

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on 05.08.2016
Judgment delivered on 03.11.2016.

+ CS(OS) 2984/2011 & IA 3665/2016

D.V. SINGH & ANR. Plaintiffs

Through: Mr. Anand Yadav, Adv.

versus

MUNICIPAL CORPORATION OF DELHI & ORS. Defendants

Through: Ms Shyel Trehan with Ms. Manjira
Dasgupta, Advs. for MCD/ D-1.
Mr. Ravi Kant Chadha, Sr. Adv. with
Ms. Mansi Chadha, Adv. for D-3

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J

1. By this judgment, the Court shall adjudicate upon Issue no. (i) which was treated as the preliminary issue out of the 10 issues framed on 29.05.2013. The preliminary issue read as under:

(i) Whether the present suit is barred by res judicata or otherwise on account of the order dated 27.07.2000 of the Supreme Court in CA No. 4246/2000 titled *Poonam v. Municipal Corporation of Delhi & Ors. ? OPD-1*

2. The plaintiff claims the following reliefs in the suit:

“(a) Pass a decree of declaration declaring that plaintiffs and Dr. Malti Garg are owners in possession of the freehold plot of land bearing No. 23 (New), Category II,

Group B, measuring 399.93 square yards Kalindi Colony in Village Kolokari, Delhi acquired for valuable consideration by virtue of Sale Deed dated 7.10.1965 duly registered on 13.10.1965 with the Sub Registrar, New Delhi, Sub District III as document No. 6494 in additional book No. 1 filing no. 1405 on pages 62-65. Further declaring that plaintiffs and Dr. Malti Garg are entitled to use occupy, possess and enjoy the same as permissible by law without any obstruction, interference from the MCD and the MCD has no right, title or interest in the said plot of land.

(b) Pass a decree of declaration declaring that any proceedings, paper or document created by MCD or obtained from any person or authority vesting or handing over possession of said plot of land in MCD is of no consequence and the same is not binding upon plaintiffs and Dr. Malti Garg and same does not affect the right, title or interest of plaintiffs and Dr. Malti Garg in the said plot.

(c) Pass a decree of permanent injunction restraining the MCD its officials, employees, servants or any persons claiming on behalf of MCD not to dispossess plaintiffs and Dr. Malti Garg from the plot of land bearing No. 25 (New), Category II, Group B, measuring 399.93 square yards Kalindi Colony in the Village Kilokari, Delhi.

(d) cost of the suit be awarded to the plaintiffs and against the defendant No.1

(e) any other and further order, decree which this Hon'ble Court deem fit and property under the facts and circumstances of the case be also passed in favour of the plaintiffs."

3. The plaintiffs' claim is based on the Sale Deed dated 07.10.1965 executed between the plaintiff and the defendant society which inter alia records as follows:

" SALE DEED

THIS DEED OF SALE made.....xxx....xxx

WHEREAS the Vendor Society vide its Circular dated 21.07.1965 offered for sale to its members, plots and lands situated in the residential colony known as 'Kalindi' in the village Kilokri, Ring Road, New Delhi on the clear understanding that the revised layout plan of these plots has not been sanctioned so far, by the Municipal Corporation of Delhi, and that the intending purchasers should be prepared to take the risk that in case the Municipal Corporation of Delhi ultimately rejects the revised layout plan or passes it with modification, the intending purchaser is agreeable to take back his money after the deduction of expenses entailed in this regard:

AND WHEREAS, subject to the conditions and stipulations, contained in the aforesaid Circular dated 21.7.1965, the Vendor Society undertook to sell to the Vendee ALL THAT free-hold plot No. 25 (new) Category II, Group B measuring – 399.93 sq. yds. Situate in Kalindi

Colony in the village Kilokri, within the Union Territory of Delhi belong to and owned by the Society and more fully described in the Schedule annexed to this deed.

AND WHEREAS the Vendee, having agreed to all the terms and conditions of the aforesaid Circular has agreed to purchase the said plot for a sum of Rs.7198/74.

AND WHEREAS the Vendee has already deposited with the Vendor Society admission fee, share money, cost of land, development charges etc. in respect thereto.

NOW THIS DEED WITNESSETH AS UNDER

1. That subject to conditions stated in the said circular dated 21.7.1965 and in consideration of Rs.7198/74 (Rs. Seven Thousand one hundred ninety eight & paise seventy four) only as the cost, development charges of the plot of land, etc. paid by the Vendee, to the said Vendor Society, the receipt of which the Vendor Society acknowledges. It hereby transfers, sells and conveys to the said Vendee, all its rights in the plot of land No.25 (new), Category II Group B and as delineated on the plan annexed to this Sale Deed, to hold the same to the Vendee as absolute owner.

.....

6. That the vendee agrees to construct and build his/her house on the plot or in accordance with the rules and bye-laws of the Municipal Corporation of Delhi and will not do anything to violate the said rules and bye-laws of the

Corporation or of other appropriate authority which may bring about or shift any liability on his/her account to the Society and he/she hereby undertakes that if under any circumstances, consciously or unconsciously, he/she does anything which on his/her account the Vendor Society is made liable, he/she shall compensate the Vendor Society.

7. That the Vendee further agrees that in case the Municipal Corporation of Delhi rejects the revised Layout Plan or passes it with modifications, the Vendee will be entitled only to the refund of his money after deduction of expenses entailed in this regard or will accept the plot as modified by the Municipal Corporation.”

4. Mr. Ravi Kant Chadha, the learned Senior Advocate for the Society and Ms. Shyel Trehan, learned counsel for the Municipal Corporation of Delhi (‘MCD’), submit that the matter has been finally adjudicated upon by the Supreme Court, which vide judgment dated 27.07.2000 in CA No. 4246 of 2000 examined the matter and held as under:

“22. In our view, Mr. Rohtagi was also right when he submitted that the Layout Plan of the Society could only have 98 plots. He correctly pointed out that in exchange for old plots Nos. E-25 and C-23 (which had gone away to the Central Road Research Institute) the Municipal Corporation of Delhi had by its Resolution dated 29th January, 1976 permitted the Society to carve out Plot Nos. C-35 and C-36. He submitted, and in our view correctly, that if anybody had any grievance to the effect that Plot

No. E-25 (new) should have been the plot in exchange of the old E-25, then a complaint should have been made at that stage and the request of the Society and the decision of the Municipal Corporation to permit plot Nos. C-35 and C-36 should have been challenged at that stage. He points out that the Resolution dated 29th January, 1976 and the carving out of plots Nos. C-35 and C-36 in place of Plots Nos. E-25 and C-23 has never been challenged by anybody. He submits that admittedly there can be only 98 and the Appellant cannot ask for building activity to be permitted on an additional plot, which would make it 99 plots. He also points out, and in our view correctly, that the allottees or owners of Plots Nos. C-35 and C-36 have not been made parties to any appeal or litigation undertaken by the Appellant and that the sanction of those plots by the Municipal Corporation has not been in challenge at any stage.

23. *In our view, from the above it is clear that in 1958 a layout containing 98 plots was sanctioned. There is no sanction for more than 98 plots. Including plots C-35 and C-36 there are already existing 98 plots in the Society. The Municipal Corporation of Delhi cannot be directed to create one more plot. What the Appellant, in effect, is claiming is directions to the Municipal Corporation of Delhi to sanction an additional plot as Plot No. E-25 (new). The right of the mother of the Appellant and/or the*

Appellant, if one existed, was to challenge, sanction of plots C-35 and/or C-36. This has never been done. Clarified that this Court is not saying that the Appellant or her mother have a right to challenge sanction of plots C-35 and/or C-36.

24. *Under these circumstances, we are of the view that the High court was absolutely right in coming to the conclusion that Plot No. E-25 (new) is not part of the sanctioned Layout Plan and that there can be no building activity in the absence of a sanctioned Layout Plan. To permit such building activity would clearly be in violation of Section 337(1) of the Municipal Corporation Act. Under these circumstances, we see no reason to interfere. The Appeal stands dismissed. There will be no order as to costs.”*

5. Mr. Chadha submits that the plaint is not maintainable because it is barred by res judicata. He refers to the judgment of the Supreme Court (five Judges’ Bench) in ***Gulab Chand Chhotala Parikh v. State of Bombay*** 1965 SCR (2) 547, with Justice Subba Rao’s dissenting opinion, which observed that “*principle of res judicata is not based on a rule of technicality but is based on high public policy to bring about an end to litigation by giving finality to judgments inter parties and to save a litigant from harassment a second time.*” He also relies upon the decision of the Supreme Court (three Judges’ Bench) in ***Ramachandra Dogdu Sonavane v. Vithu Hira Mahar*** which held that “*if there is an issue between the parties that is decided, the same would operate as a res-judicata between the same parties in the*

*subsequent proceedings.” Ramachandra Dogdu referred to Syed Mohd. Salie Labbai (Dead) by L.R.s and Ors. vs Mohd. Hanifa (Dead) by LRs & Ors. AIR 1976 SC 1569 wherein the Court had stated that “before a plea of res-judicata can be given effect the four conditions required to be proved. They are, that the litigating parties must be the same; that the subject matter of the suit also must be identical; that the matter must be finally decided between the parties; and that the suit must be decided by a Court of competent jurisdiction.” It also referred to the judgment of the Supreme Court in **Swamy Atmananda v. Sri Ramakrishna Tapovanam** (2005) 10 SCC 51 which held as under:*

“26. The object and purport of the principle of res judicata as contended in Section 11 of the Code of Civil Procedure is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject-matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the status-book with a view to bring the litigation to an end so that the other side may not be put to harassment.

27. The principle of res-judicata envisages that a judgment of a court of concurrent jurisdiction directly upon a point would create a bar as regards a plea, between the same parties in some other matter in another Court, where the said plea seeks to raise afresh the very point that was

determined in the earlier judgment.”

6. The learned counsel for the respondents submit that in light of the above, the suit is not maintainable. All the arguments which plaintiffs are raising are covered by the principle of constructive *res judicata*. The learned counsel further submit that the Supreme Court itself has held that insofar as plot No.E-25 in Swatanter Cooperative Housing Building Society in Maharani Bagh, South-East Delhi was never made available to the defendant society, delivery of the same to the plaintiff was impossible, since that property never came into existence. The Revised Layout Plan subsequently approved by the MCD did not show the existence of the aforementioned plot, therefore, in terms of Clause 7 of the aforementioned Sale Deed, the plaintiffs could only get the refund of the money.

7. Refuting the said arguments, Mr. Yadav, the learned counsel for the plaintiff submits that Clause 1 of the Sale Deed in effect transfers an absolute right to the vendee of the aforesaid plot. Similarly, the vendee would also enjoy some common rights as per Clause 3 of the Sale Deed; possession of the property was handed over to the plaintiff who subsequently made construction thereon. Therefore, the right in the said plot has been transferred to the plaintiff as an absolute owner. He submits that the issue of ownership of the land was never framed and, therefore, it could not have been adjudicated upon; that the lis before the Supreme Court was entirely different as compared to the lis in the present suit, hence the issue regarding ownership in the land is still *res integra*.

8. Mr Yadav further submits that the defendant MCD has not filed any pleadings to substantiate its contention that the suit is barred by *res judicata* and, therefore, de hors any pleading the preliminary issue cannot be decided.

He relies upon the dicta of the Supreme Court in ***Syed Mohd. Salie Labbai (supra)*** in paragraph 8, which reads as follows:

“..... 8. In the instant case according to the plaintiffs / defendants the identity of the subject-matter in the present suit is quite different from the one which was adjudicated upon in the suits which formed the basis of the previous litigation. In our opinion the best method to decide the question of res judicata is first to determine the case of the parties as put forward in their respective pleadings of their previous suits, and then to find out as to what had been decided by the judgments which operate as res judicata. Unfortunately however in this case the pleadings of the suits instituted by the parties have not at all been filed and we have to rely upon the facts as mentioned in the judgments themselves. It is well settled that pleadings cannot be proved merely by recitals of the allegations mentioned in the judgment....”

9. The learned counsel for the plaintiffs further submits that what this Court would need to examine is whether the issue was directly or subsequently determined between the same parties, for which purpose the Court would need to look into the pleadings filed by the parties in Appeal No. 237/ATMCD/91 before the Appellate Tribunal MCD, and since the pleadings were not filed, the issue could not have been decided.

10. The learned counsel for the plaintiff, contends that the MCD is only a caretaker of the common areas including the park and it does not have a right or title in the land; that after the initial rejection of the Layout Plan, 11 new

plots were carved out after the boundary of the wall and were aligned with the co-operation of the CRRI, the neighbouring colony; that the right of the plaintiffs in the land was never extinguished because the Sale Deed still subsists and the purchaser continues to be the owner of the land, even in the absence of it being specified in the Layout Plan prepared by the MCD because the Layout Plan of the Society is the one which granted the rights to the plaintiff. Therefore, the rights of the plaintiffs will not be extinguished unless the Layout Plan is sanctioned by the MCD. He refers to the judgment of the Single Judge dated 22.11.2012 passed in CS(OS) 774/2001, which dismissed the suit by a person claiming plot nos. 40, 41 & 42 in the same colony; these plots, which have been carved out as per the revised Layout Plan, have been rejected by the MCD.

11. The Single Judge had referred to the judgment of the Supreme Court in the case of *Poonam v. MCD (Supra)*. The court had reasoned that the aforesaid judgment was clear cut evidence of lack of ownership of the plaintiffs regarding plot nos. 40, 41 & 42, because the revised Layout Plan had never been sanctioned. Consequently, it was of the view that neither the plaintiffs nor the owner were in certain possession, therefore, no relief could be granted to those plaintiffs. In appeal, the said order was set aside by a consent order by the Division Bench vide order dated 03.01.2013. The order records as under:

“....5. After some hearing, learned counsel for the parties agreed that since the suit was at the stage of trial, the interests of parties would be best sub-served having regard to the reliefs claimed and the issues struck, if the impugned order is set-aside and the regular trial is

resumed and completed as expeditiously as possible.

6. Having regard to the statements made by the plaintiff and the defendants, who are represented by counsel, as well as the authorised representative of the concerned defendant society, i.e. Sh. P.S. Taneja, who had filed an affidavit in support of the application, I.A. No. 920/2012, this Court hereby sets-aside the impugned judgment and order dated 22.11.2012, which had the effect of dismissing the suit. Consequently, the suit is restored to the file of this court and the trial shall be subject to the following directions:...”

12. The learned counsel for the plaintiffs refers to the Sale Deed dated 7th October, 1965 whereby plot no. 25 New Category II Group B situated in Kalindi Colony in Village Kilokari, Delhi was allotted to him and has been shown in the revised Layout Plan of Kalindi Colony of Swatantra Cooperative House Building Society as annexed with the Sale Deed. He states that the plot no. 25 (New) is clearly shown and the plot no. 25 (Old) is also shown, which has gone to the CRRI. Therefore, as per the new boundaries, Plot No. 25 (Old) was shown as existing. He argues that it may well be the case of the defendants that plot nos. 36(c), 37, 38, 39, 40, 41 and 25 (New) may have been subsequently converted into a park because of non-approval of the revised Layout Plan by the MCD but this non-approval will not take away the rights of the plaintiff under the Sale Deed.

13. The learned counsel further submits that the property is freehold and not leasehold; it belongs to the plaintiff/vendee and the non-approval of the plot by the MCD would be meaningless apropos the inherent proprietary

right transferred to the plaintiff. The non-approval of the layout plan would not extinguish the right conferred and transferred to the plaintiff through the Sale Deed. However, the counsel for the MCD draws the attention of the Court to Clause 7 of the Sale Deed which premised on sale of a plot of land only on the approval by the MCD, failing which the plaintiffs would be entitled only to the refund of the money paid for the sale of the aforesaid plot. The said clause reads as under:-

“7. That the Vendee further agrees that in case the Municipal Corporation of Delhi rejects the revised Layout Plan or passes it with modifications, the Vendee will be entitled only to the refund of his money after deduction of expenses entailed in this regard or will accept the plot as modified by the Municipal Corporation.”

14. The learned counsel for the plaintiffs submits that there is no clause regarding the reversion of the Sale Deed and therefore, the property would not revert back to the Society and the reference to non-sanction was only to obviate any claim of damages against the Society.

15. In Suit No.771/1979 an injunction was granted restraining the MCD from sanctioning any building plan apropos the unutilised land. Subsequently, in appeal the said order was vacated. In the said order it was also recorded as:

“13. To my mind the contention raised by learned counsel cannot be accepted at this stage because under S.313 DMC Act it is for the Commissioner and for the Standing Committee to see as to whether or not the revised Layout Plan furnished by the Society is in conformity with

the general scheme of development of Delhi as contained in the master plan or Zonal plan prepared for Delhi. Even according to the written statement of Corporation no entry has yet been made in the immovable property register kept by the Corporation relating to possession of the vacant site. It has been specifically stated by the Corporation in para 20 of the written statement that a request has been received from individual owners of land for sanction of plots alleged to be owned by them and their request is under consideration and a decision on merits will be taken in accordance with the provisions of Act, bye laws and rules and regulations. It is further found from the Sale Deeds executed in favour of appellants that vendee had agreed that in case the Municipal Corporation, Delhi rejected the revised Layout Plan he/she will be entitled only to refund of money after deduction of expenses entailed in this regard. Under these circumstances I find that if the injunction as ordered by Ld. Trial Court is allowed to be operative, it may on one hand put premium on the powers of Commissioner to looking into the application of the appellants for sanction of the Layout Plans and on the other hand the appellants who are admittedly owners of the plots in question for valuable consideration may be deprived of use of their land in accordance with law. The Sale Deeds executed in their favour have not been challenged in the present

proceedings and in case at this stage the corporation is prevented from looking into the application of the appellants for sanction of building activity, it may virtually amount to holding that the Sale Deeds are illegal and in that manner the appellants may be deprived of their right of ownership without any adverse title set up in respect of these plots. The plaintiffs merely claim to be entitled to common use of the land including these plots and at this stage there is nothing on record to show that their rights are infringed in any manner by defendant Nos.1 to 7. The plots of plaintiffs as seen from the revised Layout Plan are situated at such places that they cannot as a matter of right claim any benefit or use of common nature from the plots allotted in favour of the appellants. There is no case much less a prima facie case for the grant of ad interim injunction. The balance of convenience also does not lie in favour of plaintiffs because defendants are claiming their right to move the corporation commissioner for sanction of the plan as owners of the plots on the basis of Sale Deed in their favour by the Society and in case corporation is prevented from considering their applicant for grant of sanction at this stage, it may, as already stated, put a premium on the power of commissioner and in that event the appellants may suffer loss of irreparable nature. The impugned order is, therefore, liable to be set aside.”

16. The learned counsel for the MCD, Ms. Shyel Trehan, submits that there was no determination as to the ownership or any right of the present plaintiffs in the said property, however, the concluding paragraph of the aforesaid order has to be read in its context. The reference to admitted owners of plots is something in future, i.e. apropos such persons, who may be admitted to be its owners. It was also the MCD's stand in its Written Statement that plot no.25 (new) did not exist.

“11. That para 11 of the plaint is admitted to this extent that after the exchange of the land with CRRI and after straightening their boundaries defendant No.3 applied for revised lay-out plan showing the straightening boundaries etc. which was duly approved by the Standing Committee. However, thereafter concerned member applied for sanctioning of the additional plots in lieu of the plots which went away to CRRI in exchange of land and this proposal was sanctioned after due consideration. In lieu of original plot Nos.C-23 and E-25, revised plots bearing C-35 and C-36 were sanctioned.”

17. The learned counsel further submits that the plot of land to which the plaintiffs lay a claim was never carved out and was never sanctioned. Hence, there will be no declaration to that effect and it has been so held by the Supreme Court in **Poonam vs. MCD** (supra). Ms Trehan, the learned counsel for the MCD, however argued that when the judgment relied upon, i.e. **Poonam v. MCD (Supra)**, itself clearly frames the issue and returns a finding thereon, no further hearing on the same issue would be required. She relies

upon a judgment of this court in RSA 243/2006 between the same parties pertaining to the same plot, which held as under:

“.....12. The plaintiff has prayed for a decree of permanent injunction restraining the defendant from taking possession of plot No. E25 (new) in Kalindi Colony. Positive finding had been returned that there is no plot bearing E-25 (new) in Kalindi Colony; question of granting permanent injunction qua this land does not and would not arise; plaint was right rejected under Order 7 Rule 11 of the Code. This view was correctly appreciated and endorsed by the first appellate Court. There is no perversity. The impugned judgment calls for no interference on this count...”

18. Relying upon the judgment in ***Syed Mohd. Salie Labbai (supra)***, Mr. Yadav contends that in the earlier proceedings the only issue was the non-sanctioning of the building plan and not whether the plaintiff had a right, title or interest or possession of the aforesaid plot or in a plot of that size in the land leased out to the defendant no. 3 – Society. He submits that the issue has to be substantially and materially the same in both cases for applicability of the rule of res judicata. It is his argument that in the present case, the right of the plaintiff in a plot of land of the aforesaid size is in issue and not about the correctness and justifiability of the non-issuance of a building plan or of sanctioned Layout Plan.

19. To fortify the argument, he relies upon a suit filed by one Mr. R.S. Taneja bearing Suit No. 77 of 79, before a Civil Court, Delhi in which (i) a restraint was sought against the MCD from sanctioning the building plan or from permitting any activities to be carried out in the land allotted to the

Society; and (ii) by a decree of permanent injunction the defendants may be restrained from approving any building activities or raising any construction or any vacant site, park as shown in plan in red colour in Kalindi Kunj. He contends that in this Suit the MCD had taken different stand. It is submitted that in the WS, the MCD has averred as under:

“6. That para 6 of the plaint is admitted subject to the above clarification and it is submitted that after the exchange of the land with CRRI, the area under park and community facilities remained the same as originally sanctioned in 1958. The same was not increased or altered in the revised lay-out plan duly sanctioned by defendant No. 1. The increased area which came to defendant No. 3 by way of additional purchase and by way of straightening by exchange of land with C.R.R.I. was kept blank/undefined in the revised Layout Plan.

7. That para 7 of the plaint is denied for want of knowledge. This is a matter exclusively within the knowledge of defendant No. 3 and its members nothing to do with the answering defendants. The corporation does not regulate the sale and purchase of the lands or pieces of lands but it only regulates the building activity of the lands which is allowed if the lay-out is property got sanctioned and building plans got approved.”

20. Mr. Yadav contends that in the present suit, the MCD has completely changed its stand from what it had in previous proceedings leading to the SLP. Furthermore, he contends that in the same WS, the MCD had stated

that they had not taken possession of the property concerned. He submits that the corporation has specifically stated that:

“16. Para 16 of the plaint as stated is not admitted. However, it is true that the sites earmarked for parks, community facilities, roads etc. vest in the Corporation on the sanctioning of the Layout Plan and they are taken over by the Corporation at the time of taking over the services. The Corporation has nothing to do with other vacant plots lying unutilized in the area. Rest of the para is denied.”

21. He further contends that the MCD has nothing to do with other vacant plots lying unutilized in the area; that possession of unutilised areas was never taken over by the MCD. In para 18 of the same WS it has been averred that the civic amenities were taken over by defendant No. 1 and with it sites earmarked for parks and community facilities etc. were also taken possession of. In the immediately subsequent paragraph, the MCD has averred *“that the sites earmarked for parks, community facilities, roads etc. are meant for the common use of the residents of the colony but un-built area in the colony are not for common use.”* It also averred that:

“20. It is however true that park sites are to be kept reserved and usually the building activities are not allowed on the sites reserved for parks. However, in this case defendant No. 1 has received a request from individual owners of lands for sanction of plots alleged to be owned by them and their request is under consideration.”

21. That para 21 of the plaint as stated is denied. As

already submitted above the proposal to sanction the plots over the land described in this para is still under consideration by defendant No.1. It is vehemently denied that defendant No. 1 cannot sanction the plots or building activities on such lands.

22. That 22 of the plaint is admitted to this extent only that ownership of parks, roads etc. vests in the MCD. Rest of the para is denied.

23. That para 23 of the plaint is stated is denied. Defendant No. 1 is within its rights to utilize the land vesting in them in any manner according to the provisions of the Act and Bye-laws and Zonal Regulations. Rest of the para is denied.

22. The learned counsel for the plaintiffs submits that in the proceedings originating from the sanction of plot plan filed by the plaintiff No. 2, the stand of the MCD has changed; that it has taken over possession of all the unutilised areas including those which were not shown as common amenities other than a part of the park; that till such time that the Layout Plan shows the unutilised area as a sanctioned park, possession of the same could not have been taken over by the MCD; that in the revised Layout Plan the plaintiff's area/plot was not shown as a park but only as unutilised area which is in consonance with the stand taken by them in the suit. Therefore, for the MCD to contend that they have taken possession of park or any area including the unutilised area which were shown as having been put to any sanctioned use such as parks etc. is contrary to the stand taken by the MCD in the Written

Statement. He submits that otherwise they would have no right to take over possession of such areas which were not sanctioned as common amenities/areas.

23. In this suit the plaintiffs seek to restrain the defendant no. 1 MCD from dispossessing the plaintiffs and the defendant no. 2 from the plot of land bearing No.25 (new), Category II, Group B, measuring 399.93 sq. Yds., Kalindi Colony, Village Kilokri, Delhi and/or from interfering in the possession of the plaintiff thereof. On 29.05.2013, it was observed by this Court that since it was not in dispute by either party that the property was an open piece of land and possession whereof in law is deemed to be of the title holder thereof, the status quo was directed to be maintained qua title, possession and construction over the said plot of land with a further direction that even if the same was developed as a park by the defendant no. 1 – MCD, it was without prejudice to the rights of the plaintiffs and subject to the findings in the present suit.

24. The issue to be determined is whether there exists any plot of land bearing No. E-25 (New), Category-II, Group B, measuring 399.93 square yards, Kalindi Colony, Village Kilokari, Delhi, and if so, whether the plaintiffs are owners thereof. This issue had been finally addressed and decided by the Supreme Court in an earlier round of litigation between the same parties, regarding the same plot of land. The adjudication was in the context of Sale Deed of 21.07.1965, which recorded the background of the conditional sale. The first two Recitals record that the Vendor had offered for sale to members, plots of lands situated in the residential colony vide its Circular on 21.07.1965, on the understanding that the revised Layout Plan had not been sanctioned thus far by the Municipal Corporation of Delhi and

should such Layout Plan be rejected, or passed with modification, the intending purchaser would be taking the risk in this regard and the Society had agreed to return the money back after reducing all expenses entailed in this regard. The Layout Plan prepared by the Society had identified plot No. 25 (New) in the revised layout plan. This plot was not sanctioned for construction of a plot. Hence, there was no transfer of rights in such lands to the Vendor/present petitioner.

25. It was categorically held in *Poonam v. MCD (Supra)* that plot no. E-25 (New) did not exist since it was not sanctioned in the revised Layout Plan. Therefore, the issue has been conclusively answered. The Court had also clarified that it did not say that “the appellant or her mother have a right to challenge auction of Plot C-35 and/or C-36”. The plaintiff seeks to agitate a right in the sanctioning of such a plot or any equivalent land. The Court is of the view that insofar as the Supreme Court has conclusively held that no such plot existed or was sanctioned, therefore, the said issue is barred by res-judicata and the plaintiff cannot seek fresh determination of the same in this suit.

26. The Court would further note that in Clause 7 of the Sale Deed dated 07.01.1965, between the parties, i.e., the plaintiff and the Cooperative Group Housing Society (defendant no.3), the Society clearly limited entitlement of the plaintiff to refund of money after deduction of expenses etc. in the event the MCD rejects the revised Layout Plan or passes it with modifications. The plaintiff’s ephemeral and expected right in the land stood extinguished the moment the MCD did not sanction plot No. E-25. Accordingly, the preliminary issue is answered in favour of defendants. The suit is dismissed as being not maintainable.

27. No orders as to cost.

NAJMI WAZIRI , J

NOVEMBER 03, 2016/acm