by them. If that be so, the appellants/plaintiffs are not justified in seeking the suit relief and thus, the first appellate Court rightly dismissed the appeal.

16. It is also the contention of the respondent/defendant Municipality that only after obtaining the consent of three-fourths of the owners of the suit properties, they have declared the road in question as "public street" as per Sections 3(21) and 179 of the Tamil Nadu District Municipalities Act, 1920 and therefore, the plea of the appellants/plaintiffs that no objections were raised for acquisition of the lands, fails.

17. Further, the respondent/defendant stated that they have followed the procedures laid down under the Tamil Nadu Town and Country Planning Act, 1971, before proceeding with the land acquisition proceedings and hence, no question of violation of provisions of the law would arise.

18. Whereas the appellants/plaintiffs assailed the judgment of the trial Court stating that no issues were framed relating to the compensation, however, the

first appellate Court has set aside the same. While partly decreeing the suit filed by the appellants/plaintiffs, the trial Court gave a finding that the appellants/plaintiffs are the owners of the suit properties, but, the first appellate Court, without considering any evidence adduced by them, reversed the said finding and dismissed the appeal, which, is liable to be set aside.

19. However, this Court, on consideration of the entire pleadings and materials available on record, including oral and documentary evidence adduced on either side is of the view that the first appellate Court is right in rejecting the claim of the appellants/plaintiffs, for the reason that though the appellants/plaintiffs disputed about the consent given by three-fourths of the land owners, they never established the same in the manner known to law. Besides, they did not plead for any compensation in the event of the acquisition of their lands by the respondent/ defendant Municipality. In the absence of the same, the first appellate Court has rightly held that they are not entitled to the suit claim and dismissed the suit itself, while setting aside the judgment and decree of the trial Court.

20. Accordingly, this Court holds that the judgment of the first appellate Court is found to be perfectly correct and the said finding cannot be termed to be erroneous either in law or on facts requiring interference in this second appeal. Thus, both the substantial questions of law are answered as against the appellants/plaintiffs.

21. In fine, this Second Appeal fails and the same is dismissed, confirming the judgment and decree of the first appellate Court. However, it is open to the appellants/plaintiffs to work out their remedy, if any, to seek compensation for the acquisition of their lands, before the appropriate forum, in accordance with law. Consequently, the connected miscellaneous petition is dismissed. There shall be no order as to costs.