

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

REVIEW W.P.M.P.No.31888 of 2015

IN

W.P.M.P.No.25605 of 2014

AND

W.P.No.16071 of 2006

-

COMMON ORDER:-

1. The main writ petition is filed seeking the following relief/s:-

“....to issue an appropriate Writ order or direction, more particularly one in the nature of writ of Mandamus declaring the action of the Respondent in taking possession of the vacant land adjacent to plot Nos. 140, 141 Narayanapuram Lay out of Survey Nos. 227, 235 and 236 of Rajahmundry rural as unconstitutional and consequently direct the respondent not to take possession of Plot No. 140, 141 Narayanapuram lay out in Survey Nos. 227, 235 and 236 Rajahmundry rural or take up any construction in the said land and pass such order or other orders as deemed fit in the interest of justice.

1.1 The review petition, under Order XLVII Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity), is filed by the respondent in the main writ petition no.16071 of 2006, requesting to review the orders of this Court dated 24.07.2014 passed in W.P.M.P.No.25605 of 2014, whereby the order dated 21.06.2007 passed in the main writ petition, on merits, was recalled.

1.2 The parties in these two proceedings would hereinafter be referred to as the writ petitioners and the respondent/review petitioner, for convenience and clarity.

2. To begin with, it is necessary to state the facts that lead to the filing of this review petition and the re-hearing of the writ petition, which was once disposed of on merits. The said facts are as under:

This Court, after having heard the learned counsel for the parties to the writ petition, dismissed the writ petition in W.P.No.16071 of 2006 by orders dated 21.06.2010. Subsequently, the writ petitioners filed WPMP No.25605 of 2014 for recalling the aforementioned orders of this Court which are passed on merits in the writ petition. Subsequently, the first petitioner in the writ petition had died. An application in WPMP No.21848 of 2014 is filed to implead the legal representatives of the deceased first

petitioner in the WPMP No.25605 of 2014. As there was delay in filing the said application to bring the legal representatives on record, a WPMP No.20302 of 2014 was also filed for condonation of the said delay. Since these petitions were returned with certain office objections, a WPMP No.9693 of 2012 was filed for condonation of the delay in re-presenting the said petitions. Subsequently, said WPMP No.9693 of 2012 was allowed and the delay in re-presenting the said applications was condoned. Subsequently, the application for condonation of delay in WPMP No.20302 of 2014 was ordered on 20.06.2014 and the delay in filing of the application to bring the legal representatives on record was condoned. Thereafter, WPMP No.21848 of 2014 was ordered on 03.07.2014. Thus, the legal representatives of the deceased first petitioner were permitted to be impleaded in WPMP No.25605 of 2014, which is filed for recalling the aforementioned orders dated 21.06.2010 passed by this Court in the writ petition. Subsequently, the said petition in WPMP No.25605 of 2014 was ordered and the orders dated 21.06.2010 passed in the writ petition were recalled. Therefore, the writ petition is now being listed for fresh hearing and disposal afresh. However, feeling aggrieved of the said orders recalling the orders dated 21.06.2010 passed in the writ petition, the respondent/review petitioner had filed the review petition.

3. Since the main writ petition stood revived for hearing after recalling of the orders dated 21.06.2010 passed in the writ petition, the writ petition is also coming along with the review petition for final hearing. Thus, both the petitions have now come up for hearing and disposal. In the facts and circumstances stated and in view of the close nexus between the petitions and the desire of the parties, these two petitions are heard together and are being disposed of, by these common orders.

3.1 Further, as rightly urged by the learned Additional Advocate General, if this review petition is allowed and the recall orders are set aside, no further orders need be passed in the writ petition, as the orders dated 21.06.2010 dismissing the writ petition stand revived. Hence, in the well-considered view of this Court, the application seeking review of the orders of this Court made in WPMP No.25605 of 2014 requires to be disposed of

in the first instance. Therefore, it is apt to deal with the merits of the review petition in the first instance.

4. The sequence of events that lead to the filing of this review petition are already stated supra.

4.1 The grounds of review and the submissions of the learned Additional Advocate General appearing for the review petitioner/respondent in the writ petition may be stated, in brief, as follows:

The order recalling the order dated 21.06.2010 passed on merits in the writ petition amounts to nullifying the order passed on merits in the writ petition. Therefore, the order of recall, which is being sought to be reviewed, is impermissible under facts and in law. The second writ petitioner and the legal representative of the deceased first writ petitioner ought to have preferred an appeal against the orders of this Court dated 21.06.2010 made in the writ petition in case they are aggrieved of the said order. They did not prefer any appeal against the said orders passed in the writ petition, though the said orders were passed on merits after considering the counter filed by the review petitioner/respondent in the writ petition. No satisfactory grounds were urged for recalling the orders of this Court that were earlier passed on merits in the writ petition. The order, which is being sought to be reviewed, suffers from misrepresentation of facts. The order was passed without notice to the review petitioner, i.e., the respondent in the recall petition. The petition to recall, which was allowed by this Court, is not maintainable, as both the petitioners were alive when the orders in the writ petition were passed. Therefore, the petitioners, who had sought for recalling of the orders in the writ petition, have no *locus standi* to seek such relief.

4.2 The contentions in the counter and the submissions of the learned senior counsel appearing for the writ petitioners, in brief, are as follows:

The recall petition was filed one and half years after the dismissal of the main writ petition, is no ground to seek the review of the recall order as

the said orders are conclusive. The averment that no notice is served on the review petitioner before passing of the recall orders is not correct. An opportunity of hearing is given to the learned counsel for the review petitioner before the recall order was passed. The review application is a vexatious application; it is filed basing on false allegations. The recall order that was passed is a conditional order and the recall petition in WPMP No.25605 of 2014 was allowed by this Court on payment of costs of Rs.1,000/- to the A.P. State Legal Services Authority within a period of a week. In due course, the said amount was paid and the conditional order was complied with. The legal representatives of the deceased first petitioner have no *locus standi* to file the petition to recall the orders in the main writ petition, is incorrect. After the recall petition was filed, the first writ petitioner had died. Therefore, an application for condonation of delay and for grant of permission to bring on record the legal representatives of the deceased first petitioner was filed. The petition for condonation of delay in representing the said application was also filed. This Court allowed all the applications. Accordingly, the legal representatives of the deceased first petitioner were brought on record in the recall petition. Subsequently, the recall petition was ordered and the orders passed in the writ petition were recalled and the writ petition stood revived and is listed for final hearing. At this stage, when the writ petition is coming up for final hearing, after its revival on recalling the orders passed in the writ petition, the review petition is filed. No valid and sufficient grounds are made out for reviewing the recall order.

4.3 The learned Additional Advocate General, while reiterating the grounds urged in the review petition, which are adverted to supra, would further contend as under:

When the writ petition was dismissed on merits by order dated 21.06.2010 after hearing the learned counsel for both the parties, the writ petitioners, ought to have filed a writ appeal if they are aggrieved. They did not do so. After one and half years of the dismissal of the writ petition, they had filed WPMP No.25605 of 2014 for recalling the order passed in the writ petition. An order of a Writ Court can be recalled under its inherent

powers, provided any of the three conditions, viz., (i) When the order was obtained by fraud practiced upon the Court; (ii) When the Court is misled by a party; or (iii) When the Court itself commits a mistake, which prejudices a party; are satisfied. In the case on hand, any of the three conditions are not satisfied. A court may recall an order earlier made by it, if the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent and when there exists fraud or collusion in obtaining the judgment and when there has been a mistake of the court prejudicing a party and when a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented. However, the power to recall a judgment/order rendered on merits shall not be exercised when the right of appeal or review was available, but was not availed.

4.4 In support of his contentions, the learned Additional Advocate General placed reliance on the decision in ***Budhia Swain and others Vs. Gopinath Deb and others***^[1].

4.5 The learned senior counsel for the writ petitioners, who are the respondents in the review petition, while reiterating the submissions in the counter, which are adverted to supra, would further submit as follows:

None of the grounds urged in the review petition are valid and are sufficient to review the recall orders dated 24.07.2014 of this Court. Unless there is an error apparent on the face of record, no jurisdiction to review the order shall be exercised and the error, if any, pointed out by the review petitioner must be apparent and shall not require any long drawn process of reasoning to find out such error. The contention that this Court passed the recall order by not following the applicable ratio in a precedent is no ground to seek review or order review. This petition is filed after the writ petition is listed for final hearing and, therefore, the review petition is not maintainable.

4.6 In support of the said submissions, he had placed reliance on the

following two decisions.

Haridas Das Vs. Usha Rani Banik^[2]

Kamlesh Verma Vs. Mayawati^[3]

4.7 I have gone through the decisions relied upon by the learned senior counsel appearing for the parties.

5. The point that arises for determination in the review petition is:

Whether the Rev. WPMP No.31888 of 2015 is maintainable? And, if so, whether, in the facts and circumstances of the case, the order dated 24.07.2014 of this Court made in WPMP no.25605 of 2014 is liable to be reviewed and set aside?

6. POINT

6.1 It is trite to note that the writ petition is filed seeking a writ of *Mandamus* declaring the action of the respondent-Corporation in taking possession of the vacant land adjacent to plot nos.140 and 141 of Narayanapuram layout, situated in survey numbers 227, 235 and 236, Rajahmundry Rural, as arbitrary and illegal. For adjudicating the review petition, it is not necessary to advert to the pleadings of the parties in the writ petition; nevertheless, this Court has carefully gone through the material record including the pleadings.

6.2 Admittedly, the writ petition was disposed of on merits by this Court by an order dated 21.06.2010. Without preferring a Writ Appeal and without exhausting any legal remedies available to the writ petitioners for assailing the said orders, one and half years after the passing of the above said orders in the writ petition, the writ petitioners had filed WPMP 25605 of 2014 for recalling the orders dated 21.06.2010 passed in the writ petition. The grounds urged in support of the request to recall the orders of this Court dated 21.06.2010 passed in the writ petition are as follows: "The writ petition seems to have come up for final hearing and as there was no counter filed and also no supporting material, the writ petition was dismissed on 21.06.2010. The first writ petitioner suffered serious ill-health and received treatment at Bangalore till his demise on 02.08.2011.

The second writ petitioner has been suffering from serious ill-health and was also staying at Bangalore and was not in a position to move. The legal representatives of the deceased first writ petitioner were not aware of the litigation till about the filing of the recall petition. They came to know about the writ petition at the time of performance of obsequies of the first writ petitioner. Having enquired about the status of the case, they were astonished to know that the writ petition was dismissed on 21.06.2010. As both the writ petitioners were seriously ill at the relevant time and as one of them had died, they could not give proper instructions to the counsel and hence, the said circumstances resulted in the dismissal of the writ petition. Further, because of the change of address, the advocate also could not inform the writ petitioners about the case. Hence, the recall petition is filed requesting to recall the orders dated 21.06.2010 passed in the writ petition.” In this application, no counter is filed by the respondent/review petitioner (Municipal Corporation). The contention of the review petitioner is that no notice is given to the then Standing Counsel representing the Municipal Corporation. Be that as it may. This Court allowed the recall petition WPMP 25605 of 2014 by a cryptic order dated 24.07.2014 and recalled the orders passed in the writ petition on 21.06.2010. The said order of this Court read as under:

“For the reasons stated in the affidavit filed in support of this W.P.M.P , this W.P.M.P is ordered on payment of Rs.1,000/- (Rupees One thousand only) to the A.P State Legal Services Authority within a period of one week.”

The note appended by the Registry to the copy of the said order read as under:

Note: Conditional order dated 24/07/2014 has been complied with vide U.S.R.No.7970 dated 28/07/2014 vide Receipt No.1058 dated 28/07/2014 enclosed herewith.

As rightly and fairly submitted by both the sides, the order extracted supra is not a speaking order. The review petitioner is now seeking review of the said order.

6.3 To begin with, it is important to note that this Court passed a speaking order while dismissing the writ petition on merits on 21.06.2010.

A perusal of the said order would show that this Court, in the said orders, adverted to the case of the writ petitioners, the contents of the counter affidavit; and, had then noted that it had heard the learned counsel for the petitioners and the learned Standing Counsel appearing for the respondent Corporation and had then assigned reasons before recording a finding that the Court sees no reasons to grant the relief as prayed for; and had then dismissed the writ petition. What is to be noted is that a counsel would generally take time if there are no adequate instructions from his client. But, in the case on hand, the learned counsel for the writ petitioners advanced arguments in the writ petition when it came up for hearing before this Court and did not seek time on the ground that he needs further instructions. The two grounds urged for recalling the orders passed in the writ petition are:- (i) Both the writ petitioners were seriously ill and were at Bangalore for their treatment; and, (ii) In view of the said fact, they could not instruct the counsel properly. This Court did not record a specific finding in the orders under review that the grounds urged in support of the request are valid and sufficient for recalling the orders passed on merits in the writ petition. This Court also did not consider the maintainability of the recall petition as a remedy of writ appeal is admittedly available to the writ petitioners, in case, they are aggrieved of the orders passed by this Court in the writ petition.

6.4 In the decision in ***Budhia Swain*** (1 supra), the Supreme Court considered the merits of the application of the appellants, whereby they sought review or recall of an order on certain grounds. While considering the merits of the said application, the Supreme Court considered the question as to what is a power to recall and had held as follows:

What is a power to recall? Inherent power to recall its own order vesting in tribunals or courts was noticed in *Indian Bank v. Satyam Fibres India Pvt. Ltd.* : AIR1996SC2592 . Vide para 23, this Court has held that the courts have inherent power to recall and set aside an order (i) obtained by fraud practised upon the Court, (ii) when the Court is misled by a party, or (iii) when the Court itself commits a mistake which prejudices a party. In *A.R. Antulay v. R.S. Nayak and Anr.* : 1988CriLJ1661, this Court has noticed motions to set aside judgments being permitted where (i) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented, (ii) a

judgment was obtained by fraud, (iii) a party has had no notice and a decree was made against him and such party approaches the Court for setting aside the decision ex debito justitiae on proof of the fact that there was no service.

7. In Corpus Juris Secundum (Vol. XIX) under the Chapter "Judgment - Opening and Vacating" (paras. 265 to 284 at pages 487-510) the law on the subject has been stated. The grounds on which the courts may open or vacate their judgments are generally matters which render the judgment void or which are specified in statutes authorising such actions. Invalidity of the judgment of such nature as to render it void is a valid ground for vacating it at least if the invalidity is apparent on the face of the record. Fraud or collusion in obtaining a judgment is a sufficient ground for opening or vacating it. A judgment secured in violation of an agreement not to enter judgment may be vacated on that ground. However, in general, a judgment will not be opened or vacated on grounds which could have been pleaded in the original action. A motion to vacate will not be entered when the proper remedy is by some other proceedings, such as by appeal. The right to vacation of a judgment may be lost by waiver or estoppel. Where a party injured acquiesces in the rendition of the judgment or submits to it, waiver or estoppel results.

8. In our opinion a tribunal or a court may recall an order earlier made by it if (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent, (ii) there exists fraud or collusion in obtaining the judgment, (iii) there has been a mistake of the court prejudicing a party or (iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented. The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence. (Emphasis supplied)

None of the grounds urged in the recall petition filed by the writ petitioners satisfy the legal and factual requirements for recalling the order of this Court, which was passed in the writ petition. Hence, the recall petition ought to have been dismissed. Therefore, the recall order, which was passed without examining the merits of the request of the writ petitioners and without specifically recording a finding that the writ petitioners satisfied the factual and legal requirements for recalling the orders of this Court is an order passed in exercise of power which did not vest in the court as per the ratio in the aforementioned judgment of the Supreme Court.

6.5 Viewed thus, this Court finds that the order of recall which suffers from patent invalidity as is apparent on the face of the record deserves to

be reviewed and is liable to be set aside and the WPMP 25605 of 2014 is liable to be set aside.

6.6 However, before parting with this particular aspect, it is necessary to mention that the learned senior counsel for the writ petitioners had placed reliance on the following decisions:

(i) In **Haridas Das Vs. Usha Rani Banik (2nd supra)**, it was held that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a Superior Court in another case shall not be a ground for the review of such judgment. (ii) In **Kamlesh Verma Vs. Mayawati (3rd supra)**, the Supreme Court having considered as to when a review will not be maintainable had held as follows:

When the review will not be maintainable:

- (i) **A repetition of old and overruled argument is not enough to reopen concluded adjudications.**
- (ii) **Minor mistakes of inconsequential import.**
- (iii) **Review proceedings cannot be equated with the original hearing of the case.**
- (iv) **Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.**
- (v) **A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.**
- (vi) **The mere possibility of two views on the subject cannot be a ground for review.**
- (vii) **The error apparent on the face of the record should not be an error which has to be fished out and searched.**
- (viii) **The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.**
- (ix) **Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.**

6.7 The learned Additional Advocate General did not dispute the settled propositions of law and had contended that the ratios in the decision are more helpful to the review petitioner. In **Kamlesh Verma (3rd cited)**, it was also held that review of the earlier order can be done where there is sufficient reason and when the error apparent on the record undermines the soundness of the decision and results in miscarriage of justice.

6.8 In view of the facts which are germane for consideration, and for all the reasons assigned supra, the contention of the writ petitioners that review petition is not maintainable and the review of the recall order is impermissible deserves no countenance being devoid of merit, in the well-considered view of this Court.

6.9 In the result, the review petition in WPMP no.31888 of 2015 is allowed and the order recalling the orders dated 21.06.2010 passed in the writ petition is hereby set aside and as a sequel WPMP 25605 of 2014 is dismissed.

7. As a sequel to the aforementioned orders now made, there is, indeed, no necessity to adjudicate the writ petition on merits as the orders dated 21.06.2010 dismissing the writ petition stood revived. However, without disturbing the orders supra, passed in the review petition, it is appropriate to deal with the writ petition on merits on the assumption that the review petition is liable for dismissal and the recall order is operative.

8. For the disposal of the writ petition, it is necessary to first advert to the pleadings.

8.1 The case of the writ petitioners, as set out in the writ petition and in the reply affidavit, in brief, is this:

One Chebolu Narayana, who is the father of the writ petitioners 1 and 2 and who was a businessman in Rajahmundry town, has purchased, in the year 1945, Ac.28.00 cents of land situate in survey numbers 227, 235 and 236 of Rajahmundry Rural Mandal. In the year 1959, the lands were laid out into plots and the lay out was approved in the name of Narayanapuram lay out. After most of the plots were sold out, a family settlement was arrived at and the writ petitioners 1 and 2, who are the sons of the original purchaser of the land, had got 4000 square yards of land adjacent to 30 feet road in the said settlement. The said writ petitioners together are in peaceful possession of the said extent of land and the said fact is evident from the records. It is a vacant land. Out of these 4,000

square yards, some extent of land was taken for road and school. The school was constructed in the year 1986-87. No compensation was paid to the writ petitioners. The matter is still being pursued with the Municipal Corporation for compensation and the writ petitioners were called for negotiations. After such acquisition and as on the date of filing of the writ petition, there is a vacant land of 2,500 square yards. While so, on 29.07.2006 and 31.07.2006, the staff of the respondent Corporation had dumped certain material in the vacant land aforementioned, which belongs to the writ petitioners; and the Corporation is proposing to construct a Kalyana Mandapam to be given on rent. The said act was done without following the due process of law. The representation made on 31.07.2006 in that regard was not considered and no action has been taken thereon. On the other hand, the Corporation is taking steps to construct a building. The allegation that the subject land intended for park is meant for primary school is false. While curiously contending that the writ petitioners did not file any evidence to show that they are in possession for last thirty years, the respondent Corporation did not produce any evidence to show that the subject land was transferred in its favour by the writ petitioners. The respondent-Corporation being a limb of the Government cannot plead long stay theory or adverse possession as the same is impermissible under law. The respondent-Corporation cannot be permitted to grab the land and any such attempt on its part to grab the land of a citizen shall be viewed seriously. The Corporation is contending on one hand that there is no valid layout and is further contending on the other hand that the land is left for public purpose. This shows non-application of mind on the part of the Corporation. The Corporation is trying to grab the patta land of the petitioners. The allegations to the effect that a school building is being constructed are made to prejudice the mind of the Court. The action of the respondent-Corporation in depriving the writ petitioners of their land is in utter violation of the Article 300-A of the Constitution of India. Hence this writ petition may be allowed.

8.2 The learned counsel for the writ petitioners having placed reliance on

the ratio in the decision in **State of Haryana v. Mukesh Kumar**^[4] would bring to the notice of this Court that in the cited decision, the Supreme Court had considered the question whether the State, which is in charge of protection of life, liberty and property of people, can be permitted to grab the land/property of its own citizens by invoking the provisions of adverse possession and that the Supreme Court observed that no Government Department, Public Undertaking and much less the Police Department should be permitted to perfect title to the land or building by invoking the provisions of adverse possession and grab the property of its own citizens by adverse possession. In this cited decision, the Supreme Court had also observed that if the Government itself may acquire land by adverse possession, fairness dictates and commands that if the Government can acquire title to private land through adverse possession; it should be able to lose title under the same circumstances. It was further held in the cited decision as follows:

“In our considered view, there is an urgent need for a fresh look of the entire law on adverse possession. We recommend the Union of India to immediately consider and seriously deliberate on either abolition of the law of adverse possession or in the alternative, to make suitable amendments to the law of adverse possession.”

8.3 The defence of the respondent Corporation, in brief, is this: -

The petitioners have formed an unauthorized lay out in the year 1974 in the name of Narayanapuram Colony with 250 plots and sold away the total plots to different persons, but left the vacant land of an extent of 4000 square yards (250'-0" x 150'-0") in the said unauthorized lay out for public purpose (for parks, playground, school etcetera). That 4000 square yards plot is bounded by - 30 feet road on the Northern side; plot numbers 140 and 141 on the Eastern side; 30 feet road on the Southern side; and, plot numbers 108 and 109 on the Western side. Unmistakably, the petitioners have executed the registered sale deed bearing number 5106/1974 in favour of purchasers of plot number 141, which is an adjacent plot to the park place; and in the schedule of the said registered sale deed, they have mentioned the boundaries as North: 30 feet road; East: 30 feet road; South: plot number 140; and West: site left for park.

They have also executed another registered sale deed number 1136/1983 for plot number 108 showing the boundaries of the property as North: 30 feet road; East: 30 feet road; South: Plot number 140; and West: Site left for park. The said documents clearly show that the said open site of 4000 square yards in Narayanapuram Colony is left for public purpose in the lay out and was handed over to the respondent Corporation for maintenance and development. Subsequently, the lay out was approved in G.T.P.No.9/91, regularizing the lay out as it is on the ground. Since then, the said site of an extent of 4000 square yards in Narayanapuram is under the control and possession of the respondent Corporation without anybody's interruption for more than 30 years. In the proposed Master Plan for Rajahmundry approved in G.O.Ms.No.465, M.A., Dated 29.10.1975, the said site was earmarked as public and semi public use and later on, it has been changed into residential zone as per G.T.P.No.9/91 and the said place left by the petitioners for the park is earmarked for primary school. The Narayanapuram area has been included in the municipal limits of Rajahmundry as per G.O.Ms.No.1158, M.A., dated 29.10.1981. Thereafter, the respondent Corporation constructed a school for the school going children of that area. The respondent Corporation has also proposed to construct additional class rooms in the site in question to accommodate the hiked strength of the students in the school. Since 1974, the said extent of site of 4000 square yards is in possession of the respondent Corporation. The said site was voluntarily left in the lay out for the public purpose aforementioned. The petitioners are now interrupting the construction of class rooms being undertaken by the respondent Corporation to provide additional class rooms to the increased number of students in the school. The said work was undertaken under 'Sarva Siksha Abhiyan', a Government sponsored scheme. The writ petition may be dismissed.

8.4 The point for consideration is – **'Whether, in the facts and circumstances of the case, the writ petitioners made out a valid and sufficient case for granting the relief claimed in the writ petition?'**

8.5 The learned Senior Counsel for the writ petitioners had reiterated the case urged by the writ petitioners in the writ petition and contended that the subject disputed extent of site of 2500 square yards is the exclusive property of the writ petitioners and that it is a site left out after their property was laid out by the predecessors-in-interest and that when they are in peaceful possession and enjoyment of the same, the Municipal Corporation dumped material with a proposal to make some constructions and that the Municipality has no right to do so without following the due process of law. On the other hand, the learned Additional Advocate General while reiterating the defence urged in the counter would contend that the layout is an unauthorized and illegal layout and that the site left out is intended for public purpose and is originally earmarked as a park and that subsequently, the lay out was approved in G.T.P.No.9/91, regularizing the lay out as it is on the ground and that since 1974, the said extent of site of 4000 square yards in Narayanapuram is under the control and possession of the respondent Corporation without anybody's interruption for more than 30 years and that in part of the site, a school was already constructed and that in the remaining site, when additional class rooms are being constructed, the writ petitioners caused interference and that in the counter of the Corporation, an appropriate reference was made to the schedules annexed to the sale deeds related to the plots, which are adjacent to the subject property, and that the boundaries of the properties covered by the said sale deeds would lay bare that the subject property is a site left out in the layout for public purpose and is not the property of the writ petitioners. He would further contend as follows: 'That admittedly, the Corporation is in possession of the property and is making constructions and that the question as to whether the subject property is a public property or not is a complex question of fact in view of the contentions and rival contentions and that the said factual controversy cannot be resolved in a writ petition and that the writ petition is liable for dismissal. If the property in which the school was already constructed and the subject extent of 2500 square yards, which is being claimed by the writ petitioners, i.e., the total extent of 4000 square yards is not left out for public purposes

as required under the provisions of law and that if the said extent is the property of the petitioners as being claimed by them, then the onus is upon the writ petitioners to show as to what other property in the layout is left for public purpose as required under law. The Corporation is not claiming adverse possession, but, it is only contending that the subject land of 4000 square yards was the property left in the layout as park and for public purpose and that as per the Rules governing the subject property, which was laid out, the said property was taken possession and is in the possession of the Corporation since 30 years and that the contentions of the writ petitioners on the premise that the Corporation is claiming adverse possession are not well founded. The petitioners could not establish by necessary standard of evidence and as required under law their contentions in the writ petition.”

8.6 This Court, while issuing notice before admission, granted order of *status quo* and directed the parties to maintain *status quo*. It is pertinent to note that the total extent of property in the layout, which is said to have been left out for public purpose is 4000 square yards. The Corporation had already laid a road and constructed a school in the year 1986-87 in some portion of the said extent of land. The said acts were done without acquiring the land as according to the Corporation, there is no such requirement and as the property is not a private property any longer, after the property is laid out and the said extent is left for public purpose. Though the writ petitioners contended that the matter regarding payment of compensation is being pursued with the Municipal Corporation, no documentary evidence is produced in that regard. Though several decades had elapsed since 1986-87, no proceedings seeking appropriate and necessary remedial measures were initiated by the writ petitioners in regard to that portion of land. Be that as it may, in the present writ petition, they, therefore, claim rights in respect of the balance vacant land of 2500 square yards out of the aforementioned total extent. It is of vital importance to note that no explanation is forthcoming from the writ petitioners as to why one of the boundaries in the sale deeds related to aforementioned plots viz., 108, 109, 140 and 141 was described consistently as a park.

When the writ petitioners are contending that the said property is not a park and that it is their own property, it is for them to explain the said recitals in regard to boundaries in the said documents, which are contrary to their contentions. In all fairness, the writ petitioners ought to have filed copies/registration extracts of the sale deeds in respect of the plots adjacent to the property being claimed as a park and ought to have offered some valid explanation on the said aspect and in support of their pleaded case. They had failed to do so. If the property, which is being claimed by the writ petitioners, i.e., the total extent of 4000 square yards is not left out for public purposes as required under the provisions of law and that if the said extent is the property of the petitioners as being claimed by them, then the onus is upon the writ petitioners to show as to what other property in the layout is left for public purpose as required under law. However, they could not show semblance of evidence in support of their claims in the writ petition. In the facts and circumstances of the case, the contention of the writ petitioners that the Corporation is claiming rights by means of adverse possession cannot be accepted; and hence, the decision in **Mukesh Kumar (4 supra)** is of no help to the writ petitioners. There is no *prima facie* material placed on record by the writ petitioners in support of their pleaded case and therefore, they had failed to discharge the onus of proof, which is upon them, and had failed to make out even a *prima facie* case.

8.7 For all the aforementioned reasons, this Court finds that even on the consideration of the merits of the matter, the writ petitioners have no case for entertaining the writ petition and granting them any relief as claimed in the writ petition.

9. In the result, Review WPMP No.31888 of 2015 is allowed and the order dated 24.07.2014 of this Court made in W.P.M.P.No.25605 of 2014 is reviewed and set aside and accordingly the petition in WPMP No.25605 of 2014 is dismissed and as a sequel, the orders of this Court dated 21.06.2010 in W.P.no.16071 of 2006 stand restored. However, it is made clear that these orders shall not preclude the writ petitioners from preferring an appeal against the order dated 21.06.2010 passed by this Court in

W.P.no.16071 of 2006, if the petitioners so desire and if the law permits.

The Writ Petition stands dismissed accordingly.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

M. SEETHARAMA MURTI, J

18th March 2016

Bvv

[\[1\]](#) (1999) 4 Supreme Court Cases 396

[\[2\]](#) 2006 Law Suit (SC) 212

[\[3\]](#) 2013 Laws (SC) 876

[\[4\]](#) 2011 Law Suit SC 1047