

---

**(2013) 03 MAD CK 0013**

**In the Madras High Court**

**Case No : S.A. No's. 579 and 580 of 2005**

V.N.R. Nagar Welfare Association

APPELLANT

Vs

K.K. Babu and Another

RESPONDENT

---

**Date of Decision : 26-03-2013**

**Acts Referred:**

**Citation : (2013) 5 MLJ 503**

**Hon'ble Judges : M. Vijayaraghavan, J**

**Bench : Single Bench**

**Advocate : N.S. Nandakumar, for the Appellant; M. Venkatachalapathy, for Yaswant and N. Subbarayalu, for the Respondent**

**Final Decision : Allowed**

---

## **Judgement**

M. Vijayaraghavan, J.—These two distinct appeals are arising out of a common judgment and decree passed in A.S. No. 36 of 2003 and

A.S. No. 37 of 2003 in allowing A.S. No. 36 of 2003 under a common Judgment dated 30.6.2004 and thereby setting aside the judgment and

decree passed in O.S. No. 831 of 1995 under a common judgment dated 12.1.2002 and as a result dismissing the suit, as well as allowing the

appeal in A.S. No. 37 of 2003 and thereby setting aside the judgment and decree under a common judgment, dated 12.11.2002 and as a result

decreeing the suit O.S. No. 913 of 1995. For the better appreciation of these two appeals, the brief averments of the plaint as well as the written

statement in O.S. No. 831 of 1995 are as follows:

2. The brief averments of the amended plaint in O.S. No. 831 of 1995 are as follows:

The plaintiff is a registered association formed by the residents of V.N.R. Layout

comprised S.F. Nos. 67/1B, 67/2B, 71/2B and 71/3B in

Vadavalli village, Coimbatore south village for the purpose of maintenance and up keeping of the layout. The first defendant is a total stranger and

third party to the layout had colluded with promoters of the VNR Nagar Layout for the purpose of illegal occupation and unlawful utilisation of the

"Reserved Site" left in the layout. The association is also intended for the protection and maintenance of the Reserved site left for children's park

and nursery school in the lay out. As per the approved plan of the lay out two reserved sites left for the purpose of forming a children's park and

for construction of a nursery school in S.F. Nos. 71/2B and 71/3B in the layout. Taking advantage of the fact that the Reserved sites are being

kept vacant, the first defendant in collusion with the promoters of the layout is now attempting to occupy a portion of the reserved sites set out for

the purposed nursery school i.e. the suit property illegally without any valid right and title. The 1st defendant is also making hurried attempts to

create and fabricate documents of title in his favour. On 9.5.1995, the first defendant and his henchmen came to the suit property and started to

store building materials like stones, soil and sand and also start digging earth for putting up basement in the portion of the suit property. The plaintiff

association and its members prevented the illegal and high handed act of the first defendant and his henchmen. The residents of the plaintiff's

association apprehends that the first defendant may come again and may continue his illegal and unlawful construction work. After filing the suit, the

first defendant has also filed a suit in O.S. No. 913 of 1995 for permanent injunction on vexatious grounds. The Executive officer, Vadavalli Town

panchayat had issued a letter to the first defendant directing him to demolish the construction put up by him illegally in the reserved site. The plaintiff

prays for a decree and judgment for permanent injunction restraining the 1st defendant, his men, servants, family members, agents or anybody on

his behalf in putting up construction in the suit property and with costs.

3. The brief averments of the written statement in O.S. No. 831 of 1995 filed by the first defendant are as follows:

The plaintiff is not a proper person to represent the entire residents and the suit filed is to blackmail the defendant. This defendant is not a stranger

and infact the defendant has paid a sum of Rs. 60,000/- and purchased the

property as early as on 23.4.1993 and he has to arrange money for the construction and also the approval of the Executive Officer of the Vadavalli Town Panchayat. This defendant is a innocent purchaser and the question of collusion does not arise at all. Only after due process, this defendant has started the house construction. The plaintiff has no locus-standi to prevent the construction work of the defendant which is well approved by the authority and the cause of action is not correct and the suit ought to have been filed for the relief of declaration of the site in question and filing of the suit for bare injunction without declaratory relief is not sustainable and prays to dismiss the suit with costs.

4. The brief averments of the written statement of the second defendant filed in O.S. No. 831 of 1995 are as follows:

No relief is prayed for as against the 2nd defendant and hence the 2nd defendant is unnecessary party and hence the suit is bad for misjoinder and

liable to be dismissed. While so, One Kaliappan, Palanisamy and Others joined together and submitted a plan for approval with the Executive

Officer of the Vadavalli Town Panchayat on 12.12.1981 and the same was submitted to the Deputy Director of Town and country planning,

Coimbatore for approval and the same was approved on 27.4.1981 by his letter No. 2417/81 dated 27.4.1981 and the total extent approved is

4.69 acres. After scrutinizing the relevant documents and sketches of the layout plan, the local planning authority approved the Layout and gave

L.P/R No. There must be a reserve site in every layout and the same is compulsory. Likewise, in V.N.R. Nagar Reserve site is allotted for nursery

school and the same cannot be subdivided without obtaining prior permission from the Director of Town planning or Local planning authority as the

case may be. But, in this case the reserve sites was subdivided and one portion pertaining to the nursery school was sold to the first defendant and

the same is against law. The reserve site which was originally allotted to the school and park and its portion was sold to the first defendant. On

26.9.1995, the first defendant submitted papers through one Murali who is an licensed building surveyor and the approval was obtained by the

said Murali by suppressing the real facts before this defendant. After knowing that the approval area is located in reserved site which was allotted

for nursery school. On 18.10.1994, the Panchayat Authority issued cancellation

order to Murali. After receipt of the order, the first defendant further constructed the building. A letter was given to the 1st defendant to stop further construction and for removal of building materials from the site vide letter 289 of 1995 dated 9.5.1995. Further, another letter dated 22.5.1995, also sent and the same was received by the 1st defendant on 31.5.1995. A cancellation of the approved building plan was made under Municipal Act in condition No. 7. The cancellation of the building plan was sent on 18.10.1994 through the said Murali. If any amount paid by the first defendant even after cancellation of the plan will not bind this defendant. There is no cause of action in the suit and hence prays to dismiss the suit with exemplary costs.

5. The brief averments of the plaint and written statement in O.S. No. 913 of 1995 are reproduced hereunder:

6. The brief averments of the plaint in O.S. No. 913 of 1995 are as follows:

The plaintiff is the absolute owner of the suit property under schedule by virtue of Sale Deed executed by one N. Rajagopal on behalf of the owner

Susila on 23.4.1993 for a sum of Rs. 60,000/- and the plaintiff is in possession and enjoyment of the same from the date of purchase. The plaintiff

approached Vadavalli Town panchayat with required papers for the proposed construction and permission was also granted to the plaintiff on

26.9.1994 and the plaintiff paid the required building tax of Rs. 385/- on the same day. The plaintiff has to arrange for construction cost and

Boomi Pooja was held on 22.2.1995 and the members of the welfare association were also participated. The construction work was in full swing.

The first defendant approached the plaintiff and invited to join the Association. But the plaintiff refused and thereafter the trouble started. The suit

filed by the 1st defendant in O.S. No. 831 of 1995 during vacation. Notice was ordered. In the meantime, the plaintiff has received a letter from

the second defendant on 25.5.1995, informing that the permission granted for construction is cancelled. Further the description of the property

cited in the letter is 71/2. Whereas, the plaintiff's property is coming under 71/2B. The letter, dated 22.5.1995 was not binding on the plaintiff since

no proper enquiry was conducted before issuing the letter. The order of the 2nd defendant is arbitrary and capricious in exercise of its powers and

the same is liable to be set aside as illegal, invalid and inoperative. Since the 2nd

defendant is threatening the plaintiff to take forcible action without any further notice, the plaintiff apprehends danger to his possession and enjoyment of the property which was purchased for valid consideration and prays for a decree and judgment declaring that the letter of the 2nd defendant under reference No. 285 of 1995, dated 22.5.1995 is invalid, inoperative, in executable and unenforceable, restraining the defendants 1 and 2, their men and agents and subordinates act from in any way interfering with the peaceful possession and construction of the suit property and with costs.

7. The brief averments of the written statement in O.S. No. 913 of 1995 of the first defendant are as follows:

It is false to state that the plaintiff is absolute owner of the suit property by virtue of a Sale Deed, dated 23.4.1993. It is false to state that the Vadavalli Town Panchayat, after scrutinizing the proposal, permitted the plaintiff for the proposed construction. The allegation about the ill-will as against this defendant is not correct. In a suit filed by the defendant in O.S. 821 of 1995, a commissioner was appointed and the commissioner also visited the suit property and filed his detailed report. As per the approved plan and lay out, 2 sites are reserved for children's park and for construction of nursery school and the same are maintained by the 1st defendant association. After taking advantage of the fact that the reserved site are being kept vacant, the plaintiff is colluding with the promoters of the layout and attempting to occupy the portion of the reserved site, in which the plaintiff has no manner of right. After filing of the suit by the defendant, the plaintiff has started the illegal construction. Therefore, the 2nd defendant issued a letter to the plaintiff cancelling the permission and also directed the plaintiff to remove the illegal construction within 24 hours. In this suit after hearing both sides, status-quo was ordered by the Court. The sale deed is invalid and the same must be fabricated and not binding on the members of this defendant. There is no merit in the suit and there is no cause of action for the suit and prays to dismiss the same with compensatory costs.

8. The brief averments of the written statement filed by the second defendant in O.S. No. 913 of 1995 are as follows:

The local planning authority approved the layout in accordance with the rules and

regulations and after scrutinizing the relevant documents and sketches of the layout plan the local planning authority approved the layout and gave L. P/R No. There must be reserve site in every lay out and likewise in S.F. 71/2, the reserve site is allotted for nursery school. The Reserve site cannot be subdivided without obtaining the prior permission from the Director of Town Planning or LPA as the case may be. But in this case, the reserve site was subdivided and while so one portion of the nursery site was sold to the plaintiff and the same is against law. On 26.9.1995, Mr. K.K. Babu submitted the papers and documents through one Murali, who is an licensed building surveyor. The panchayat authority came to know that the permission and approval of the building plan is illegal and as against law, rules and regulations of the Municipal Act. Hence, on 18.10.1994 the Panchayat authority issued a cancellation order to Murali and even after receiving the said letter Mr. K.K. Babu further constructed the building. Hence a letter was sent to the plaintiff to stop further construction and also to remove the building materials from the site vide letter 289 of 1995 dated 9.5.1995. Cancellation of the building plan was also sent on 18.10.1994. The Boomi Pooja conducted on 22.5.1995 is imaginary one and the same cannot bind this defendant. The letter of this defendant dated 22.5.1995 was acknowledged on 31.5.1995 and hence the construction of the building after cancellation of the building plan is against law. The plaintiff wrote a letter stating that he stopped the construction work as per the status quo order of this Court in I.A. No. 976 of 1995. The plaintiff has no locus standi to build house in reserved site. The order passed in the letter No. 289 of 1995 dated 22.5.1995 is valid one and legal and executable and enforceable one. There is no cause of action for filing the suit and prays to dismiss with exemplary costs.

9. These two second appeals were admitted on the following substantial questions of law:

1. Whether the lower appellate Court is right in reversing the well considered judgment of the trial Court on factual findings?
2. Whether the appellate Court is right in considering the principles of estoppel in respect of the plan permit obtained by the first respondent under Exhibit B-3 on 26.9.1994 which was cancelled immediately on 18.10.1994 on the ground that misrepresentation and violation of layout conditions

by the first respondent by procuring such plan permit?

3. Whether the lower appellate Court is right in granting the declaratory relief on the basis of a consequential proceedings No. 289 of 1995 dated

22.5.1995 issued by the second respondent town panchayat for removing the encroachment and materials from the site reserved for public

purpose in the absence of challenge to the cancellation of permit and the first notice dated 9.5.1995 under Exhibit B-8 issued by the Municipality

against the second respondent-Town Panchayat to the first respondent?

10. In these two appeal preferred by the appellant VNR Nagar Welfare Association, the learned counsel for the appellant submitted that as per

the approved lay out plan which is marked as Exhibit A-2 in Survey No. 71/2B the northern portion of the land as shown and indicated in Exhibit

A-2 is ear marked and reserved for nursery school which is measuring 0.31 cents or 31,615 square feet and there is no dispute over such area

allotted for public purpose i.e. reserved for nursery school and it is also fairly admitted by the learned senior counsel for the first respondent in both

appeal that in the said ear marked area reserved for nursery school a portion of area around 0.05 cents was purchased by the first respondent

herein from the original owner i.e. Susila Narayanasamy under Exhibit B-1 sale deed dated 21.4.1993 and it is also not the case of the first

respondent herein that after the approval of the lay out plan this said site ear marked for public purpose was de-reserved by the competent

authority and thereafter, Exhibit B-1 sale deed was obtained by the first respondent and further more the learned counsel for the appellant

submitted that as per the approved lay out plan the owner ceased to be a legal owner and she is holding the property as a trustee and she is

prohibited from transferring or selling the interest in the property and the sale effected by the third respondent in S.A. No. 580 of 2005 under

Exhibit B-1 is against law and illegal and no way confer any right, title or interest to the first respondent and as such based on Exhibit B-1's sale

deed approval of plan and building licence granted by the second respondent dated 26.9.1994 shall not give any absolute right to the first

respondent to do any construction activities in the area which is ear marked for public purpose as pointed out above and rightly the second

respondent after noticed the mistake committed by the authority in sanctioning

the plan and building license granted under Exhibit B-3 was cancelled on 18.10.1994 and notice dated 9.5.1995 was also subsequently issued to the first respondent to stop the construction activities which is marked as Exhibit B-8 and further subsequent notice dated 22.5.1995 was also rightly sent to the first respondent to immediately stop the construction and remove the materials failing which right to demolish and remove the same was issued and the same is marked as Exhibit B-6.

11. Further more, the learned counsel for the appellant submitted that since the erstwhile owner of the land who got the approval lay out plan

Exhibit A-2 wherein specified area reserved for nursery school, is prohibited from transferring or selling interest in it to any party other than the

purpose reserved for public use and therefore, Exhibit B-1 sale deed obtained from the third respondent by first respondent, is against law of the

land and hence, the same is illegal and moreover, the plan approval as well as building license obtained from second respondent by first respondent

under Exhibit B-3 shall not confer any right to the first respondent and hence, the second respondent has every right and authority to revoke or

cancel the order dated 18.10.1994, unilaterally without issuing notice to the first respondent and conduct due enquiry.

12. The learned counsel for the second respondent also affirmed the submission made by the learned counsel for the appellant that the first

respondent based of Exhibit B-1-sale deed obtained approval of plan and building license under Exhibit B-3 and after came to know about the

mistake committed by the Executive Officer, the plan approval and building construction license issued to first respondent for a portion of property

in the area which is ear marked for public purpose reserved for nursery school as per Exhibit A-2 was cancelled under a proceeding dated

18.10.1994 and said unilateral act of the second respondent cannot be questioned in the facts and circumstances that Exhibit B-2 sale deed itself is

illegal as against law.

13. The learned senior counsel for the first respondent submitted that the suit filed by the appellant in O.S. No. 831 of 1995 a general relief of

injunction in prohibiting the first respondent to build any kind of construction as prayed for is not maintainable. In the light Exhibit B-1-sale deed

was obtained from the original owner i.e. the third respondent and more

particularly, Exhibit B-3 plan approval and building license were granted by second respondent, the second respondent is estopped from denying such approval and license granted by him and the same such a stand has also been rightly taken by the first Appellate Court and therefore, the same shall be confirmed by this Court.

14. Moreover, the learned senior counsel further submitted that the suit filed by the first respondent in O.S. No. 913 of 1995, was dismissed by the trial Court and the same was decreed through the first Appellate Court judgment and decree passed in A.S. No. 37 of 2003 in decreeing the suit and as against which now, the Second Appeal has been filed by the first respondent thereunder and not by the second respondent Executive Officer and as such, this Second Appeal itself is not maintainable and liable to be dismissed by this Court.

15. With regard to the later part of the submission made by the learned senior counsel for the first respondent it is found in both the suit O.S. No.

831 of 1995 as well as O.S. No. 913 of 1995 the Executive Officer, Vadavalli Town Panchayat was rightly added as second respondent and no

doubt the suit filed by the first respondent i.e. in O.S. No. 913 of 1995 was based on the order dated 22.5.1995 passed by the second

respondent Executive Officer to declare the same as invalid and illegal and also consequential relief of injunction as against the appellant/2nd

respondent, defendants 1 and 2 and it is revealed that the original order dated 18.10.2004 in revoking/cancelling the building license and plan

approval granted to the first respondent by the order dated 26.9.1994 was not challenged and even then, the consequential order to stop

construction which was issued under Exhibit B-6 was challenged as pointed out above.

16. It is not disputed that the VNR Nagar Welfare Association registered society has filed a suit in O.S. No. 831 of 1995 for injunction and O.S.

No. 913 of 1995 was also rightly filed by the purchaser under Exhibit B-1 sale deed as against VNR Nagar Welfare Association and as has rightly

been pointed out above the relief sought for by the Association in a separate is to enjoy the benefit granted under Exhibit A-2 approved lay out,

wherein no doubt in both the suit the Executive Officer, Vadavalli Town Panchayat is rightly arrayed as defendant. In the above circumstances,

even though declaratory relief was sought for in O.S. No. 913 of 1995 as against the order passed by the Executive Officer/second

respondent/second defendant, the consequent relief of injunction is sought for is against the appellant/second respondent, defendants 1 and 2 and

hence, absolutely no legal bar in filing the Second Appeal No. 580 of 2005 by the VNR Nagar Welfare Association and the same is well

maintainable and therefore, the submission made by the learned senior counsel shall not sustain and the same is rejected.

17. The learned senior counsel for the first respondent submitted that even though under Exhibit A-2 - approval lay out northern portion of the S.

No. 71/2B i.e. 0.31 cents of land was ear marked and reserved for public purpose, in this reserved area 0.11 cents of land was sold by the third

respondent for the same purpose of constructing school and such school activities is also going on in the reserved area and thereby, the first

respondent out of the balance area has purchased 0.05 cents of land under Exhibit B-1 and after due approval from the local body i.e. from

second respondent, constructing the house and while so, unilaterally without hearing and notice, the second respondent under his order dated

18.10.1994, cancelled the order of plan approval as well as building license granted and therefore, is not sustainable under law and hence he

rightly filed a suit for declaration to declare the notice issued where Exhibit B-6 to stop construction as invalid and illegal.

18. From the above submission made, it is made clear that the first respondent fairly admitted that as per Exhibit A-2 the area reserved under S.

No. 71/2B is for public purpose i.e. to construct school and out of the reserved area, only the first respondent purchased under Exhibit B-1 sale

deed, 0.05 cents of land and during construction work is on in this land, of course after the approval of the second respondent which was later

cancelled by the second respondent.

19. For the foremost submission made by the learned senior counsel for the first respondent that out of the reserved area 0.11 cents of land was

sold to one Vimala and school activities is going on; there is no substantial valid evidence on record and hence, the above submission cannot be

sustained and the same is rejected. It is not disputed that the original lay out Exhibit A-2 was sanctioned by the Deputy Director of Town Planning,

Coimbatore Region and not by the second respondent and no doubt, Exhibit A-2 is a true copy signed by A2. It is also not the case of the first

respondent that the area reserved for nursery school in S. No. 71/2B was de reserved for other purpose by the competent authority and

thereafter, the above Exhibit B-1 sale deed was obtained.

20. The learned senior counsel for the first respondent submitted that since 0.11 cents of land out of the reserved area has already been sold to

one Vimala and the school activities going on now, the rest of the land reserved for the purpose deemed to have been released that too in the light

of no gift deed is executed in respect of the entire public area by the owner in favour of the second respondent and hence, the owner has every

right over the balance area and moreover, the first respondent validly purchased the property under Exhibit B-1 and that too after due approval

from the second respondent under Exhibit B-3, the first respondent is doing his building activities and as such no injunction can be granted and also

cited judgment of the Division Bench of this Court in a case namely K. Rajamani, R.M. Chinna Alamu rep. by Power Agent V. Ramasamy and

R.M. Meenakshi rep. by Power Agent V. Ramasamy Vs. Alamunagar Residents Welfare Association, The State of Tamil Nadu and The Special

Commissioner Town and Country Planning Department, .

21. Further more the learned senior counsel also pointed out the last two questions raised for consideration by the Division Bench of this Court in

the above cited case law. The relevant portions of the judgment cited is reproduced here under:

10. We have carefully considered the above submissions. The following questions arise for our consideration:

(iii) Whether the provisions of the Land Acquisition Act are to be followed for acquiring that land with reference to the provisions of Section 36 of

the Planning Act ?

(iv) Whether the open space earmarked in a layout could be considered to be the property of the Municipal Corporation either in the absence of

any declaration u/s 37 or in the absence of any gift by the owner?

23. Point Nos. (iii) and (iv): The next contention is as to whether in the absence of any proceedings under the Land Acquisition Act, the Municipal

Corporation can claim a right over the property. The contention of Mr. K.M.

Vijayan, learned senior counsel is that after the land is deemed to be the land needed for public purpose within the meaning of Land Acquisition Act in terms of Section 36, a declaration in this regard should be made u/s 37. In the event no declaration is made within a period of three years after the publication of notice in the gazette as to the preparation of regional plan, master plan or the new town development plan, as the case may be, the land shall be deemed to be released from such reservation, allotment or designation u/s 38 of the Planning Act. In terms of Section 26, notice of preparation of regional plan, master plan or the new town development plan should be published in the Government Gazette after the appropriate planning authority had received the consent of the Government under sub-section (2) of Section 24. Thereafter, the Government is competent to acquire the land under the provisions of the Land Acquisition Act as contemplated u/s 36 and for that purpose, a notice shall be also published in the Tamil Nadu Government Gazette u/s 37. In the event such notice is not made within a period of three years from the publication of notice u/s 26 or 27, the land shall be deemed to be released from such reservation, allotment or designation. This contention would be available to a land owner before he/she makes an application for approval of the layout plan as to the entitlement of a land owner for release of such land for non-compliance of the provisions of Sections 26, 27, 37 and 38 of the Planning Act. In this context, we may refer to the judgment of the Apex Court in Balakrishna H. Sawant and Others Vs. Sangli, Miraj and Kupwad City M. Corpn. and Others, . In that case, certain lands were reserved for high school and playground in a development plan. The concerned Municipal Corporation did not offer sufficient financial resources to construct the school and playground on the land and therefore, the Municipal Corporation did not take action. In the meantime, the Government also took a stand that the reservation had lapsed and in that circumstance, the Apex Court had directed the release of the land. The above judgment was quoted with approval in Raju S. Jethmalani and Others Vs. State of Maharashtra and Others, relating to the power of the Government for de-reservation. In both the judgments, the power of the Government for de-reservation has been upheld prior to the stage of approval of the layout and not afterwards. It is one thing to say that the land

should be released to the owner and Another thing to say to change the use of the said land. In this case, the question is whether after the layout has been approved showing certain extent of land to be used as park, etc., whether it could be de-reserved for the use of housing plots by an order of the Government. The Government's power to de-reserve the land is not available after the layout plan is approved, except as per the provisions of Section 90, which confers power on the Government only in respect of legality or correctness of the layout plan and not in respect of power to change the usage of the land as shown in the layout. Therefore, the contention of the learned senior counsel that in view of non-compliance of the provisions of the Land Acquisition Act, the land in question shall be deemed to have been released cannot be accepted on the facts of this case. Equally, we also hold that in the absence of acquisition of land in terms of Sections 36, 37, 38 of the Planning Act, the Municipal Corporation cannot claim right over the land, as the right of the owner cannot be deprived except following the above procedure. We may also mention that the owner of the land has not executed any gift deed as well in respect of the open space in favour of the Municipal Corporation, thereby the Corporation could claim a right over the land for all legal purposes.

24. This takes us to the next question as to whether in the absence of any declaration u/s 37 and the consequential release of the land u/s 38, the Municipal Corporation could claim ownership of the land on the basis of the resolution. The resolution questioned by the appellants does not speak of the right of the Municipal Corporation for ownership, but it only speaks for taking over possession of the land. That resolution, in our opinion, could only be read for taking over possession of the open space by the Municipal Corporation in order to maintain as park, etc. as per the layout plan and not for conferring title on the Municipal Corporation. Hence, the validity of the resolution is of no consequence on the facts of this case. In Pt. Chet Ram Vashist (Dead) by Lrs. Vs. Municipal Corporation of Delhi, the Apex Court has directed that the Corporation shall have the right to manage the land which was earmarked for school, park etc., and the Corporation shall not have any right to change the user of land which shall be for beneficial enjoyment of the residents of the colony and it is left open to the Corporation to get the land transferred in its favour after paying the

market price as prevalent on the date when the sanction to the layout plan was accorded. Placing reliance on the above judgment, the learned

Judge has found that the Municipal Corporation would be only the custodian of the land and cannot claim to be the owner. The custodian of the

land is only for the purpose of maintaining the open space and to put to use the purpose for which it was earmarked and for the benefit of the

inhabitants. Hence, the learned Judge rightly did not interfere with the resolution and found that the Municipal Corporation is only the custodian of

the open space. In our view, the said finding requires no interference. Accordingly, point nos. (iii) and (iv) are answered.

22. Even though, the above two questions raised for consideration is rightly answered. It was held in the above cited judgment that the lay out

sanctioned by the Municipal Authority cannot be altered by the Government by issuance of Government order de-reserving such plot hence, the

above judgment cited shall not support the case of the first respondent as stated above.

23. The learned counsel for the appellant submitted that in the cited Division Bench judgment of this High Court, it was held that the owner of the

land has no power to sell the land reserved for the public purpose and he is only a Trustee. In the cited judgment it was held as here under:

The very same question came up for consideration again before the Apex Court in Pt. Chet Ram Vashist v. Municipal Corporation of Delhi

(supra), wherein the Apex Court has held as follows:

6. Reserving any site for any street, open space, park, school etc., in a lay out plan is normally a public purpose as it is inherent in such reservation

that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he

holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the

owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary

interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned lay out

plan.

Thus the Division Bench judgment cited is support, the learned counsel for the

appellant in both appeal and with due respect after following the Division Bench judgment of the Hon'ble Court this Court holds that the third respondent ceased to be the owner of the land which is ear marked for public purpose i.e. reserved for nursery school as shown in Exhibit A-2 approved lay out plan and as such, he has precluded from transferring or selling the same to any body and such a sale effected by third respondent in favour of the first respondent under Exhibit B-1 is illegal and no title of right shall pass on based on Exhibit B-1 document.

24. As rightly submitted by the learned counsel for the appellant in both appeal that since the purchase effected by first respondent under Exhibit B-1 itself is against law and illegal. Unilaterally, the order passed by the second respondent dated 18.10.1994 in cancelling/revoking the order of approval of plan as well as granting license to build a house under Exhibit B-3 as well as consequential order passed to stop construction more particularly, Exhibit B-6 are valid true binding document and the same shall not be construed as illegal, void and in operative and in executable and enforceable document.

25. Applying the principle of estoppel, in respect of the order passed by the second respondent under Exhibit B-3, the decision arrived at by the First Appellate Court in allowing that Exhibit B-6 order dated 22.5.1995 is invalid and illegal and consequential relief of injunction granted without considering the well considered document A2 approved lay out plan in favour of the first respondent are perverse and as against law and the same are liable to be set aside.

26. For the above reasons the three substantial questions of law framed by this Court are answered in favour of the appellant. In the result S.A.

No. 579 of 2005 is allowed, after setting aside the decree and judgment passed by the A.S. No. 36 of 2003 by restoring the judgment and decree

passed by the trial Court in O.S. No. 831 of 1995 dated 12.11.2002. Considering the facts and circumstances there is no order as to costs. The

Second Appeal No. 580 of 2005 is allowed, after setting aside the judgment and decree passed by the first Appellate Court in A.S. No. 37 of

2003 dated 30.6.2004 by confirming the judgment and decree passed by the O.S. No. 913 of 1995 dated 12.11.2002 in dismissing the suit

totally. There shall be no order as to costs.