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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 31.05.2018

% ***Pronounced on : 24.04.2019***

\+ **LPA No.369/2016**

SOUTH DELHI MUNICIPAL CORPORATION..... Appellant

Through : Mr. Sanjay Poddar, Sr. Adv. with Ms.Mini Pushkarna, Standing Counsel for SDMC along with Ms. Swagata Bhuyan and Mr. Shiva Pandey, Advs.

versus

PAWAN GARG & ORS ..... Respondents

Through : Mr. Pawan Verma, Mr. Anup Gupta and Mr. Krishan Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K. CHAWLA

S. RAVINDRA BHAT, J.

1. The appellant (hereafter "SDMC") is aggrieved by a judgment dated 03.03.2016, allowing a writ petition bearing of the respondents (hereafter "Garg"). Garg filed the writ petition and sought directions, to set aside the decision dated 19.05.14 passed by the Lay Out Scrutiny Committee (hereafter "LOSC") of SDMC; and to direct the SDMC to incorporate their (i.e. the respondents) plots, (comprised in *khasra* no. 5, 6, and 14, village Yusuf Sarai Jat now known as property no. K-28, Green park Extension, New Delhi) in the layout plan of Green Park Extension colony, New Delhi. The Single Judge set aside the order dated 19.05.2014 of the LOSC and the decision of the Standing Committee (hereafter referred to as "SC") dated 17.07.2014, and directed the SDMC to re-consider the inclusion of plot in *Khasra* Nos. 5, 6 and 14 ("the plot" hereafter) at Village Yusuf Sarai Jat (K-

28 Green Par Extension) in the lay out plan within a period of sixty days from the date of the impugned judgment.

2. Garg's claim was that the plot in measured 1600 sq. yds. is now known as property no. K-28, Green park Extension; it was sold by M/s. Urban Development Company Pvt. Ltd. to five people through registered sale deeds. During the years 1975 to 1982, the officers of Municipal Corporation of Delhi(MCD) tried to dispossess the erstwhile owners from their plots, a result of which, the erstwhile owners filed five separate individual civil suits for permanent injunction against MCD in Civil Court at Delhi. On 01.10.88, Sh.V.K. Malhotra, Sub Judge, First class, Delhi, decided all the mentioned suits through five separate judgements, whereby the erstwhile owners were held to be the owners of their respective plots comprised in the said land.MCD was permanently restrained from dispossessing them from the said plots. Five separate appeals were filed against the said judgment before Sh. S.N. Dhingra, ADJ, Delhi, and these appeals were dismissed by an order dated 21.03.1992.

3. In 1994, the erstwhile owners sold the plot in question to some subsequent buyers, Garg being one of them. The MCD again tried to take possession from the subsequent buyers and on 03.05.1995 they preferred four individual Contempt Petitions against the erring MCD officers in the Court of Civil Judge, Delhi. The details of the contempt petitions filed are given below:

Contempt Petition	Filed by (subsequent buyer)	Arising from suit
20/95	SurindraKundra	Suit no. 445/78 titled Vasudev Vs. MCD & others.

22/95	Harish Kundra	Suit no. 183/78 titled Jagdish Lai Batra Vs. MCD & others and 116/80
23/95	Roshan Lal	Suit no. 445-A/78 titled Prem Nath Vs. MCD & others.
24/95	Surinder Kumar	Suit no. 444/78 titled Govind Ram Vs. MCD

4. These contempt petitions were disposed of by orders dated 28.09.1995, the MCD officers apologized for their 'unintentional acts' of interference in the possession of the suit property. The statements of the MCD officers was also recorded by the court and apology was tendered by them.

5. On 08.08.1996, the six subsequent buyers applied to the office of the MCD to get their respective plots incorporated in the layout plan of Green Park Extension. On 03.09.1997, the Additional Deputy Commissioner (Land & Estate) wrote to the Deputy Municipal Commissioner (south-zone MCD) referring to the judgments in the civil suit and also the statements made by MCD officers in the above mentioned Contempt Petitions; and sought clarification whether the aforesaid land was MCD property or it was private property in the name of the subsequent owners. On 13.01.1998, the Delhi Development Authority (DDA) wrote to the Secretary (Government of NCT of Delhi hereafter "NCT") that the land in question was un-acquired by the DDA and the same had to be acquired for the higher secondary school under emergency provisions of the land acquisition act. The subsequent owners on 27.01.1998 wrote a letter to the Addl. Dy. Comm. (L&E), MCD, submitting all their title deeds, the judgment in the civil suit, contempt petitions and revenue records in support of their title on

the said plots. The Addl. Dy. Comm. (L&E), MCD then wrote a letter dated 20.07.1998 to the concerned *Tehsildar* to get the demarcation/*nishandehi* of site in question. On 18.08.1998, the demarcation of Khasra no.5, 6 & 14 was conducted by the concerned revenue officer in the presence of MCD officers and submitted the report stating, inter-alia, that the land in question fell in the concerned *khasras.*

6. The MCD in its Resolution No.210 dated 19.08.1998, passed in a meeting of the SC referred to the letter dated 13.01.1998 written by the Jt. Dir. (New Leases), DDA to the Secretary, (Land & Bldg.) GNCTD urging that the land in question had to be acquired for the higher secondary school under the emergency provisions of the land acquisition act. Reference was further made to the letter dated 20.07.1998 from the Addl. Dy. Comm. (L&E) to the Tehsildar to get demarcation of the site in question. The LOSC on the report from the DDA recommended the same to the SC for rejection. The SC Committee then resolved that the incorporation of 6 residential plots on the plots in the layout plan of Green Park Extn. be rejected as proposed. The Standing Committee however noted that the revenue authorities had verified the ownership in favour of the respondents herein and the Tehsildar had further informed the MCD in 1997 that the land in question had not been notified for acquisition. The Standing Committee nonetheless rejected the proposal to incorporate the land in the lay out plan on the basis of DDA's 13.01.1998 letter.

7. It was contended in the writ petition that in an office noting dated 11.12.1998, the Deputy Law Officer (DLO-HQ) of MCD observed various things about the land in question. He observed that even though the land had been earmarked for the MCD school park in the layout plan of Green Park Extension and the MCD had obtained appropriate sanction from the corporation for acquisition of the land for public purpose as earmarked in

the layout plan and that reference had been made to the Govt. of NCT of Delhi for initiating acquisition proceedings. The record on the file showed that neither the sanction for acquisition of land had been obtained from the corporation nor any acquisition proceedings had been initiated to acquire the said piece of land for public purpose. In the abovementioned noting, the DLO-HQ (MCD) further observed that even if the title or ownership of the applicants was accepted or not, the unassailable and admitted position as per law was that the applicants were the owners of the Land in dispute. Garg again requested for the incorporation of the land in question in the green park layout plan by his letter dated 17.09.1999, on the ground that no acquisition proceedings had been carried out.

8. The Additional Town Planner (first respondent in the writ petition "ATP" hereafter) through letter dated 04.11.1999 requested DDA to send its report regarding acquisition of the land in question as the latter had communicated to the MCD that it required the said land for the purposes of building a school. On this basis, the proposal for carving out six residential plots was rejected by the SC on 19.08.1998 by Resolution No. 210.The DDA replied to the ATP's letter on 14.08.2000; it *inter alia* stated that:

> *"... as per the report received from the Lands Deptt. Of DDA, Khasra no. 5, 6 and 14 have not yet been acquired by DDA.*
>
> *Further as per land use plan of MPD-2001, the land under reference has been indicated for residential use. As per the approved zonal plan of Zone F, the land is a part of proposed Sr. Sec. School. As per MPD-2001, the minimum area required for the Sr School is 4(1.6 ha) acre and the available land is inadequate for school.*
>
> *On part of this proposed school land, a layout plan for residential plot has already been approved by MCD, and now on balance un-acquired land, the proposal is to carve out plots, instead of school. If any modification is carried out in the layout*

plan, MCD would like to put up detailed proposal for change of land use in approved zonal plan. As the subject area is under jurisdiction of MCD, modification/approval in the layout plan lies with MCD."

9. Another letter dated 08.09.2000 was sent by the ATP, MCD to DDA for clarification with regard to the land in question. DDA sent another letter dated 17.01.2001 to the Chief Town Planner (hereafter referred to as "CTP"). The relevant part of that letter states:

> *"1.Khasra no. 5, 6 and 14 of village Yusuf Sarai as per report of the Land Deptt. Dt. 6.12.99 have not been acquired.*
>
> *2. As per MPD 2001, the land under reference has been indicated as residential where as per approved Zonal Plan of Zone F, the site under reference along with its adjoining land is indicated for Sr. Sec. School.*
>
> *3. It is not sure as to how MCD has approved carving out of residential plots on the un-acquired surrounding land, which was meant for Primary and Sr. Sec. School even in Zonal Development Plan of earlier Zonal Plan of F.*
>
> *4. The record of this office shows that no letter has been issued to MCD regarding allotment of lesser are for school sites. However if received in your office, a copy of the same be sent.*
>
> *5. It is advisable to use the area as per the provision of MPD-2001 and Zonal Plan.*
>
> *Further if any modification is required in approved Zonal Plan MCD would like to put up detailed proposal for change of use."*

10. MCD's position, in its counter-affidavit in W.P. (C) 4788/2000 (*Green Park Extn. Residents Association v. Union of India & others*)was that the areas which fell under its control were maintained as per the regularization plan except for the pocket as now shown as 'others land' (land in question) and that too for the reason that the owners of the said land

had filed civil suits against the MCD and as the civil courts declared them to be owners of these plots of land, it had been restrained from dispossessing or interfering from the peaceful possession of such persons.

11. MCD's LOSC decision dated 28.10.2002 opined that the application for carving out 7 plots be agreed to and it be put up to standing committee for approval only after obtaining proper clearance from DDA. The writ petitioners relied on this to say that the LOSC approved the proposal, subject to approval from the DDA. In view of the decision of the LOSC, the ATP again sought clarification from the DDA through his letters dated 18.12.2002 and 05.10.2005.In 2006-2008, the said land was transferred to the first, second and third respondents through gift deeds and sale deeds. The first respondent continued to be in possession of 250 sq. yds. of the land as the same was bought by him in 1994.

12. The owners of the lands (with particulars) is set out in a tabular chart, below:

Name	Number of plots	Area of plot (in sq. yds.)
Respondent no. 1	2	400+250
Respondent no. 2	1	300
Respondent no. 3	4	100+150+150+200

13. In a letter dated 24.01.2011 written by the DDA to the CTP, MCD the DDA wrote:

> *"In this regard it is further submitted that as per provisions of MPD-2021 Sr. Secondary School and the primary school is a layout level facility and is to be shown in the layout plan and not in the Zonal Plan. DDA has adopted the large Scale Land acquisition & disposed policy for Urban Development and the land under reference is a privately owned. Since the area is*

under the jurisdiction of MCD therefore MCD may take appropriate action.

14. Consequently, DDA again placed the onus on MCD to decide with regard to incorporating the land in question in the layout plan.

15. The respondents/writ petitioners wrote various letters to the CTP to expedite the said matter however, there was no reply. Hence, were constrained to move a complainant dated 13.8.2013 in this regard before the Public Grievance Commission (PGC), NCT of Delhi. On 30.08.2013, ATO wrote to the PGC wherein he stated that in view of the letter dated 24.01.2011 of the DDA, the matter was being referred to the LOSC for its consideration. The respondents alleged that through letter dated 24.12.2013, the MCD for the first time in 18 years alleged that the land in question stood transferred to it in 1969 itself and that it was registered in the IP register of the Corporation. The ATP also made reference to the court case in which the Town Planning Dept. was not made a party to and also revealed from a letter of L&E Dept., written to DC (South Zone), they were also not aware of the court decision or its applicability. In the same letter, the matter was advised to be put up before the LOSC and after the recommendation of the LOSC, before the SC. A comprehensive reply was given to the said letter by the respondents herein. A complaint dated 09.04.2014 was then made to the LG, NCT Delhi as there was no decision with regard to the incorporation of the said land in the layout plan of Green Park Extension. A status report was filed by two officers of the MCD (ATP and the second respondents in the writ petition):

"The Town Planning Deptt. was addressing another case of Plot No.K - 28, which was earmarked for a Mandir in the layout plan (F/G), Since such facility sites are handed over to MCD and the sites are taken in possession on behalf of by L&E Deptt. of MCD,

A reference was made to L&E Deptt. wherein the L&E Deptt. enclosed copies of records showing the large area including the land of these plots handed over to MCD in 1969 by the colonizer. The land as handed over to MCD is shown in green colour in the enclosed plan (F/H). The entry of the land in the I.P. Register of L&E Deptt. Has also been made available and the same is also attached along with the plan of the site. The sale documents of the present owners also show that this land was purchased from the colonizer.

The report as received form the L&E Deptt. has also been made available to PGC, where the application was filed by the applicant.

In view of the report of L&E Deptt. of MCD that the land was ' handed over to MCD in 1969, the legal opinion was sought and C.L.O. opined that "the record forwarded by L&E Branch established that the land was transferred to MCD in the year 1969 and it is registered in the I.P. Register of the Corporation. The map as enclosed in the fiel does not leave any doubt that it is MCD property, though encroached, which is shown in the green colour.

It is also stated that the T.P. Deptt. is dependent on the reports of outside Departments like Revenue Deptt. of GNCTD LAC, DDA, L&DO and the L&E Deptt, of Corporation on the issue of ownership. The decision is taken by the Committee called as Layout Scrutiny Committee (LOSC) which recommends the case either for approval or rejection to the Standing Committee on merit. This Committee is chaired by Addl. Commissioner, Incharge of Engg. Deptt. LOSC cannot recommend any case for approval where land is claimed by a Deptt. of MCD.

The report as above is submitted, please."

16. The first respondent in the writ petition (i.e. the ATP) informed the PGC by letter dated 05.08.2014 that the matter was rejected by LOSC. In response to respondents' RTI application, Town Planning Department (MCD) supplied a copy of the decision of LOSC dated 19.05.2014 to them.

17. The case of the MCD/SDMC is that the colony in question i.e. Green Park Extension was originally approved by SC in 1958 by Resolution No. 07 dated 03.09.1958. Subsequently, a revised layout plan showing certain modifications and increase in number of plots was approved vide Resolution No. 10 dated 28.03.1959 passed by the SC. That subsequently a demarcation layout plan including the combined layout plan of shopping centre of Green Park Main and Extension colonies was approved vide Resolution No. 183 dated 30.05.1969. The said Resolution stated that no new plots would be allowed to be carved out. The condition as incorporated in the said Resolution is reproduced as follows:

> *"1. No new plots are allowed to be carved out. If the colonizer is, however, already committed in respect of newly carved out plots, he should surrender the alternative plots in lieu of the same."*

18. The SDMC stated that possession of open spaces earmarked for community services such as parks, schools, dispensaries, community centre plots and public building in terms of the approved layout plan were taken over by the Municipal Corporation from the colonizer, i.e., M/s. Urban Improvement Company (Pvt.) Ltd. on 04.12.1968. Subsequently, the possession of all these sites was handed over by the L&E Deptt., MCD to the respective departments on 24.03.1969. It is contended by the SDMC that the land in question is a part of Municipal land vested in the Municipal Corporation and the same is duly entered in the IP Register showing it as property of the MCD. It is alleged by the SDMC that at the time of handing over the land in question, there were hundred unauthorized jhuggies, a store of P&T Department and a tube well at the site. There were encroachments on the land in question and the department officials sought to remove the said encroachments.

19. The SDMC stated that records of MCD also suggest that a school had been in existence on the land in question and Jain Shiksha Samiti acquired the ownership on the basis of a 'Settlement Deed' dated 10.12.1959 where the colonizer was also a party. The school had also furnished the documents which go to establish that the MCD gave recognition to the primary department of the school, way back in May, 1959. The documents relating to payment of salary to the staff, bank accounts, meetings of the governing body and other correspondence with the MCD/other statutory organizations go to establish the existence of the school since 1954. It was further submitted that the colonizer seemed to have played a trick on MCD while not indicating the proper picture at the time of handing over the sites. This issue was taken up by letter dated 11.11.1971 with the colonizer to explain the circumstances under which said plot was sold by him to Jain School which was occupying the land at site and simultaneously also transferred to MCD. No reply was received to the same. The MCD did acknowledge that the foregoing facts posed a problem as to whether they could lawfully claim the ownership of the land merely on the basis of handing/taking over certificate, when the facts did establish that a school was functioning at the site and at the relevant time, the ownership of the land did not seem to be vesting in the colonizer while handing over the possession to the MCD. It seems that while taking possession, the sites were not inspected, otherwise, the question of the existence of the school being observed in March, 1969, and not in December, 1968 would not have arisen.

20. The occupants of the plots, the predecessor-in-interest of the respondents, filed suits for perpetual injunction against erstwhile MCD in the year 1975. Five suits were filed claiming that the persons therein were in possession of the land in question. Those five suits were contested by the

erstwhile MCD. It was clearly stated by the MCD that the land in question was part of school cum park complex as per layout plan of Green Park Extension. Encroachment removal action was taken by the MCD and encroachment was removed from the land in question on 03.12.1975. However, predecessor-in-interest of the respondents re-encroached the land. Action was taken by the Municipal Corporation for removal of encroachment time and again including in the year 1977. Through the judgment dated 01.10.1988, the suits were decreed and erstwhile MCD was restrained from taking forcible possession of the land in question.

21. SDMC said that in 1996, the predecessors of respondents applied for incorporation of 6 plots in *Khasra* Nos. 5, 6 and 14 in the layout plan of Green Park Extension, submitting that they had purchased their respective plots from the previous owners in the year 1994. That application was rejected by the SC by Resolution No. 210 dated 19.08.1998. The case was again considered in 2002; however approval was not given. The LOSC after consideration, on 19.05.2014, recommended rejection of the respondents' application. The SC's Resolution No. 74 dated 17.07.2014, rejected the application. That the respondents filed writ petition bearing W.P. (C) No. 5382/2014 before this Hon'ble Court with prayer for setting aside the decision dated 19.05.2014 passed by the LOSC with further prayer for directing the Municipal Corporation to incorporate the plots of the respondents comprised in Khasra No. 5, 6 and 14, Village Yusuf Sarai Jat (property No. K-28, Green Park Extension) in the layout plan of Green Park Extension Colony.

Findings of the learned Single Judge

22. The learned Single Judge noted that the pleadings in the civil suits before the concerned court which had sought injunction did not contain any

averment on behalf of the SDMC that it was owner of the property; there was no advertence to the IPA register even in the counter affidavit in the previous writ petition – W.P.(C) 4788/2000. It was, therefore, felt that the SDMC's position was an afterthought. Learned Single Judge then noted that the communication on record with respect to clarification regarding use also contained a discussion whether the land was an MCD property whereby the DDA was told that it was not acquired by that authority (MCD). The demarcation report of 1998 of the concerned Tehsildar was also adverted to in respect of the plots. The impugned judgment then noted that the issue was reopened in September 1999 for reconsideration when LOSC finally rejected the request. Given all these circumstances, it was held that the argument with respect to finality of the decision of the Supreme Court dated 19.08.1999 was not tenable. Learned Single Judge then noticed that not only were the MCD's appeals dismissed but even its officers apologised in contempt proceedings. A reference was also made to the Chief Legal Officer's opinion of 1998, stating that the lands belonged to the predecessors of the writ petitioners and not to the MCD. It was noted that even the Standing Committee meeting of 19.08.1998 stated that, *"the land had not been notified for acquisition at that time."*

23. It was stated that the SDMC's position emerged for the first time with respect to the LOSC's decision of 19.05.2014, which was approved by the SC on 17.07.2014, that it was neither communicated to the writ petitioner nor was any averment made in that regard in the counter affidavit. The court then went on to hold as follows:

> *"35. The Court has power to mould the relief according to the demand of the situation to do complete justice between the parties. Thus, the petition cannot be rejected merely on the ground that the petitioners have not challenged the decision of the Standing Committee. A similar view was also taken by the*

Supreme Court in the case reported as Rajesh Kumar &Ors. Vs. State of Bihar &Ors. Civil Appeal Nos. 2525-2516/2014 decided on 13th March, 2013.

36. It is interesting to note that in the proceedings before the trial court in the suit filed by the erstwhile owners, as also in the writ petition (mentioned above) before this Court, the respondent neither produced the I.P. Register nor made a single averment in this regard. However, in the present petition suddenly I.P. Register came into picture. Likewise, not a single averment was made in the counter affidavit of present petition about the decision of the Standing Committee dated 17th July, 2014 and now when the written submissions are filed, the respondent talked about the decision of the Standing Committee, which to my kind is inconsequential as the Standing Committee only affirmed the decision taken by the LOSC.

37. Chapter XV of the Act deals with streets. The public streets are dealt from Section 298 to 311 of the Act whereas private streets are dealt with from Section 312 to Section 330 of the Act. Section 312 of the Act obliges an owner of any land utilising, selling, leasing out or otherwise disclosing of the land for the construction of building to lay out and make a street or streets giving access to the plots into which the land may be divided and connect it with an existing public or private street. Section 313 of the Act requires the owner to submit a lay out plan before utilizing the land for any of the purposes mentioned in Section 312 and send it to the Commissioner with a lay out plan showing the particulars mentioned in clauses (a) to (e) of Section 313.

38. In terms of Section 313 (3) of the Delhi Municipal Corporation Act, 1957 the Standing Committee is required to decide the application moved under Section 33(1) of the Act within a period of 60 days. Section 313(3) of the DMC Act is reproduced as under:-

> *"313 (3) Within sixty days after the receipt of any application under sub-section (1) the Standing Committee shall either accord sanction to the lay-out plan on such conditions as it may think fit or disallow it or ask for further information with respect to it."*

Proviso to Section 313 further provides that the passing of such orders shall not be in any case be delayed for more than sixty days after the Standing Committee has received the information

which it considers necessary to enable it to deal with the said application.
39. The present case is a peculiar case where the application of the petitioners was decided only after a period of more than 18 years."

24. The learned Single Judge then quoted *in extenso* the opinion of the Deputy Law Officer of the MCD by noting dated 11.12.1998 which unambiguously stated that the writ petitioners' title to the land could not be questioned. Learned Single Judge again quoted extensively from the relevant portions of the MCD's affidavit dated 11.12.2000 which stated that the Corporation had been restrained from dispossessing the peaceful possession of the owners and then went on to conclude as follows:

"42. Further, in the counter affidavit filed in WP(C) No.4788 of 2000 by the MCD, it clearly admitted as under:-
"......It is further humbly submitted and stated that the areas which fell under the control of MCD are being maintained as per the regularization plan except for the pocket as now shown as „others land" and that too for the reason that owners of the said land have filed civil suits against the MCD and the civil courts declared them (owners) to be the owners of these lands and the MCD has been restrained from dispossessing or interfering from peaceful possession of these persons" (Para 3)
......This particular alleged K-28 is a part of others land shown in the layout plan of the Town & Planning Department of MCD" (Para 11) The erstwhile owners purchased the land in question from Urban Improvement Co. P. Ltd. in the year 1975 vide duly registered sale deeds. The property was in their possession. The sale deeds submitted by the petitioners or the erstwhile owners to the MCD were never questioned by the MCD.
43. A perusal of the communications between the MCD and DDA also reveal that the land in question was not acquired and jurisdiction for modification/approval of the layout plan lies with MCD as the area was under their jurisdiction.
44. The petitioners had to fight for a number of years even to get rights to their land. The petitioners' predecessors had to file civil suits which were contested by the respondent which

culminated into declaring the petitioners' predecessors as owners. The findings of the Civil Court was affirmed in the appellate Courts also as far back as in 1992.

45. Interestingly, the decision of the Lay Out Scrutiny Committee dated 19th May, 2014 itself shows that the ownership was verified in the name of the applicants by concerned Tehsildar in 1997. Mere entry in the I.P. Register does not entitle the Corporation to become the owner of the land in question. The own documentation of the respondent Corporation itself frustrates the stand taken by the MCD that the land is owned by them.

46. In my considered view, in light of the aforesaid discussion, the decision taken by the Lay Out Screening Committee can hardly be considered rational. The result is that the petitioners cannot utilise their land despite fighting for their rights since 1975. Thus the decision of the Lay Out Scrutiny Committee dated 19th May 2014 qua the petitioners' land is set aside. Consequently, the decision of Standing Committee dated 17.7.2014 qua the petitioner's land is also set aside. The respondent, South Delhi Municipal Corporation is directed to consider the petitioner's plots in question in the layout plan within a period of sixty days from today in accordance with law."

Contentions of the parties

25. Sh. Sanjay Poddar, learned senior counsel, appearing for the SDMC highlighted that the plots comprised in the three Khasra Nos. are the subject matter of the proceedings of which original lay out plan was submitted by the coloniser and approved by the Standing Committee on 03.09.1958. A revised lay out plan was approved on 28.03.1959 and the demarcation plan was approved on 30.05.1969 which specifically stated that no new plots are allowed to be carved-out. It was submitted that the land in question was earmarked for school. It was also stated that subsequent to the revised plan approval, the coloniser in fact handed over the areas as a precondition for demarcation prior to 1969, on 04.12.1968. Consequently, the MCD was

handed over the land which in turn handed over possession to the respective department on 24.03.1963. It is stated in this context that the entries were made in the IP Register in 1969. Learned counsel relied upon the relevant entries in the IP Register, which stated as follows:

"MUNICIPAL CORPORATION OF DELHI
LANDS & ESTATE DEPARTMENT

No.E/L&E/68 Dated the November, 1968

The following services of Green Park Extension Colony as per approved layout plan have been taken over today the 4th December, 1968 from the Secretary.

1) Roads, Roads Berms, Storm Water Drain as per approved Layout plan of Green Park Extension.

2) Open space earmarked for community purposes such as parks, school, dispensary, community Centre's plot and public building, as per approved layout plan of Green Park Extension and marked as A, B, C, D, E, F, G, H, I and J in the Plan.

3) 10 (Ten) ft. vide strips by the site of plot No.T.I. 03 and U-4 as a shown in the plan and open spaces by the size is 6 ft. shop no.1&7 (L Block).

The details of the open spaces mentioned at 2 above are indicated in the plan bearing signatures of the colonizer as representatives of the Municipal Corporation of Delhi.

Sd/-
04.12.1968
Manager Lands & Estate
Municipal Corporation of Delhi
Town Hall, Delhi.

Sd/-
Daulat Ram Choudhari
Site Incharge, Green Park Extn
For Urban Improvement (Pvt) Ltd.
F-32, Connaught Place, New Delhi."

26. It was next submitted that the suits filed between 1978 and 1982 by the writ petitioners' predecessors were only to restrain the MCD from dispossessing them. Undoubtedly, the MCD's appeals were dismissed and even the second appeal was also dismissed by this Court. It is stated that the writ petitioners' stand that all these resulted in possession of the predecessors being perfected through adverse possession and that the title was perfected in 1994 with the execution of the five sale deeds in favour of the predecessors is highly contentious and disputed. It is stated that concededly, even the predecessors of the petitioners had initiated contempt proceedings which was ultimately disposed of. The purchasers had also sought incorporation of the plots in the lay out plan in 1996 which culminated in the rejection of that application on 19.08.1998 through Resolution No. 210. Another letter dated 17.09.1999 was triggered on account of the Deputy Commissioner's noting that the land had not been notified for acquisition. This too was considered and rejected by the LOSC on 19.05.2014, which was approved by the SC on 17.07.2014.

27. Counsel relied on the two documents, i.e. LOSC decision and the SC resolution. They are extracted below:

> ***"DELHI MUNICIPAL CORPORATION***
>
> *Copy of the proposal/issue No.210 of minutes of meeting of Municipal Corporation Standing Committee held on 19.08.1998.*
>
> *Item No.16:- Incorporation of Residential Plots (6 Nos.) on Kh. No.5, 6 and 14 in the layout plan of Green Park Extn.*
>
> *Commissioner's letter NO.F.33/TP/498/C&C dated 20.7.98.*
>
> *The above mentioned proposal has been submitted by Sh. Pawan Garg & Others for approval of MCD u/s 313 of DMC Act.*
>
> *The proposal envisages incorporation of 6 residential plots in the layout plan of Green Park Extn. Total area of the land is 1500 sq. yds.*

The site is shown for school in the layout plan of Green Park Extn and in layout plan of plots K-16 to K-27 as approved by the Stg. Committee vide Decision No.927/Stg dated 7.3.74.
After the receipt of the application, for ascertaining the status of land, the reports were requisitioned from ADC (L&E), Director (Edu), Tehsildar (N) and Revenue Authorities.
Revenue Authorities have verified the ownership in favour of the applicants and Tehsildar (N) informed in Jan 1997 that land had not been notified for acquisition by that time.
However, Jt. Dir (MP), DDA vide his letter No.F.3(71)96-MP/331 dated 18.3.98 enclosed a letter of Jt. Dir. (New Leases) written to Secy (Land &Bldg), GNCTD, for acquiring the land in question for Higher Secondary School. The letter of the Jt. Dir (New Leases) is reproduced as under:-
"It is to inform you that an area in Village Yusuf Sarai Kh. No.5, 6 & 14 is unacquired and is now required by DDA for its Higher Secondary School use as per the report of the Planning Deptt.
You are, therefore, requested to acquire the above said land under emergency provision u/s 4, 6 and 37(A) of LA Act immediately."
The matter was considered by LOSC vide Item No.36/98 dated 8.5.98 and in view of the report received from DDA it was decided that the case be referred to the Stg. Committee for rejection.
Recommendations:
In view of above and as required u/s 313 of DMC Act (amended upto date) the incorporation of 6 residential plots on Kh. No.5, 6 and 14 in the layout plan of Green Park Ext, New Delhi, is placed before Stg. Committee for rejection.

Item No.16:- Incorporation of Residential Plots (6 Nos.) on Kh. No.5, 6 and 14 in the layout plan of Green Park Extn.

Resolution No.210: Resolved that in view of the position brought out by the Commissioner in his letter no.F.33/TP/498/C&C dated 20.7.98, incorporation of 6 residential plots on Khasra No.5, 6 and 14 in the layout plan of Green Park Extn, be rejected as proposed."

28. The Resolution No.210 and 74 dated 17.07.2014 of the Standing Committee are as follows:

"***Item No.16 :-***	***Incorporation of Residential Plots (6 Nos.) on Kh. No.5, 6 and 14 in the layout plan of Green Park Extn.***
Resolution No.210	*Resolved that in view of the position brought out by the Commissioner in his letter No.F.33/TP/498/C&C dated 20-7-98, incorporation of 6 residential plots on Khasra No.5, 6 and 14 in the layout plan of Green Park Extn., be rejected as proposed.*

South Delhi Municipal Corporation"

29. Resolution No. 74 was identically worded- it was in respect of the 7 plots; it effectively rejected the proposal for incorporation of the plots in the layout, as recommended.

30. It is argued by Mr. Poddar, learned senior counsel that concededly in terms of the lay out plan, the plots were earmarked for school. It is urged that consequent by operation of Sections 312 and 313, the coloniser ceased to be the owner and held the property or any residuary interest in it for the benefit of the society in general of which the Corporation secured rights and management as a custodian. Learned senior counsel relied upon *Pt. Chet Ram Vashist v. MCD* 1995 (1) SCC 47. It was submitted that the limited and restricted nature of the rights of the coloniser and the general public interest in the land had to be considered. According to the counsel, the coloniser's right was to hold the land for the benefit of the society, i.e. other plot holders or the public in general and consequently, the right to hold the land in trust for the specific purpose specified by the coloniser in the sanctioned lay out plan and thirdly, the coloniser could not transfer the land or use it for any other purpose or manner. It was stated that correspondingly, the general public and those living in the neighbourhood had acquired the easement rights that the land in question was used for the purpose earmarked in the lay out plan: the school was constructed and lastly

it was submitted that the MCD (now SDMC) is the custodian of public interest and managed it in the best interest of the society. Learned counsel also relied upon *NDMC v. Prashant Narula & Ors.* 2016 (160) DRJ 113 and furthermore, relied upon *Real Estate Agencies v. State of Goa and Ors.* (2012) 12 SCC 170.

31. Next, it was argued that the writ petitioners could not claim any entitlement or modification of the nature of use as that would amount to usurping or depriving the rights of the general public and the custodial rights of the MCD. He relied upon the decision in *State of Orissa v. Ram Chandra Dev & Anr.* AIR 1964 SC 685; *Rajasthan State Industrial Development and Investment Corporation v Subhash Sindhi Cooperative Housing Society, Jaipur and Others* (2013) 5 SCC 427 and urged that this Court should not grant relief.

32. Learned counsel submitted that the impugned judgment was erroneous because the learned Single Judge could not have, in the absence of any entitlement or established right to own the land inuring to the petitioners' favour granted relief to it. Learned counsel strongly denied the petitioners' assertion that they were kept in the dark about the LOSC and the Standing Committee's decision of 2014. It was submitted that the writ petitioners sought to challenge the decision of the SC by an amendment application but it was ultimately dismissed as not pressed. It was urged that the learned Single Judge erred in holding that no interest vested in the Corporation since that was clearly in ignorance of the binding authority of the Supreme Court in *Pt. Chet Ram Vashist (supra)*and as possession of the land was handed over to MCD on 04.02.1968. MCD- and SDMC's rights as custodian to manage the property in the best interest of the property crystallized at that time. The subsequent claim of title by trespassers was a mere illusion because the coloniser <u>was precluded from asserting any rights,</u>

much less in 1994 after the approval of the lay out plan, *after it* handed over of the property in December 1968 (to the MCD) and its demarcation in 1969. It was urged next that the reliance on the principle of *res judicata* is misplaced because the question of title was never centrally in issue nor was it necessary for decision in the previous injunction suits. In this regard, reliance was placed upon the rulings in *Sajjadanashin Sayed Md. B.E. Edr. v. Musa Dadabhai Ummer and Others* (2000) 3 SCC 350; *Williams v. Lourdusamy* (2008) 5 SCC 647 and *Syed Mohd. Salie Labbai (dead) By L.Rs and Others v. Mohd. Hanifa (dead) By L.Rs and Others* (1976) 4 SCC 780.

33. Mr. Sudhanshu Batra, learned senior counsel for the respondents/petitioners urged this court not to interfere with the findings of the Single Judge. He urged that the Single Judge correctly set aside order dated 17.07.2014 of the SC which was never brought to the knowledge of the writ petitioners nor to the knowledge of the court until the final arguments, and did not even find mention in SDMC's counter affidavit. The order of 19.05.2014 passed by LOSC was the foundation of the order of the SC. The SC in its order merely reproduced the order of the LOSC and added last two sentences stating that the incorporation be rejected as proposed. Clearly, there was non-application of mind.

34. It is urged that in terms of Section 313(3), SC has to decide applications made under Section 313(1) for incorporation within a period of 60 days. However, in the present case, SC did not decide the respondents' application despite expiry of 18 years. The latter could not have waited for an infinite period of time before filing the present writ petition, when 18 years had already lapsed and LOSC clearly recommended SC for rejection.

35. Mr. Batra submitted that though the said 5 judgments granted relief of permanent injunction, yet the last paragraph (relief paragraph) in each of

5 judgments clearly states that relief of permanent injunction had been granted on the basis of ownership and possession having been proved by the plaintiffs in each case. Moreover, in one of the 5 suits, a specific issue no.3 was framed, *"whether the plaintiff is owner of the disputed land"*, which was decided in favour of the plaintiff against the MCD on the basis of evidence lead by the parties. It is argued that MCD did not place any document regarding its ownership in any of the suits, not even the alleged IP Register or the alleged possession letter. It did not reject the respondent's application for incorporation on the ground of MCD's ownership until 19.05.2014. On the contrary, MCD accepted the respondent's ownership on the said land in its (i) SC Resolution No. 210 dated 19.08.1998; (ii) Counter affidavit (para 11 thereof) dated 17.2.2001 filed in WP (C) 4788/ 2000; (iii) LOSC decision dated 28.10.2002; (iv) the first page of LOSC order dated 19.05.2014. On the other hand, SDMC failed to prove its ownership or handing over of possession to MCD by the colonizer or that the land was a part of school cum park complex.

36. In one of the civil judgments (*Prem Nath vs. Municipal Corporation of Delhi* & others), specific issue no. 3 and 4 regarding ownership and possession were framed, which were decided in favour of the respondents' predecessors and against MCD. Therefore, MCD lost the said 5 suits and was restrained from interfering in possession on the basis of ownership of the plaintiffs therein having been proved through registered sale deeds. It was submitted that the subsequent attempts by MCD to interfere in the possession, caused the plaintiffs to file contempt petitions against it wherein its officers apologized for interfering in possession. In contempt proceedings, the MCD failed to show that it was owner of the properties.

37. It is submitted that MCD entertained the respondents' application under Section 313 and kept on acting and proceeding thereupon for last 20

years and never took a stand that the application was not maintainable under the said section. SDMC's sole ground of rejection of the application was on the basis of SDMC's ownership. Therefore, it cannot now be allowed to take this plea that the application was filed under wrong provision. Moreover, by its letter dated 30.11.2006, MCD rejected an application dated 14.09.2006 for sanctioning building plans for a nursery school on the alleged school land, stating that the land is not a part of approved layout plan and asked to file fresh proposal for approval of layout plan under Section 313 of the Act.

38. It was urged that the earlier legal opinion of Law Officers of MCD in year 1998 was based upon the judgments in the 5 civil suits, when no entry in IP register was in existence. On the other hand, the legal opinion of the Law officer in 2014 was based just on an entry in IP register, and no reference to the judgments in the civil suits and contempt proceeding was made to the said law officer. Thus, the opinion of Law officer in 2014 was obtained by concealing material information regarding the judgment from him and hence, the same was rejected by the learned Single Judge. This finding, therefore, is reasonable and based on the record. It was stated that after the SC's order dated 19.08.1998, the issue was reopened on an application made by Garg in September, 1999 for reconsideration of case, which was finally rejected by order of 19.05.2014, which itself stated that the matter was reopened on an application of the said first respondent.

39. It is emphasized that the MCD stated on oath in its counter affidavit dated 17.02.2001, filed in another WP No. 4788/2000, that the said land was owned by others and not by it (MCD). This was a clear admission of MCD, which clearly established the ownership of the respondents. It is also submitted that the Respondents could not have challenged earlier decision of SC dated 19.08.1998, because subsequent thereto the matter was

reopened on an application made by Garg in September, 1999 for reconsideration of case, which was finally rejected by the LOSC and the SC in 2014. Counsel points out that the rejection of the application for incorporation was based on the sole ground of ownership and not any other ground, much less on the ground of land being earmarked for school as SDMC contends now. Moreover, the land was not earmarked for School.

40. Dealing with handing over of possession, it is submitted that MCD never placed any document to that effect. The letter dated 04.12.1968, related to handing of only the services and not possession. Reliance is placed on one of the suits (*Prem Nath v Municipal Corporation of Delhi &Ors*) a specific issue no.4 was framed - "whether land was handed over to MCD by Colonizer", which was decided against the defendant, MCD.

41. The land was shown as part of the land earmarked for school in the original layout plan, but the school land use was deleted in the revised layout plan. It is stated that since MCD's second appeal was rejected, it does not lie in the mouth of SDMC to say that the respondents are illegal trespassers. It is argued that though the respondents' predecessors were trespassers, their occupation of the land were regularized through separate sale deeds, executed and registered in 1994. Furthermore, the unauthorized occupation, if any was only against the colonizer and not the MCD or SDMC. Also, the colonizer executed the sale deeds in 1975 only after deletion of school land use from the layout plan in the year 1969; and authorizing the then part of school land for residential plots by MCD in 1974. It is clear that the land is under ownership and possession of the respondents who hold valid and legal title. Moreover, after the land use of school was deleted, it ceased to be even earmarked to be a public land.

42. It is urged that the established law is that if the issue was 'necessary' to decide for adjudicating on the principal issue, and is decided, it would

have to be treated as 'directly and substantially' in issue and if it is clear that judgment was in fact based upon that decision, then it would be *res judicata* in a latter case. Thus, for the civil court it was necessary to decide the issue of ownership for adjudicating the principal issue of possession and therefore, the issue of ownership was "directly and substantially" an issue and not collaterally. Therefore, *res judicata* was applicable against MCD in writ petition.

43. Mr. Batra submitted that the Master Plan and Zonal development plans fall in the realm of DDA; which has made it clear in its letter dated 14.08.2000 and dated 24.01.2011 that the matter falls in the jurisdiction of MCD alone and not DDA.

44. It was argued that the writ petitioners/respondents did not urge any disputed question of facts. The issues regarding ownership and title were previously proved in favor of the respondents' predecessors in above said five suits. The respondents do not seek the ownership or title to be decided by this Court, but they are merely relying upon those judgments. It is submitted that the dispute regarding ownership was raised by SDMC for the first time in their letter dated 24.12.2013. Before that, MCD had been accepting the respondents' ownership in its LOSC decisions dated 28.10.2002 and 19.05.2014; and its counter affidavit dated 17.02.2001 (para 11) in CWP No.4788/2000.

45. Lastly, Mr. Batra relied on the response to an RTI application with respect to the land in question, SDMC provided information by letter dated 19.12.2016,where:

(a) It stated that the copy of order on which the entry of IP register was not available in the record;

(b) It also provided office noting, in which its DLO has questioned the legal sanctity of the IP register and has pointed to the contemptuous nature of

SDMC's stand of its ownership claim over the land, which it has disowned in its Counter Affidavit filed in the previous writ petition; the DLO further opined that complete true facts need to be verified and brought on record to avoid an embarrassing position in the court. He also stated that it was apparent that some officials are playing dubious role, which needed to be checked. Actual facts need to be verified and action needs to be taken against erring officers, while bringing correct facts on court record, it is worth noting that disciplinary proceedings were initiated against Mr. Bharat Bhushan Gupta in this connection, who has signed the present LPA without having been authorized in this regard.

Analysis and conclusions:

46. On an overall consideration of the findings of the learned Single Judge and having regard to the submissions of the parties, the question which this Court has to decide are:

(i) firstly, whether the findings of the five previous suits are conclusive on the issue of title – alive to it is the RV sale deeds executed by the coloniser in favour of the writ petitioners' predecessors in 1994;

(ii) Secondly, whether the communication by the DDA that the Master Plan – and the consequential Zonal Development Plan requirements no longer stipulated that the land was needed for a secondary school and, therefore, consequently, the SDMC could change the purpose to residential. Alive to this is the nature of the MCD's obligations to carry out the necessary correction in the layout plan.

(iii) The third would be the interpretation of Sections 312 and 313 of the Act, having regard to the decision of the Supreme Court in *Pt.*

Chet Ram Vashist (supra) etc. and whether the MCD is correct in asserting that it has the right to manage the property as its custodian.

(iv) Lastly, whether the issue of title - in the light of the contentions of the parties has to be decided in favour of the writ petitioners.

47. Before proceeding with the analysis of the submissions, it would be necessary to extract the relevant provisions of the DMC Act, 1957 (i.e. "the Act"). They are as follows:

> ***"312. Owners, obligation when dealing with land as building sites***
>
> *"If the owner of any land utilises, sells, leases out or otherwise disposes of such land for the construction of buildings thereon he shall lay down and make a street or streets giving access to the plots into which the land may be divided and connecting with an existing public or private street.*
>
> ************ ************
>
> ***313. Lay-out plans***
>
> *(1) Before utilising, selling or otherwise dealing with any land under section 312, the owner thereof shall send to the Commissioner a written application with a lay-out plan of the land showing the following particulars, namely:—*
>
> *(a) the plots into which the land is proposed to be divided for the erection of buildings thereon and the purpose or purposes for which such buildings are to be used;*
> *(b) the reservation or allotment of any site for any street, open space, park, recreation ground, school, market or any other public purpose;*
> *(c) the intended level, direction and width of street or streets;*
> *(d) the regular line of street or streets;*
> *(e) the arrangements to be made for levelling, paving, metalling, flagging, channelling, sewering, draining, conserving and lighting street or streets;*

(2) The provisions of this Act and the bye-laws made thereunder as to width of the public streets and the height of buildings abutting thereon, shall apply in the case of streets referred to in sub-section (1) and all the particulars referred to in that sub-section shall be subject to the sanction of the Standing Committee.

(3) Within sixty days after the receipt of any application under sub-section (1) the Standing Committee shall either accord sanction to the lay-out plan on such conditions as it may think fit or disallow it or ask for further information with respect to it.

(4) Such sanction shall be refused—

(a) if the particulars shown in the lay-out plan would conflict with any arrangements which have been made or which are in the opinion of the Standing Committee likely to be made for carrying out any general scheme of development of Delhi whether contained in the master plan or a zonal development plan prepared for Delhi or not; or
(b) if the said lay-out plan does not conform to the provisions of this Act and bye-laws made thereunder; or
(c) if any street proposed in the plan is not designed so as to connect at one end with a street which is already open.

(5) No person shall utilise, sell or otherwise deal with any land or lay-out or make any new street without or otherwise than in conformity with the orders of the Standing Committee and if further information is asked for, no step shall be taken to utilise, sell or otherwise deal with the land or to lay-out or make the street until orders have been passed upon receipt of such information:

***Provided that** the passing of such orders shall not be in any case delayed for more than sixty days after the Standing Committee has received the information which it considers necessary to enable it to deal with the said application.*

(6) The lay-out plan referred to earlier in this section shall, if so required by the Standing Committee, be prepared by a licensed town planner."

48. The first and fourth points would be taken up together, as they concern the same issue. It would be essential to set out the facts relating to the five suits filed by the writ petitioners' predecessors. In *Prem Nath v Hans Raj,* (Suit No. 620/1995 before the Senior Sub Judge), the plaintiff claimed ownership of the land by virtue of the sale deed in his favour executed by the Urban Improvement Company. He claimed to be in possession for over 19 years and conceded that since transfer of property could not be made on account of impediment in law, effect was given to the agreement to sell by granting him possession. The suit claimed injunction on the basis of continued possession and alleged threat of dispossession by the erstwhile MCD. Similar assertions were made by all the plaintiffs' predecessors. According to the writ petitioners, the five original predecessors in interest conveyed title or interest in favour of six other individuals (including Pawan Garg). Intervening transactions are also relied upon. The writ petitioners/respondents in this case rely upon a flow chart depicting the transfer of title at various times. The same is extracted below:

Urban Improvement Company Pvt. Ltd.

18.06.75

ERSTWHILE OWNERS

Govind Ram 700 sq. yds.

Vasudev 250 sq.yds.

Jagdish 250 sq. yds.

Prem Nath 150 sq. yds.

Pearey Ram 250 sq. yds.

25.01.94 | 11.4.94 | 25.01.94 | 11.04.94 | 11.04.94 | 11.04.94

SUBSEQUENT OWNERS

Dinesh Garg 400 sq. yds.

Surender Kumar 300 sq. yds.

Mrs. Surender Kundra 150 sq. yds.

Surender Kumar 100 sq. yds.

Harish Kundra 250 sq. yds.

Roshan Lal 150 sq. yds.

P1 250 sq. yds.

21.11.06 | 21.11.06 | 21.11.06 | 04.08.08 | 21.11.06

CURRENT OWNERS

P1 400 sq. yds.

P2 300 sq. yds.

P3 150 sq. yds.

P3 100 sq. yds.

P3 250 sq. yds.

P3 150 sq. yds.

P1 250 sq. yds.

49. Each of the suits filed – *Govind Ram v. MCD* Suit No.444/1978; *Vasudev v. MCD* Suit No. 445/1978; *Prem Nath v. MCD* Suit No.445-A/1978; *Jagdish Lal Batra v. MCD* Suit No.183/1978 and *Pyare Ram v. DDA* Suit No.714/1982, were decided on the same day, i.e. 01.10.1998. A close look at the judgments of the trial court reveal that findings were recorded with respect to ownership of property. Yet, the reasoning is perfunctory and sketchy. Given the undoubted backdrop of the principal claim to injunct him, being in possession rather than ownership, the discussion necessarily was proved and in one sense a *prima facie*

conclusion. In these circumstances, the court is of the opinion that the discussion and findings with respect to the writ petitioners' ownership was not necessary for the decision on the main issue, i.e. possession and threatened dispossession from the land.

50. The judgment in *Sajjadanashin (supra)* points out that:

> *"In India, Mulla has referred to similar tests (Mulla, 15th Ed.p.104). The learned author says: A matter in respect of which relief is claimed in an earlier suit can be said to be generally a matter 'directly and substantially' in issue but it does not mean that if the matter is one in respect of which no relief is sought it is not directly or substantially in issue. It may or may not be. It is possible that it was 'directly and substantially' in issue and it may also be possible that it was only collaterally or incidentally in issue, depending upon the facts of the case. The question arises as to what is the test for deciding into which category a case falls? One test is that if the issue was 'necessary' to be decided for adjudicating on the principal issue and was decided, it would have to be treated as 'directly and substantially' in issue and if it is clear that the judgment was in fact based upon that decision, then it would be res judicata in a latter case. (Mulla, p.104) One has to examine the plaint, the written statement, the issues and the judgment to find out if the matter was directly and substantially in issue (Ishwar Singh Vs. Sarwan Singh: AIR 1965 SC 948 Mohd.S.Labbai Vs. Mohd. Hanifa: AIR 1965 SC 1569). We are of the view that the above summary in Mulla is a correct statement of the law.*
>
> *19. We have here to advert to another principle of caution referred to by Mulla (p.105).*
>
> *"It is not to be assumed that matters in respect of which issues have been framed are all of them directly and substantially in issue. Nor is there any special significance to be attached to the fact that a particular issue is the first in the list of issues. Which of the matters are directly in issue and which collaterally or incidentally, must be determined on the facts of each case. A material test to be applied is whether the Court considers the adjudication of the issue material and essential for its decision".*
>
> *XXXXXX XXXXXX XXXXXX*

These three cases are therefore instances where in spite of a specific issue and an adverse finding in an earlier suit, the finding was treated as not res judicata as it was purely incidental or auxiliary or collateral to the main issue in each of these cases, and not necessary for the earlier case nor its foundation."

51. More pointedly, in an elaborate analysis of the law on the subject, the Supreme Court held in *Ananthula Sudhakar v. P. Buchi Reddy (Dead) by LRs. & Others* 2008 (4) SCC 594 in the following manner:

"15. In a suit for permanent injunction to restrain the defendant from interfering with plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally.

XXXXXX XXXXXX XXXXXX

21. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

52. Thus, it is clear that the plea of *res judicata* in this case could not, having regard to the surrounding circumstances of this case, precluded or estopped the SDMC from questioning the writ petitioners' title to the lands.

Sajjadanashin (*supra)* is an authority on the issue as to what constitutes a matter directly and substantially in issue. The court clearly stated that something which is necessary for a decision is directly and substantially in issue and that which is inessential may result in findings which are not conclusive of the matter. This principle appears to have been followed and applied in *Williams (supra).* On the specific issue as to whether the evidence concerning ownership and title, if gone into, would preclude further debate by the parties, in the context of injunction suits and not those which seek the establishment or declaration as to title, the judgment in *Anathula Sudhakar (supra)* is categorical; it clearly holds that the suit for injunction *simplicitor* is concerned with possession and issue of title will never be directly and substantially in issue. The court went to say that even when that issue does and there are necessary pleadings. Nevertheless, if the matter involves complicated questions of fact and law, the court will relegate the matter for remit by way of comprehensive *suit for declaration.*

53. In the present proceedings, each plaintiff had asserted actual possession of the property and not *de jure* possession or occupation. The suit was for bare injunctive relief. In these circumstances, the decision on the question of ownership or title could not be deemed to be conclusive.

54. While on the subject it would be necessary also to deal with an argument made repeatedly on behalf of the writ petitioners that the SDMC was precluded from raising previous communication, internal notings as well as the opinion of its Chief Legal Advisor that the corporation was precluded from questioning the ownership of the writ petitioners or their predecessors in interest. In this context, it is noteworthy that in *Subhash Sindhi Co-operative Society(supra)*, the Supreme Court observed as follows:

…"Be that as it may, there can be no estoppel against the law or public policy. The State and statutory authorities are not bound by their previous erroneous understanding or interpretation of law. Statutory authorities or legislature cannot be asked to act in contravention of law.

"13…..The statutory body cannot be estopped from denying that it has entered into a contract which was ultra vires for it to make. No corporate body can be bound by estoppel to do something beyond its powers, or to refrain from doing what it is its duty to do."

Even an offer or concession made by the public authority can always be withdrawn in public interest. (Vide: State of Madras & Anr. v K.M. Rajagopalan AIR 1955 SC 817; Badri Prasad &Ors v Nagarmal & Ors. AIR 1959 SC 559; and Dr. H.S. Rikhy etc. v. The New Delhi Municipal Committee, AIR 1962 SC 554). In Surajmull Nagoremull v Triton Insurance Co Ltd, AIR 1925 PC 83, it was held as under:

"..No court can enforce as valid, that which competent enactments have declared shall not be valid, nor is obedience to such an enactment a thing from which a court can be dispensed by the consent of the parties or by a failure to plead or to argue the point at the outset..."

A similar view was re-iterated by the Privy Council in Shiba Prasad Singh v Srish Chandra Nandi, AIR 1949 PC 297."

55. In the light of the above discussion, it is held that the impugned judgment to the extent it assumes that question of ownership and title were conclusively determined in the previous suit by the Senior Sub judge and had been endorsed in appeal and further on second appeal by this Court, is clearly erroneous. It is also important to notice here that the appeal preferred before the District Judge appears to have been time barred. That was the primary ground for rejection of the application for condonation. The consequent refusal by this Court to set aside the findings of the lower courts on the ground that no substantial question of law arises was in no

manner conclusive on the issue of title as well. For these reasons, it is held that the Single Judge fell into error in accepting the writ petitioners' plea that the question of title had been decided affirmatively in favour of their predecessors in interest and that issue had the effect of estopping SDMC from questioning their rights and interest over the land, as subsequent transferees.

56. On the second issue with respect to the LOSC's rejection in 2014 of the request for re-examination of change of user and inclusion of the plots in the lay out plan, both parties had relied upon a welter of documentary evidence. The SDMC had relied upon the initial proposal of the coloniser, the draft layouts, approval of lay out plan and the final demarcation in 1969; it highlights that possession on the basis of the lay out plan was handed over to it on 04.12.1968. The demarcation was carried out subsequently. This formed the basis of its argument that the use of land was fixed and crystallized as a public land although for the purpose of construction and use as a secondary school. The writ petitioner/respondents, on the other hand made diverse arguments. In the present context, the relevant arguments are that the issue never attained finality because the ownership of the land remained with the coloniser and was vested in the petitioner's predecessors in 1994. It was also importantly argued, on 07.03.1974, a Resolution was passed dealing with regularization of plan of the plots. It was urged that given these circumstances, the SDMC's argument with respect to rejection of the request for inclusion of lay out in the residential colony was untenable; the SC's decision based on the LOSC recommendations has noted the previous decision of 19.08.1998 were based entirely on the ground of existing user of the property or the alleged ownership of the suit land vesting in favour of the MCD.

57. In this case, the lay out plan was sanctioned in favour of the coloniser on 03.09.1958. The revised plan submitted by the coloniser subsequently was approved by the erstwhile MCD on 28.03.1959. That resolution considered the revised lay out. The relevant parts of the resolution reads as follows:

> *"No.7*
>
> ***Subject: Sanction of lay out plan of Green Park Extension on Mehrauli Road, by Urban Improvement Housing and Construction Co. (Private) Ltd.***
> *The applicant has submitted a layout plan for this area for the approval of the portion. The full report regarding details of this layout plan is as follows:*
>
> *1. The area covered by the layout plan falls in the Residential Zone according to the Interim General Plan in Low Medium Density Area.*
> *2. Total area covered by the colony 62.1 acres.*
> *3. Total no. of residential plots (size varying from 232 to 800 sq. yards). 357*
> *4. Total estimated population (@ 10 persons per plot, calculating 2 families per plot and 5 persons per family) 3570*
> *5. Total area under roads (the major collector street is 80' wide, other streets are 45' and 36' and service lanes are 15' wide) 17.65 acres.*
> *6. Total area under residential plots 28.54 acres*
> *7. Area covered by parks and open spaces 4.8 acres (our standard prescribes 1.2 acres for 1000 population, according to this it works out 4.5 acres while the applicant has provided more than this):*
> *8. Schools: (a) One High School 4.5 acres*
> *(b) Two Primary Schools (1.5 acres each) 3 acres*
> *XXXXXX XXXXXX XXXXXX*
>
> ***<u>RECOMMENDATIONS:</u>***
> *As this area falls in Low Medium Density Residential Area according to the interim general plan and the applicant is fulfilling all the conditions as required for the sanction of the layout plan, the case is put up for the approval of the Standing*

Committee under Section 313 of the Delhi Municipal Corporation Act, 1957."

58. On 04.12.1968, the possession of open spaces, including the land was handed over to the erstwhile MCD. The document evidencing this reads as follows:

"MUNICIPAL CORPORATION OF DELHI
LANDS & ESTATE DEPARTMENT

No.E/L&E/68 Dated the November, 1968

The following services of Green Park Extension Colony as per approved layout plan have been taken over today the 4th December, 1968 from the Secretary.

1) Roads, Roads Berms, Storm Water Drain as per approved Layout plan of Green Park Extension.
2) Open space earmarked for community purposes such as parks, school, dispensary, community Centre's plot and public building, as per approved layout plan of Green Park Extension and marked as A, B, C, D, E, F, G, H, I and J in the Plan.
3) 10 (Ten) ft. vide strips by the site of plot No.T.I. 03 and U-4 as a shown in the plan and open spaces by the size is 6 ft. shop no.1&7 (L Block).
The details of the open spaces mentioned at 2 above are indicated in the plan bearing signatures of the colonizer as representatives of the Municipal Corporation of Delhi.

Sd/-
04.12.1968
Manager Lands & Estate
Municipal Corporation of Delhi
Town Hall, Delhi.

Sd/-
Daulat Ram Choudhari
Site Incharge, Green Park Extn
For Urban Improvement (Pvt) Ltd.
F-32, Connaught Place, New Delhi."

59. Apparently, the erstwhile MCD handed over possession of the properties in turn to its respective departments for maintenance and development and made an appropriate entry in its IPR, the extract of which has been produced; in fact acting in furtherance, the demarcation report too was prepared, which reads as follows:

….."Item No.7: - Demarcation Plan of Green Park Main and Extension on Mehrauli Road.

(i) Commissioner's letter no.1135/C&C dated 14-10-68
This case was put up before the SC, MCD vide by letter No.1101/C&C dated 25.8.67 copy of which is placed at appendix B. The SC, however, vide resolution no.848 dated 1.4.1968 referred it back for report in the light of discussions held in the meeting. The points of discussion in the meeting were that the position of the sewer line affecting certain plots be shown on the plan and 10 ft. space to the left around it be clearly indicated and also the facts regarding the cinema site be given in detail.
As required the plots affected by the sewer lines are not marked clearly on the plan. The plots, thus affected are as under:

(1) Plot No.C-9, Green Park Extension
(2) Plot No. Q-3, Green Park Extension
(3) Plot No.T-1, Green Park Extension
(4) Plot No.U-4, Green Park Extension
(5) Plot No.U-20 Green Park Extension

Out of 5 above mentioned plots, No.T-1 and U-20 shall have to be deleted completely whereas plot Nos. C-9, Q-3 and U-4 are affected only by a strip of 10 ft. width.
Regarding the cinema site, a detailed preamble is being put up separately for the consideration of the Standing Committee.
As required under Section 313 of the Delhi Municipal Corporation Act, 1957, the case is put up before the Standing Committee for approval subject to the following conditions:

1. *Plot Nos. T-1 and U-20 shall not be considered the part of the approved plan.*
2. *Plot Nos. C-9, Q-3 and U-4 shall be reduced in width by 10 ft.*

3. No new plots are allowed to be carved out. If the coloniser is, however, already committed in respect of newly carved out plots, he should surrender the alternative plots in lieu of the same.
4. The combined layout plan of shopping centre as approved by the Standing Committee vide resolution no.1756 dated 16.3.1962 shall be adhered to though at the cost of reducing the size of the plots numbering 29 to 32.
5. The size of cinemas shall be allowed to be utilized as may be decided by the Standing Committee for which a separate preamble has been put up.
6. The portions of land not owned by the coloniser as well as the portions shown as encroached upon which have been clearly indicated on the layout plan as pockets shall not be considered as part of the approved layout plan. As such, the plots which are being affected by these pockets and portions shown as encroached upon shall not be considered as part of the approved layout plan and building plans for the same shall not be considered.
7. The coloniser shall pay for the cost of the acquisition of land falling under roads and lanes, which are affected by other pockets marked on the layout plan."

60. Interestingly, the demarcation report has attached the Resolution No. 848 dated 01.04.1968 of the SC of the MCD in respect of Green Park Extension. That reads as follows:

> *"GREEN PARK EXTENSION*
> *The layout plan of Green Park Extension on Mehrauli Road was originally approved by the SC of the MCD vide Resolution No.7 dated 3.9.1958. In the layout plan then approved, the information in respect of plot and block numbers was not given. But as per counting the total number of plots approved was 409. Subsequently, the applicant approached with a revised layout plan showing certain modifications and an increase in the number of plots from 409 to 427. The same was approved by Shri P.R. Nayak, the then Commissioner vide his orders dated 5.5.1959. Powers for allowing minor modifications were given to the Commissioner vide Resolution No.10 dated 28.3.1959 of the Standing Committee.*

The number of plots now as per demarcation plan in Green Park Extension colony is 429 which means an increase of 2 plots from the latest layout plan approved by the then Commissioner.

XXXXXX XXXXXX XXXXXX

The coloniser has also stated that leaving aside these, the building permission be allowed in the plots which were previously held up due to ownership dispute. There seems to be no objection to the request of the coloniser subject to the condition that an undertaking is given by the coloniser on a stamped paper saying that he will take full responsibility for any kind of dispute that may arise with respect to ownership of the said plots. The abstract in respect of number of plots approved at various stages is given in the table below:-

Total number of approved plots.	*As per demarcation at site of in Green Park Main and Extn.*	*Green Park main and Extension*
Main (Approved by DDPA)	*714*	*710(-)4*
Extension (approved by SC & Commissioner)	*427*	*439 (+)12*
Total	*1141*	*1149 (+)68*

The additional 8 plots were carved out by the coloniser while submitting combined layout plan of Green Park Main and Extension far getting the set back and combination plan approved.

While the commissioner approved the set back and combination plan the increase of 8 plots was left unnoticed because the plan was submitted by the coloniser mainly for set back and combination purposes.

As they layout plan of Green Park main and Extension colonies is already deficient in respect of open spaces and various public amenities, the addition of new plots should not be agreed to. A demarcation layout plan including the combined layout plan of shopping centre of Green Park main and Extension colonies on Mehrauli Road is recommended for approval and put before the SC as required under Section 313 of the DMC Act, 1957 subject to the following conditions:-

1. *Now new plots are allowed to be carved out. If the coloniser is, however, already committed in respect of newly carved out plots, he should surrender the alternative plots in lieu of the same.*

2. *The combined layout plan of shopping centre as approved by the SC vide Resolution No.1557 dated 17.3.62 be adhered to, even though at the cost of reducing the size of plots numbering S.1 to S.6.*
3. *Building permission be granted on plots leaving aside those now shown disputed by the colonizer, subject to a clear undertaking from the coloniser that there is no dispute of land and he will be fully responsible for it that may arise in future."*

61. The Resolution No. 929 of the MCD Committee dated 07.03.1974 speaks of the proposal to regularize land of Khasra No.4 and records that one Sh. Amar Nath Datta of the Green Park Sudhar Samiti sought regularization of the Khasra that was previously included in the primary school. The Resolution also talks of approval of the proposal. The court notices here that there was absolutely no advertence to Resolution No. 929 of the MCD dated 07.03.1994 – in the original pleadings in the writ petition. This document was introduced by way of a rejoinder to the SDMC's reply dated 28.01.2015. The rejoinder was filed on 18.02.2015. The relevant part of the pleadings are as follows:

> *"g. That a resolution bearing no. 929 passed by Municipal Corporation on 7.3.1974 (item No.37) is relevant in this regard, the true typed copy whereof is annexed and marked as* ***Annexure P-41.*** *Vide the said resolution the respondent approved a part of the land earmarked for primary school for regularization of residential plots and roads. The relevant portion of the said resolution is reproduced as under:*
> *"……..Now Shir Amar Nath Datta, Secretary, Green Park Extension Sudhar Samiti has submitted the regularization plan of one of such pockets (Khasra No.4) which was previous included in the Primary School in the original layout plan. In the revised demarcation plan, this land has been excluded from the Primary School and shown as others land and therefore, does not form part of the approved layout plan.*
> *In the regularization plan, the approach to the site in question has been taken through the primary school site by providing a*

36-0" wide road and 24'-0" wide road. The existing 15'-0" wide road has been proposed to be widened to 24-0 as shown in the plan.....

h) The contents of above referred resolution showing the regularization of a part of the land earmarked for primary school, clearly establishes that respondent themselves had been regularizing the land earmarked for primary school to be used for residential and road purposes, since the land available in quite inadequate for school purpose or any other purpose. Since the petitioners' case is also similarly placed, they are also entitled for regularization of their plots on ground of parity."

62. Upon an overall analysis of the documentary evidence, it is clear that no commitment was ever held out in categorical terms that the vacant land earmarked for purposes other than school or public use in the original lay out plan would be later changed to residential purposes and also included in the lay out plan. On the contrary, all documents clearly point to the fact that the coloniser had sought revisions of the plans at least twice. The later, conditionally granted amendments had clearly stated that the increase in residential plots correspondingly meant shrinkage of public and green spaces. Taking these circumstances into consideration, the repeated correspondence which the MCD engaged in – likely on account of pressures of the local residence samiti and perhaps at the behest of some officers of the corporation for reasons that are not relevant, the DDA was approached on three occasions. Each time, the DDA lobbed back the issue into MCD's court. The best that Garg and the other writ petitioners could come up with were recommendations made in 2002 by the MCD, for approval of their proposals to convert the land for residential use purposes and their inclusion in the lay out plan. What has been relied on by the respondents/writ petitioners are proposals and recommendations, but never the proposals that were ever notified or amended subsequently.

63. In the opinion of the court, the material on record did not warrant any findings that MCD was obliged under the changed circumstances – assuming *arguendo* that in the subsequent Master Plan, the use could be residential – or that the SMDC was under a compulsion to accept the proposal to include the land in the layout plan. Neither law nor equity can be called in aid by anyone to say that a public obligation vested on account of a statutory duty should be jettisoned, on account of individual or private interest. In these circumstances, the claim of the writ petitioners could not trump over that of the general public and not in the least because they succeeded to the previous owner's interests to the property. The dynamics of town planning are such that open spaces and common amenities remain precious. Even if the use of the plot can no longer be that for the original purpose of the school and could possibly be residential, on application of later developmental or zonal regulations that *per se* would not mean that original setting apart of such land for that public purpose is to cease.

64. In this context, this Court recollects the previous decision of a Division Bench, where a co-operative society was allotted lands for plotted development; as part of the common utilities and other areas, space was set apart for a school. Some members of the society complained that the change of the use and incorporation of that area in the later Master Plan as residential meant that it had to be converted into a residential plot. The court rejected the plea and imposed costs in *Samir Kohli & Ors. v Union of India & Others* (W.P. (C) 4489/1995 decided on 13.04.2012), holding as follows:

> *"51. The charge of non-application of mind, in this Court's opinion, is devoid of merit and therefore, insubstantial. The reasons cited by the DDA - and accepted by the Central Government, to withdraw its earlier direction - were mainly that the society did not own the land; that superimposition of new*

Master Plan norms to "release" lands earmarked for amenities for the purpose of residential plots would lead to pressure on amenities (one noting stated as much); absence of any clear cut policy; the fact that according to norms, 3.36 acres land for amenities was deficit, in the Society, are all relevant. In addition, the reservation expressed that in most cases, housing societies which had allotted lands in the 1970s had frozen their list of members, and allowing them to enroll members or permit new members to be allotted new residential plots, developed especially for that purpose by changing the layout plans, would be an unwholesome idea, cannot be brushed aside as irrelevant or not germane to the issue.

52. It is entrenched in our judicial system that judicial review of executive or legislative action is limited to examination whether the impugned decision is tainted, the Court's role is confined to seeing if it is illegal, the result of non-application of mind, irrational (in the sense that no reasonable man would have arrived at such decision) or the result of mala fides. The Court does not adjudicate or weigh the merits of a policy decision, unless the executive decision is one which no reasonable man can subscribe to.

****** ***********

55. The plea of estoppel, similarly, is insubstantial. Estoppel is enforceable only when it does not run into conflict with law, and the person setting it up, proves that the representation by the public authority or agency led him to alter his circumstance irrevocably to his prejudice. No such facts were either pleaded or urged. The approval through the order dated 12-9-1994, did not result in any tangible, let alone substantial steps on the part of the petitioner, or any member of the society which were of an irreversible character. Consequently, the plea of estoppel fails.

56. Apart from the above reasons, which are dispositive of the Petitioners' claims, the Court is of the view that the contention regarding change in norms as the result of a new Master Plan resulting in new rights, and "freeing" lands for development, in terms of such "relaxed" norms, in localities which are developed and existing, is too startling a proposition to be accepted. Such an interpretation would result open spaces and public utility areas - if designedly kept open or yet to be developed, being altered. Planning then would be in a constant state of flux, and every colony-possibly the use of every public amenity area -

having to be reviewed to accommodate unceasing demands from societies and developers, a completely undesirable development. It would most probably also change the character of the city, and result in further concretization, posing greater problems for provision of facilities and services like sewage, water supply, electricity, etc.

57. This Court is not unmindful of the fact that the DDA had allotted 7.87 acres of the land in question for development of schools in the locality. A series of legal proceedings, culminating in the present one - has ensured that the land was not entirely handed over; even the interim order made in 2005 in this case, conditionally permits the Government to use only a part of the land - 3.98 acres by putting up "porta cabins" or temporary structures for a school. The Government of NCT had even paid the consideration assessed for the allotment-over ₹ 23 lakhs, long ago in 1992. Today, some sections of the society who claim to support the petition-and the petitioners have successfully stalled the realization of our most cherished goal - the right to education for well over 16 years, through this petition. In fact, an entire generation of school going children - (if the schools had been constructed and allowed to function, the children born in 1994-1995 would have been graduating from 12grade by now) in the vicinity have been deprived of this benefit. This is virtually an intolerable, and un-restitutive situation. In view of the above discussion, WP (C) No. 4489/1995 has to fail with costs, quantified at ₹ 1,50,000/-payable by the petitioners in equal proportion (of ₹ 30,000/-by each Petitioner), within four weeks, to the Govt. Of NCT, which shall ensure that the same is used for infrastructure development of the school it seeks to build….”

65. For these reasons, it is held that on the second aspect as well, the writ petition could not have succeeded in law; the Single Judge clearly erred in returning findings in favour of the writ petitioners.

66. The third question is with respect to interpretation of Sections 312 and 313 of the Act. In *Pt. Chet Ram Vashist* (supra) the question involved was whether the MCD was correct in permitting sanction of construction *“with condition that the open space for parks and schools be transferred to the Corporation free of cost.”* The Supreme Court held, after explaining the

nature of the MCD's obligations and rights as custodian of lands handed over to it, as follows:

> *"None of its provisions entitled the Corporation to claim any right or interest in the property of the owner. Sub-section (3) empowers the Standing Committee to accord sanction to the lay-out plan on such conditions as it may think fit. The expression, 'such conditions' has to be understood so as to advance the objective of the provision and the purpose for which it has been enacted. The Corporation has been given the right to examine that the lay-out plan is not contrary to any provision of the Act or the rules framed by it. For instance a person submitting a lay out plan may be required to leave certain open space or he may be required that the length and width of the rooms shall not be less than a particular measurement or that a coloniser shall have to provide amenities and facilities to those who shall purchase land or building in its colony. But the power cannot be construed to mean that the Corporation in the exercise of placing restrictions or imposing conditions before sanctioning a lay-out plan can also claim that it shall be sanctioned only if the owner surrenders a portion of the land and transfers it in favour of the Corporation free of cost. That would be contrary to the language used in the Section and violative of civil rights which vests in every owner to hold his land and transfer it in accordance with law. The resolution passed by the Corporation directing the appellant to transfer the space reserved for tube wells, school and park in its favour free of cost was depriving the owner of its property and vesting it in the Corporation against law. The finding of the High Court that such condition did not amount to transfer of ownership but it was only a transfer of the right of management cannot be accepted. The two rights, namely, of ownership and of management, are distinct and different rights. Once a vacant site is transferred in favour of another free of cost then the person transferring it ceases to be owner of it. Whereas in transfer of right of management the ownership continues with the person to whom the property belongs and the local authority only gets rights to manage it. But the conditions imposed by the Standing Committee clearly meant to transfer the ownership in favour of the Corporation. The Corporation as custodian of civil amenities and services may claim and that would be proper as well, to permit the Corporation to regulate, manage, supervise and look*

after such amenities but whether such a provision can entitle a Corporation to claim that such property should be transferred to it free of cost appears to be fraught with insurmountable difficulties. The law does not appear to be in favour of the Corporation. Public purpose is, no doubt, a very important consideration and private interest has to be sacrificed for the welfare of the society. But when the appellant was willing to reserve the two plots for park and school then he was not acting against public interest. This cannot be stretched to create a right and title in favour of a local body which utmost may be entitled to manage and supervise only.

5. The power directing transfer of the land has been exercised Under Section 313 of the Act. This Section falls in Chapter XV which deals with streets. The public streets are dealt from Section 298 to Section 311 whereas private streets are dealt from Section 312 to Section 330 Section 312 obliges an owner of any land utilising, selling, leasing out or otherwise disposing of the land for the construction of building to lay-out and make a street or streets giving access to the plots into which the land may be divided and connect it with an existing or public street. Section 313 requires such owner to submit a lay-out plan before utilising the land for any of the purposes mentioned in Section 312 and send it to the Commissioner with a lay-out plan showing the particulars mentioned in Clauses (a) to (e). The reservation or allotment of any site in the lay-out plan for any open space, park or school is to be provided by Clause (b) of Section 313. Section 316 entitles the Commissioner to declare a private street to be a public street on the request of owners. Section 317 prohibits a person from constructing or projecting any structure which will encroach overhang project in a private street. In fact the entire cluster of Sections from 312 to 330 of which Section 313 is a part, deals with private streets only. There is no provision in this chapter or any other provision in the Act which provides that any space reserved for any open space or park shall vest in the Corporation. Even a private street can be declared to be a public on the request of owners of the building and then only it vests in the Corporation. In absence of any provision, therefore, in the Act the open space left for school or park in a private colony cannot vest in the Corporation. That is why in England whenever a private colony is developed or a private person leaves an open

space for park to be used for public purpose he is required to issue what is termed as 'Blight Notice' to the local body to get the land transferred in its favour on payment of compensation. Section 313 which empowers the Commissioner to sanction a lay-out plan, does not contemplate vesting of the land earmarked for a public purpose to vest in the Corporation or to be transferred to it. The requirement in law of requiring an owner to reserve any site for any street, open space, park, recreation ground, school, market or any other public purpose is not the same as to claim that the open space or park so earmarked shall vest in the Corporation or stand transferred to it. Even a plain reading of Sub-section (5) indicates that the land which is subject-matter of a lay-out plan cannot be dealt with by the owner except in conformity with the order of the Standing Committee. In other words the Section imposes a bar on exercise of power by the owner in respect of land covered by the lay-out plan. But it does not create any right or interest in the Corporation in the land so specified. The resolution of the Standing Committee, therefore, that the area specified in the lay-out plan for the park and school shall vest in the Corporation free of cost, was not in accordance with law.

6. Reserving any site for any street, open space, park, school etc. in a lay-out plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned lay-out plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer

of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred in the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for parks and school was an order for transfer without there being any sanction for the same in law."

67. It is clear from the above passage that the title and interest in the land does not vest in the public corporation (in this case, SDMC): however it has *"a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself."* This enunciation is supported by the earlier observation that this custodial nature of the right amounts to *"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."*The facts in this case, no doubt are different: it is that the layout plan continued to be the same, i.e. the area was earmarked for a school. The MCD in that case had compelled a transfer to itself of the public spaces; in this case, it refused to amend the layout plan.

68. In another judgment, In *Sri Guru Singh Sabha v. South Delhi Municipal Corporation*, (W.P.(C) 4651 and 5817/2014 decided On: 07.07.2016) this court held in the context where a layout plan was changed, but was challenged by the local residents' body that:

"It would thus be noticed, that the question with which these petitions are concerned, viz. whether a reservation under Section 313(1)(b) once done for a particular purpose can be changed for another purpose specified therein or removed i.e. by prescribing the use of that land for a private purpose, as compared to public

purpose, did not fall for consideration in either of the above cases. What the aforesaid judgments answer is, only question no. I of the questions framed by me in para 22 above i.e. that the layout plan once sanctioned, can be modified. <u>It was held so expressly by the Division Bench in Greater Kailash-II Welfare Association supra and Pt. Chet Ram Vashisht supra also was a case of modification of layout plan and the Supreme Court, though not faced with the issue, did not hold that layout plan once sanctioned could not be modified.</u>

<u>28. Once, there is no bar to the modification / alteration of a layout plan, I see no reason to limit the said power to Clauses (a),(c),(d) & (e) of Section 313(1) and to hold that the power of such modification / alteration does not extend to the reservation under Section 313(1)(b) of the Act. There is nothing in Section 313 or in any other provision to suggest so.</u> The reservation under Section 313(1)(b) of the MCD Act is not as per the ipsidixit of the developer / coloniser or of the Standing Committee of MCD. The developer / coloniser is ordinarily interested in having the maximum permissible area available for sale / development into residential and commercial and would be interested in reserving only the minimum prescribed area for streets, open spaces, parks, recreation grounds, schools, markets or for any other public purpose and would not voluntarily reserve an area in excess thereof, and for which he reaps no price, for such public purposes. MCD also, cannot insist upon the developer / coloniser reserving more than the prescribed area. Supreme Court, in Pt. Chet Ram Vashisht supra also held that reservation of sites for streets, open spaces, parks, schools etc. has to be in accordance with the prevalent bye-laws or other parameters prescribed. If with the passage of time or for any other reason (as in Pt. Chet Ram Vashist supra, where the need for tube well for which the plot was ear-marked disappeared with the passage of time) the parameters of the area required to be reserved for streets, open spaces, parks, recreation grounds, schools, markets or for any other public purpose changes or the need therefor disappears, I see no reason to hold that notwithstanding the same, MCD or developer / coloniser are precluded from seeking such modification. In fact, a situation may also arise where the residents themselves may want the user

to be changed as per the changed needs and requirements of public/society…"

69. As is evident whereas in *Pt. Chet Ram Vashist* (supra), the MCD granted permission and *sought to help itself to land by a coercive gift, so to say,* in *Sai Guru Singh Sabha (supra),* the SDMC actually changed the lay out use. The peculiar facts no doubt lent different dimensions; yet what is important is that MCD or the SDMC is the custodian of public interest and crucially, the original owner ceases to have interest. *Chet Ram Vashist (supra)*says this clearly:

> *"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."*

70. Given this position, it is doubtful whether the original owner, i.e. the colonizer could have conveyed valid title to the plots in question at all by executing sale deeds in 1994 in favour of the writ petitioners' predecessors in interest.

71. One of the main arguments of the petitioners accepted by the Single Judge was that DDA's letters dated 14.08.2000 and 17.01.2001,stated that as per MPD-2001, the land had been shown for residential use. Under the approved zonal plan of Zone F, the land was a part of proposed Sr. Sec. School. As per the MPD-2001, the minimum area required for the Sr. School is 4(1.6 ha) acre and the available land was found inadequate for school. The DDA further intimated that the subject area was under jurisdiction of MCD and modification/approval in the layout plan was with

the MCD. It was in fact suggested by the DDA that the area should be used according to the provisions of the MPD-2001 and the Zonal Plan.

72. Here, the land no doubt does not belong to SDMC; the minimum area required for Sr. Secondary School is 4000 sq. mts., which is roughly 4783.96 sq.yds. and the land in question is 1600 sq. yds. The stand of SDMC with regard to the land being transferred to MCD in 1969 is correct. The layout plan of the area in question was originally approved in the year 1958 by Resolution No. 7 dated 03.09.1958 of the SC. Thereafter, the layout plan was modified in the year 1959. Thereafter, by Resolution No. 183 dated 30.05.1969, the demarcation plan of the area in question was approved. The land in question, which is the subject matter of the present petition, was always shown as earmarked for school. Possession of the land in question was also handed over to the Municipal Corporation way back in the years 1967 and 1968, as reflected from the record. These facts, *ipso facto,* in the opinion of this Court, did not compel the SDMC to permit residential use. SDMC undoubtedly cannot – like in *Pt. Chet Ram Vashist's case* compel transfer of the lands unto itself. However, it has to formally accept the proposal to convert the use. Here, the petitioners are not on sound footing.

73. Once the colonizer parted with the properties, and at a time, when the use of the plot was "fixed" or had crystallized as a public purpose, the question of its transfer in 1994 could not have arisen. As clearly held in *Pt. Chet Ram (supra),* the residual ownership did not extend to the holder of title the *right to transfer the land.* Here, not only did the colonizer transfer the lands <u>at a time, when the use continued to remain unaltered,</u> it appears to have conferred -*through such transactions,* rights it never had nor could claim. Moreover, it is one thing to say that the SDMC can, or may approve a change of layout; it is another thing entirely to say that it can <u>be</u>

compelled to do in judicial review. During the hearing, no rule of law or binding authority was shown to the court, in support of the submission that a writ or direction of the nature sought could be given under Article 226 of the Constitution of India.

74. This Court recollects that the Supreme Court had in its judgment in *Friends Colony Development Committee v. State of Orissa and Others* (2004) 8 SCC 733 dealt with the obligation of local authorities in the context of zonal planning and held as follows:

> *"22. In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed there under. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified."*

75. In *Howrah Municipal Corpn. And Others v Ganges Rope Co. Ltd. and Others* 2004 (1) SCC 663 the question of rights of parties, in the context of town planning was explained in the following terms:

"Neither the provisions of the Act nor general law creates any vested right, as claimed by the applicant - company for grant of sanction or for consideration of its application for grant of sanction on the then existing Building Rules as were applicable on the date of application. Conceding or accepting such a so-called vested right of seeking sanction on the basis of unamended Building Rules, as in force on the date of application for sanction, would militate against the very scheme of the Act contained in Chapter XII and the Building Rules which intend to regulate the building activities in a local area for general public interest and convenience. It may be that the Corporation did not adhere to the time limit fixed by the court for deciding the pending applications of the company but we have no manner of doubt that the Building Rules with prohibition or restrictions on construction activities as applicable on the date of grant or refusal of sanction would govern the subject matter and not the Building Rules as they existed on the date of application for sanction. No discrimination can be made between a party which had approached the court for consideration of its application for sanction and obtained orders for decision of its application within a specified time and other applicants whose applications are pending without any intervention or order of the court.

37. The argument advanced on the basis of so-called creation of vested right for obtaining sanction on the basis of the Building Rules (unamended) as they were on the date of submission of the application and the order of the High Court fixing a period for decision of the same, is misconceived. The word 'vest' is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word 'vest' has also acquired a meaning as "an absolute or indefeasible right" [See K.J. Aiyer's 'Judicial Dictionary' (A complete Law Lexicon), Thirteenth Edition].

The context in which respondent - company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to 'ownership or possession of any property' for which the expression 'vest' is generally used. What we can understand from the claim of a 'vested right' set up by the respondent-company is that on the

baas of Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the court for its consideration, it had a 'legitimate' or 'settled expectation' to obtain the sanction. In our considered opinion, such 'settled expectation', if any, did not create any vested right to obtain sanction. True it is that the respondent-company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rule making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such 'settled expectation' has been rendered impossible of fulfillment due to change in law. The claim based on the alleged 'vested right' or 'settled expectation' cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such 'vested right' or 'settled expectation' is being sought to be enforced. The 'vested right' or 'settled expectation' has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this such a 'settled, expectation' or so-called 'vested right' cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon.

38. In the matter of sanction of buildings for construction and restricting their height, the paramount consideration is public interest and convenience and not the interest of a particular person or a party. The sanction now directed to be granted by the High Court for construction of additional floors in favour of respondent is clearly in violation of the amended Building Rules and the Resolution of the Corporation which restrict heights of buildings on GT Road. This Court in its discretionary jurisdiction under Article 136 of the Constitution cannot support the impugned order of the High court of making an exception in favour of the respondent - company by issuing directions for grant of sanction for construction of building with height in violation of the amended Building Rules and the resolution of the Corporation passed consequent thereupon."

76. The existence of power is one thing; however to say that it has to be used in one manner, is entirely another. The decision of the LOSC and the final rejection by the SC took into consideration *all circumstances,* including the previous judgments, the opinion of the Chief Legal Adviser, the DDA's position about change of land use and also that no secondary school was possible. Yet, the final decision of the SDMC was not to include the plots in the Green Park Extension and construct residences. Besides use for school purposes, conceivably, SDMC may explore other options for use of the plot for some other public purpose or purposes, given the acute lack of open spaces in the city for public amenities and utilities. In these circumstances, the learned Single Judge was clearly in error in directing the SDMC to reconsider the matter, in the manner he did, in the impugned judgment.

77. In view of the foregoing findings, the appeal has to succeed; the impugned judgment is hereby set aside. The appeal is allowed without any order on costs.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

APRIL 24, 2019