

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2688 of 2018
and
C.M.P.No.20281 of 2018

M.M.Shanmugam ..Appellant/3rd Defendant

Vs.

1.Dr.A.K.D.Kumar ..1st Respondent/Plaintiff

2.The Commissioner,
Corporation of Chennai,
Having Office at Rippon Buildings,
Park Town,
Chennai - 600 003. ..2nd Respondent/
1st Defendant

3.The Assistant Executive Engineer,
Division No.45, Zone 15,
Corporation of Chennai,
Sholinganallur,
Chennai - 600 119. ..3rd Respondent/2nd Defendant

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 (r) of C.P.C., to set aside the order and Decreeal order dated 10.04.2017 made in I.A.No.1057 of 2016 in O.S.No.169 of 2016 on the file of Principal District Court of Kancheepuram District at Chengalpattu.

For Appellant : Mr.M.S.Krishnan
Senior Counsel
For M/s.Sarvabhauman Associates

For Respondents : R1 - Mr.S.Rajasekar

R2 & R3 - M/s.Karthikaa Ashok
Senior Standing counsel
[For Chennai Corporation]

J U D G M E N T

The Fair and Decreeal order dated 10.04.2017 passed in I.A.No.1057 of 2016 is under challenge in the present Civil Miscellaneous Appeal.

2. The 5th defendant is the appellant before this Court. The 1st respondent is the plaintiff, who instituted a suit for Declaration of title and for Permanent injunction. Along with the suit, the 1st defendant filed an Interlocutory Application in I.A.No.1057 of 2016 for interim injunction. The trial Court adjudicated the grounds raised by the respective parties in the Interlocutory Application and granted an injunction on the ground of balance of convenience and a *prima facie* case of title was established by the 1st respondent / plaintiff.

3. The learned Senior counsel appearing on behalf of the appellant mainly contended that the very observation made by the trial Court with reference to the *prima facie* case of title in favour of the 1st respondent itself is erroneous, in view of complicated nature of facts and circumstances and, those facts and circumstances are to be adjudicated elaborately with reference to various documents and evidences. If such an opinion is formed by the trial Court regarding the title of a suit property, then the same would affect the other parties to the suit, while adjudication of issues during the final hearing. The learned Senior counsel is of an opinion that the 1st respondent has encroached the public road as per the approved layout and therefore, the said portion of the encroachment is to be removed for the benefit of the general public. With reference to the other issues, the parties may be given liberty to adjudicate elaborately during the trial. The learned Senior counsel made a submission that the 1st respondent has no title at all. The trial Court, while deciding the Interlocutory Application, gone to the extent of adjudicating the title and form an opinion and granted an injunction and therefore, such observations would affect the rights of the other parties during the final adjudication.

4. The learned counsel appearing on behalf of the 1st respondent objected the said contentions by stating that based on certain admitted facts, the 1st respondent had established his title. In view of the fact that the 1st respondent/plaintiff could able to establish his title before the trial Court, the trial Court made a finding that the plaintiff established *prima facie* case of title and applying the principles of balance of convenience, an injunction was granted. The earlier notice issued by the Chennai Corporation authorities was challenged by the first respondent and the matter went up to the Hon'ble Division Bench and the Hon'ble Division Bench made a finding that the parties have to adjudicate the issues before the

competent Civil Court and with that observation, the 1st respondent approached the Civil Court for Declaration of title and for Permanent injunction.

5. The learned counsel for the 1st respondent is of an opinion that when the documents pertaining to the title of the 1st respondent is unambiguous and the trial Court could able to arrive a conclusion that a *prima facie* title is made out, then there is no error in granting injunction and further, the 1st respondent is ready to establish the said title during the trial. As far as the allegation of encroachment is concerned, the learned counsel for the 1st respondent is of an opinion that he was not a purchaser from the VGP layout and in fact, he purchased from the original owners, from whom VGP purchased 40 acres alone and formed a layout. As far as the properties belongs to the 1st respondent is concerned, it is not part and parcel of VGP layout and therefore, his right is independent and the same is to be adjudicated before the Civil Court with reference to the documents and evidences.

6. The 1st respondent in his pleadings in and before the trial Court contended that his purchase from his vendor is absolutely unconnected with the VGP layout and therefore, he has not encroached upon the public land and he is in possession of his own land purchased from the vendor and therefore, there is no infirmity as such in respect of the order of interim injunction granted by the trial Court pending disposal of the suit.

7. The learned counsel appearing on behalf of the Chennai Corporation strenuously contended that the public road is encroached by the 1st respondent. The layout was approved by the competent authorities namely the Director of Town and Country Planning and the said approval of layout was granted on 07.06.1975. Thereafter, the VGP Partnership Firm sold the plots in the layout to many individuals and those individuals purchased the plots from the VGP layout, constructed their respective buildings by obtaining building approval from the competent authorities. The approval was granted in the year 1975 itself. As far as plot numbers 18, 19 and 20 are concerned, the said plots have no other approach road, except the encroached portion by the 1st respondent. Simply because the owner of Plot No.19 purchased an opposite Plot No.40, he could able to create a pathway but the road earmarked for the usage of public in general is encroached by the 1st respondent. Therefore, the very approved layout clearly states that the portion under the possession of the 1st respondent is earmarked as public road for the usage of public in general. The said road is the connecting road for the next layout and therefore, the Corporation authorities issued a notice and the said notice was challenged

by the 1st respondent by way of a writ petition and the writ petition was disposed of with the direction to conduct a re-survey. Pursuant to the orders of the High Court, re-survey was conducted and the report was submitted, holding that the 1st respondent was encroached the road. Thereafter, the 1st respondent approached the Hon'ble Division Bench and the Hon'ble Division Bench granted liberty to the parties to approach the Civil Court and directed the Corporation Authorities not to demolish the encroached portion for a period of three weeks, enabling the 1st respondent to file a suit. Till such time, *Status quo* was granted. Pursuant to the said order of the Hon'ble Division Bench, the 1st respondent instituted a Civil Suit and in the Civil Suit, the interim injunction was granted.

8. The learned counsel for the Chennai Corporation made a submission that the trial Court granted injunction mainly on the ground that the 1st respondent established his title and further, based on the liberty granted by the Hon'ble Division Bench of this Court. As far as the orders of the Hon'ble Division Bench is concerned, the Division Bench granted liberty to the 1st respondent to approach the Civil Court and the issues were not proceeded by the Hon'ble Division Bench. *Status quo* granted for three weeks is only for the purpose of approaching the Civil Court and therefore, such a *Status quo* granted for three weeks by the Hon'ble Division Bench cannot be construed as if the rights of the 1st respondent is established before the Hon'ble Division Bench. Thus the trial Court completely misconceived the orders passed by the High Court and granted *Status quo* without considering that as per the approved layout, it is a public road and the 1st respondent encroached the public road.

9. This Court perused the approved layout and the layout was approved by the competent authority namely the Director of Town and Country Planning in the year 1975. Admittedly, the 1st respondent has not raised any objections nor preferred any appeal before the competent authority to review the layout or to cancel the layout under the provisions of the Town and Country Planning Act or under the Development Control Rules. Layout became final. Pursuant to the layout, many persons purchased plots from the developers and they have developed their plots by constructing residential buildings and now it became a developed area and therefore, the people in that locality cannot be prevented from using the public road, which is earmarked as per the approved plan by the competent authority.

10. Once the approved plan became final and the layout was developed now after a lapse of about 40 years, the 1st respondent instituted a suit, praying for Declaration and Permanent injunction. Therefore, the rights accrued to the public in general pursuant to the layout, cannot be taken away by an

individual, more so, after a lapse of about 40 years. Even presuming that the 1st respondent purchased property from the original owner, his remedy would be against his vendor and not against the public. For the benefit of such public, the roads were formulated and approved by the competent authorities.

11. The Development Control Rules prevailed during the relevant point of time in the year 1975, when the layout approval was granted. In the present case Rule 3(a) of the said Rules, states that 'Development to be in conformity with these rules. Rule 3(a)(1) stipulates "No development shall be contravention of these rules." Rule 3(a)(2) states that "No land, premises or building shall be changed or put to a use not in conformity with the provisions of these rules". Rule 5 Sub Clause (i) and (ii), which reads as follows:

(i) Proposal rights of way for all major roads together with set back lines for them shall be in accordance with details specified in Annexure-IV. The Authority may prescribe or modify these rights of way or set back lines from time to time with the approval of the Government.

(ii) Notwithstanding anything contained in the Development Plan or in these rules the Executive Authorities of the Corporation or Municipality concerned may from time to time, with the prior approval of the Authority prescribe under relevant sections of the Madras City Municipal Corporation Act, 1919 (Tamil Nadu Act V of 1919) or (Tamil Nadu District Municipalities Act 1920) (Tamil Nadu Act XXXV of 1920) regular alignments for streets of width different from these shown in the Development Plan or in these rules"

12. Therefore, the Development Control Rules prevailed during the relevant point of time, when the VGP layout was formulated unambiguously stipulates that the roads approved are to be maintained for the public use and if at all any person is aggrieved, they would have raised objections during the relevant point of time and not after a lapse of 40 years and more specifically, after the layout was developed to such an extent, wherein the public roads are required for the usage of public at large.

13. With reference to the said Development Control Rules, the Madras High Court elaborately considered the scope and principles in the case of *K.Sudarsan and others Vs. The Commissioner, Corporation of Madras*, reported in AIR 1984 MAD 292 and the relevant paragraphs 14, 15, 16 and 19 are extracted hereunder:

"14. Before considering the preliminary objections raised by Mr. Kesava Iyengar with regard to the maintainability of the writ petitions, it is necessary to consider the common law right of highway and also the right of the petitioners to use Ranganathan Street and Rattan Bazaar Road and N.S.C. Bose Road to pass and repass. The highway is a passage over which members of the public are entitled to pass and repass. The essential characteristic of a highway is that every person should have the right to use it for the appropriate kind of traffic. The road or part over which only a particular class of people or a few individuals are allowed to pass and repass cannot be a highway. In Halsbury's Laws of England, Third Edition, Vol. 19, at page 12, highway is defined thus:

"A highway is a way over which all members of the public are entitled to pass and repass; and conversely, every piece of land which is subject to that public right of passage is a highway or part of a highway..... It is, however, an essential characteristic of a highway that every person should have a right to use it for the appropriate kind of traffic, subject only to any restrictions affecting all passengers alike. It follows that a road or path over which only individuals, or a limited class of the public (for example, the inhabitants or occupiers of a particular house, field, or village) have a right of passage, is not a highway."

As regards the extent of the right of the public over the highway, it is stated thus at page 73;

"The right of the public is a right to 'pass along' a highway for the purpose of legitimate travel, not to 'be on' it, except so far as their presence is attributable to a reasonable and proper user of the highway as such. A person who is found using the highway for other purposes must be presumed to have gone there for such purposes and not with a legitimate object, and as against the owner of the soil he is to be treated as a trespasser."

Again with regard to the right of access to the highway by adjoining owners, the law is stated at page 78 thus:

"An owner of land adjoining a highway is entitled to access to such highway at any point at which his land actually touches it, even though the soil of the highway is vested in another, but he has no such

right if a strip of land, however narrow, belonging to another and not subject to the public right of passage, intervenes.

An adjoining owner's right of access from his premises to the highway and vice versa is a private right, and is distinct from his right to use such highway as soon as he is upon it, which (at any rate if the soil of the highway is not his) he enjoys only as a member of the public..... The right of access is not limited to the right to pass from the premises to the highway and vice versa, but includes the right of access to a wall on the boundary of the premises."

As regards the remedy for interference with the right of access to highway Halsbury states at page 79 thus:

"Interference with a private right of access will, if wrongful, support an action and an adjoining owner may accordingly recover damages where an unreasonable use of the highway has rendered access to his shop unnecessarily inconvenient to himself or his customers. If the interference is also a public nuisance, he is entitled to recover in respect thereof if he can show particular damage, and if the obstruction, though near to a person's premises, interferes only with his public right, and not with his private right of access, his claim must be based on the ground of a public nuisance causing special damage to him.

Where, however, the interference is authorised by statute no action will lie, and there will be no remedy unless compensation is provided for by the statute." Again at page 283 it is stated as follows:

"At common law the duty of repairing a highway includes the duty of preventing and removing obstructions, and if a highway authority sustains special damage it may bring an action for damages. This duty and power is supplemented by general statutory powers and by specific statutory powers to abate nuisances summarily or to prevent their creation."

Salmond in his Law of Torts, 17th edition, at page 79 describes highway thus:

"A highway (including in that term any public way) is a piece of land over which the public at large possesses a right of way. A highway extends to the whole width of the space between the fences or hedges on either side partly in order to admit light and air to it, and partly because Macadam's system of road-

making with broken stone was not introduced at the earliest until just before the end of the eighteenth century."

the learned author again states at page 80 thus:

"Every person who occupies land immediately adjoining a highway has a private right of access to the highway from his land and vice versa; and any act done without lawful justification whereby the exercise of this private right is obstructed is an actionable wrong. This right of access is a private right of property, and if what is complained of is sufficiently substantial to constitute an interference with that right he may recover at least nominal damages, for it is an example of an action on the case succeeding without proof of special damage. At common law a frontager had the right of entrance and exit from his land on to a highway at any point. But this common law right has been greatly cut down by statutes (see, for example, the Highways Act, 1959, S. 155) especially since local authorities have had vested in them the surface of the highway. ... This right of access to a highway by the occupier of land abutting upon it must be distinguished from the right of passing along the highway. The former is a private and the latter a public right, and for any infringement of the former an action will lie; whereas, as we shall see in the next section, no action will lie for an infringement of the public right of passing except on proof of some special or particular consequential damage suffered by the plaintiff. The private right of access thus protected includes merely the right to get from the highway into the plaintiff's land, and from his land into the highway; and does not include a right to get to and from the plaintiff's land by going along the highway, for this is merely the public right of passage. A disturbance of this private right of access may or may not be at the time a disturbance of the public right of passage."

In *Harvey v. Truro Rural District Council*, 1903 LR 2 Ch 638) Joyce, J. has observed as follows:—

"In the case of an ordinary highway running between fences, although it may be of a varying and unequal width, the right of passage or way prima facie, and unless there be evidence to the contrary, extends to the whole space between the fences, and the public are entitled to use the entire of it as highway, and

are not confined to the part which may be metalled or kept in order for the more convenient use of carriages and foot passengers." The learned Judge has again observed:

".....as Lord Tenterden observed in *Rex v. Wright*, (1832, 3 B & Ad 681). 'The space at the sides' (that is of the hard road) is also necessary to afford the benefit of air and sun. If trees and hedges might be brought close up to the part actually used as road it could not be kept sound."

In the Madras City Municipal Corporation Act, a public street is defined in S. 2(20) thus:

"Public street means any street, road, square, court, alley, passage or ridingpath over which the public have a right of way, whether athoroughfare or not and includes—

- (a) the roadway over any public bridge or causeway,
- (b) the foot-way attached to any such street, public bridge or causeway and
- (c) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, veranda, or other structure, which lies on either side of the roadway up to the boundaries of the adjacent property, whether that property is private property or property belonging to the Government.

Street-alignment is defined thus under S. 2(26) of the Act:

"Street-alignment means a line dividing the land comprised in and forming a part of a street from the adjoining land."

Section 203 of the Act deals with vesting of public streets and their appurtenances in the corporation. It reads thus:

"All public streets in the city not reserved under the control of the Central or the State Government, with the pavements, stones and other materials thereof, and all works, materials, implements and other things provided for such streets, all drains, drainage works, tunnels and culverts whether made at the cost of the municipal fund or otherwise in, alongside or under any street, whether public or private, and all works, materials, implements and other things appertaining thereto and all trees not being private property growing on public streets or by the side thereof, shall vest in the corporation.

(2) The State Government may by notification withdraw any such street, drain, drainage, work, tunnel, culvert or tree from the control of the corporation."

Section 204 reads thus:

"The corporation shall cause the public streets to be maintained and repaired and may make all improvements thereto which are necessary or expedient for the public safety or convenience."

Section 220 reads thus:

"No one shall build any wall or erect any fence or other obstruction or projection or make any encroachment in or over any street or any public place the control of which is vested in the corporation except as hereinafter provided."

Section. 221 reads thus:-

"(1) The Commissioner may by notice require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar, or ground-floor window) situated against or in front of such premises and in or over any street or any public place the control of which is vested in the corporation.

(2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give him a prescriptive title or where such period is less than thirty years, (for a period of thirty years) or that it was erected with the consent of any municipal authority duly empowered in that behalf, and that the period, if any, for which the consent is valid has not expired, the corporation shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same."

Section 223 reads thus:

Section 223 (1)

(2) With the concurrence of the Commissioner of Police, the Commissioner may grant a licence subject to such conditions and restrictions as he may think fit, for any temporary construction in any street or in any public place the control of which is vested in the corporation.

(3) No licence shall be granted under sub-section (1) if the projection or construction is likely to be injurious to health or cause public inconvenience or otherwise materially interfere or result in material interference with the use of the road as such.

(4) On the expiry of any period, for which a licence has been granted under this section or after due communication of an order of suspension or revocation of such licence the Commissioner may, without notice, cause any projection or construction put up under sub-sections (1) or (2) to be removed, and the cost of so doing shall be recoverable in the manner provided in Section 387 from the person to whom the licence was granted.

(5) The council shall have power to lease road sides and street margins vested in the corporation for occupation on such terms and conditions and for such period as it may fix: Provided that no such lease for any term exceeding three years shall be valid unless the sanction of the State Government therefor shall have been first obtained:

Provided further that if the State Government consider that any occupation of a road side or street margin under a lease granted by the council under this section is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with use of the road side or street margin as such, the State Government may direct the council to cancel or modify the lease and the council shall thereupon cancel or modify the lease accordingly".

15. From the above provisions of the Act, it is clear that all public streets and their appurtenances vest in the Corporation. No one has got a right to build any wall or erect any fence or other obstruction or projection or make any encroachment in or over any street, which is vested in the Corporation except as otherwise provided. Section 223 (2) of the Act confers power on the Commissioner of the Corporation of Madras with the concurrence of the Commissioner of Police to grant a licence for any temporary construction in any street or any public place the control of which is vested in the corporation and the licence will be subject to such conditions and restrictions as he may think fit. Under Section 223(1) the Commissioner has got the power to grant a licence to the owner or occupier of

any premises to put up certain projections or constructions. But such projection or construction shall not be likely to be injurious to health or cause public inconvenience or otherwise materially interfere or result in material interference with the use of the road as a road. On the expiry of the period of the licence the projection or temporary construction is likely to be removed. Section 223(5) confers power on the Commissioner to lease but road sides and street margins vested in the corporation for occupation on such terms and conditions and for such period as it may fix. Any lease for a term exceeding three years shall not be valid unless the sanction of the State Government is obtained. Any such lease shall not be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road side or street margin.

16. The vesting of public street in the municipalities under the Madras District Municipalities Act, 1884 came up for consideration before a Bench of this Court in *S. Sundaram Ayyar v. Municipal Council of Madras and The Secretary of State for India in Council*, (1902 ILR 25 Mad 635) where it is observed as follows:

"When a street is vested in a Municipal Council, such vesting does not transfer to the Municipal authority the rights of the owner in the site or soil over which the street exists. It does not own the soil from the centre of the earth *usque ad caelum*, but it has the exclusive right to manage and control the surface of the soil and so much of the soil below and of space above the surface as is necessary to enable it to adequately maintain the street as a street. It has also a certain property in the soil of the street which would enable it as owner to bring a possessory action against trespassers."

In *Municipal Board of Agra v. Sudarshan Das Shastri*, (1915 ILR 37 All 9) : (AIR 1914 All 341) a Division Bench of the Allahabad High Court observed as follows:-

".....in our opinion all the ground, whether metalled or not, over which the public had a right of way, is just as much the public road as the metalled part. The Court would be entitled to draw the inference that any land over which the public from time

immemorial had been accustomed to travel was a public street or road, and the mere fact that a special part of it was metalled for the greater convenience of the traffic would not render the unmetalled portion on each side any the less a public road or street."

The scope of the words "public street or road or any part thereof" occurring in Article 146-A of the Limitation Act arose for consideration in *Anukul Chandra v. Dacca Dist. Board*, (AIR 1928 Cal 485) where Suhrawardy, J. observed as follows:-

"The expression road or highway has been considered in many cases in England and it seems that the interpretation put there is not confined to the portion actually used by the public but it extends also to the side lands. See the cases in *Rex v. Wright*, (1882, 3 B. & Ad. 681) and *Turner v. Ringwood Highway Board*, (1870 LR 9 Eq. 418). I am not prepared to put a too narrow meaning on the expression 'public streets' or road 'in Article' 146-A, as it is intended to safeguard the interest of public bodies which are not expected to be as vigilant over their rights as private individuals. I am of opinion that road in that article includes the portion which is used as road as also the lands kept on two sides as parts of the road for the purposes of the road."

In *Municipal Board v. Mahadeoji*, (1965-2 SCR 241) : (AIR 1965 SC 1147) after referring to the above decisions, the law is summarised thus (Para 8):-

"The law on the subject may be briefly stated thus: Inference of dedication of a highway to the public may be drawn from a long user of the highway by the public. The width of the Highway so dedicated depends upon the extent of the user. The sidelands are ordinarily included in the road, for they are necessary for the proper maintenance of the road. In the case of a pathway used for a long time by the public, its topographical and permanent landmarks and the manner and mode of its maintenance usually indicate the extent of the user." The Supreme Court again observed thus (Paras 9 and 10):

"In the present case it is not disputed that the metalled road was dedicated to the public. As we have indicated earlier, the inference that the side lands are also included in the public way is drawn easily as the said lands are between the metal road and the drains admittedly maintained by the Municipal Board.

Such a public pathway vests in the Municipality, but the Municipality does not own the soil. It has the exclusive right to manage and control the surface of the soil and so much of the soil below and of the space above the surface as is necessary to enable it to adequately maintain the street as a street. It has also a certain property in the soil of the street which would enable it as owner to bring a possessory action against trespassers. Subject to the rights of the Municipality and the public to pass and repass on the highway the owner of the soil in general remains the occupier of it and therefore he can maintain an action for trespass against any member of the public who acts in excess of his rights.

If that is the legal position, two results flow from it, namely (1) the Municipality cannot put up any structures on the public pathway which are not necessary for the maintenance or user of it as a pathway, (2) it cannot be said that the putting up of the structures for installing the statue of Mahatma Gandhi or for piyo or library are necessary for the maintenance or the user of the road as a public highway. The said acts are unauthorised acts of the Municipality".

19. From the above decisions the following principles emerge. Every member of the public has got a right to pass and repass over a highway or a public street. The said right of the public is a right to pass along the highway for the purpose of legitimate travel, not to be "on it" except to the extent their presence is attributable to a reasonable and proper user of the highway as such. The right of the public to pass and repass extends over the whole width of the highway or the street, in other words, over every inch of the street. A member of the public cannot be compelled to confine himself to a part of the street at the choice of another. The owner of a property adjacent to a highway or a public street has got a right of access to such highway or street at any point at which his land actually touches it. His right of access from his premises to the highway and vice versa is a private right. However, his right to use such highway or public street as soon as he is "on the highway" or the public street becomes a public right. It is the background if the above facts the locus standi of the petitioners to maintain the

writ petitions has to be considered. The petitioners in W.P. Nos. 1127 of 1980, 2415 and 2416 of 1982 have averred that they are carrying on business in the shops in Ranganathan Street, which is admittedly a public street. They have got the right of access from any point of their, shop to Ranganathan Street. Further, once they are on Ranganathan Street, according to allegations, they will have the right to pass and repass along Ranganathan street. That right inheres in them as members of the public. They have further stated that their customers and they are prevented by reason of the obstructions created by the hawkers to load and unload the goods from vehicles into the shops and to enter or leave the shop directly on to the street without any obstruction whatsoever. In view of these allegations it has to be held that the petitioners have sufficient personal interest in the subject matter of the writ petitions. However, Mr. Kesava Iyengar contended that the petitioners are not aggrieved persons and therefore they cannot maintain the Writ Petitions. In this connection, the learned counsel cited the decisions in *N.R. & F. Mills v. N.T.G. & Bros.*, ((1970) 1 SCC 575 : AIR 1971 SC 246). There, the question that arose for consideration was whether a competitor in a rice mill business can feel aggrieved by the permission granted to another rice mill owner to shift his existing rice mill to the new site and the Supreme Court answered the question in the negative. The learned counsel also cited the decision in *J.N. & Co. v. State of A.P.* ((1971) 2 SCC 163 : AIR 1971 SC 1507). In that case, the tax collected by dealers as agents of the principals became illegal as a consequence of decisions of the High Court. But due to the Amending Act the collection has become legal and as dealers they are liable to pay that amount to the State in respect of the assessments made. The amending Act removed the exemption of Rs. 10,000/- on sale of jaggery which was given retrospective effect. The agents questioned the constitutional validity of the Amending Act. The Supreme Court held that the Agents have no locus standi to question the validity. The Supreme Court held that the Agents of the dealers have no locus standi to maintain the Writ Petition. I am of the view that these two decisions are not applicable to the facts of this case. Here, the Petitioners have alleged that by reason of the obstruction caused in

the public Street they are prevented from having access to the same from their respective shops. The petitioners have alleged a clear infringement of their right to have access to the public street which itself amounts to an injury. Consequently, they are aggrieved persons and are entitled to maintain the writ petitions."

14. This Court is of the opinion that once a layout is approved by the competent authority and if any person claims that a particular property belongs to him or mistakenly or erroneously included in the layout or earmarked as a public road, then such a person ought to have raised an objection during the relevant point of time or filed an appeal or approach the Court of law for cancellation of layout or for reviewing the layout, so as to correct the mistakes or error. Contrarily, here is the person, who allowed the layout to remain and pursuant to the approved layout, many persons purchased the plots, developed and constructed buildings and now after a lapse of about 40 years, the 1st respondent raises a ground, stating that he is the absolute owner of the portion of the land, which is earmarked as a public road in the approved layout and therefore, the Corporation authorities have every authority to demolish the portion of the building constructed in the road earmarked as per the approved plan.

15. As far as the layout approval under the provision of the Tamil Nadu Town and Country Planning Act 1997 is concerned, Section 101 stipulates Bar of Jurisdiction of Courts. Accordingly, 'Any decision or order of the Tribunal or the Government or the planning authority or other authority or of any officer under this Act shall, subject to any appeal or revision or review provided under this Act, be final and shall not be liable to be questioned in any Court of law 1 (and no injunction shall be granted by any court against the notices served to any person by the planning authority under section 56 or under section 57 of this Act)'.
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16. Therefore, if any notice is issued by the competent authority under the Act, then the Civil Court cannot grant any injunction. However, the 1st respondent has got every right to institute a Civil Suit for Declaration of title and for an injunction otherwise. Therefore, the Bar of jurisdiction of Courts under Section 101 of the Town and Country Planning Act, 1997, is limited to the extent of notice issued under the provisions of the Act for demolition of the encroached portion or to demolish the portion earmarked as per the approved layout.

17. In the present case, the Chennai Corporation also contends that as per the approved layout of the year 1975, the

portion under the possession of the 1st respondent was earmarked as a public road and now the area is developed to such an extent and the public in general are restrained from using the public road on account of the encroachment by the 1st respondent. Thus, the authorities issued a notice and the notice was challenged and the Hon'ble Division Bench directed the 1st respondent to approach the Civil Court and the 1st respondent also filed a Civil Suit for Declaration and Injunction. Under these circumstances, the injunction cannot be granted against the Corporation officials to remove the encroachment made in the public road with reference to the approved layout of the year 1975, which was approved by the competent authority, which was not disputed by the parties. The said approval was not questioned by the 1st respondent or by any person for the past about 40 years and thus, the approval became final and many other persons acquired right pursuant to the approval of layout and those public rights cannot be taken away on account of encroachment by the 1st respondent.

18. This Court is of the considered opinion that when a matter of private right and public right case came as a dispute, public right alone will prevail over and the private rights can be adjudicated in the Civil Suits. The said approved layout was not questioned or appealed by any of the aggrieved person, there is no reason whatsoever to interfere with the approved layout. After a lapse of about 45 years, pursuant to the approved layout, many persons purchased plots from the VGP Partnership Firm and constructed buildings and in occupation. The rights of those individuals cannot be infringed. The rights of those individuals for the usage of the public road is to be protected by the public authorities. Thus, in all respects, the public road identified for the usage of public at large based on the approved layout cannot be interfered with and therefore, the authorities are competent to remove such occupation or encroachment and allow the public to use the said road for the benefit of public at large.

19. As far as the order passed by the Trial Court in the Interlocutory Application is concerned, the trial Court undoubtedly adjudicated the documents and found that the 1st respondent/plaintiff could able to establish his title *prima facie*.

20. The fact remains that the VGP layout was approved by the competent authority in the year 1975 by the competent authority and the said approved layout was not objected nor any appeal was filed by any aggrieved person during the relevant point of time and now after a lapse of about 40 years first time, the 1st respondent raised an objection, this Court is of an opinion that the said objections are to be dealt with elaborately in the

Civil Suit and therefore, the findings of the trial Court that the 1st respondent/plaintiff established a *prima facie* case of title is unnecessary at this juncture. This apart, title is to be adjudicated with reference to the documents and evidences. Any such observation in Interlocutory order should not affect the rights of the parties to defend their case during the final trial. Though the trial Court made a finding that the balance of convenience is in favour of the 1st respondent/plaintiff, this Court is of an opinion that when the public right is involved based on the approved layout granted by the competent authorities namely the Director of Town and Country Planning and when the portion of the land is earmarked as a public road, then public interest is to be protected in all respects and if at all, any private interest is involved, those rights can be adjudicated in the suit itself. Undoubtedly, the 1st respondent may be an innocent purchaser, who purchased the said portion of the land from his vendor. The 1st respondent would not have been thought about these issues. However, his right to prosecute the vendors also remains, if any misrepresentation or fraud is established. As far as the public rights are concerned, that will prevail over and the private interest cannot be a ground to grant injunction by the trial Court.

21. This Court is of the considered opinion that when it is crystal clear that the particular portion of the land under the possession of the 1st respondent is earmarked as a public road as per the approved layout of the year 1975, the said portion is to be kept for the public usage and the authorities are bound to clear the portion of the road and make it available to the public for their usage.

22. As far as the rights of the parties are concerned, it is left open to them to adjudicate the same with reference to the documents and evidences in the Civil Suit pending and as far as the interim injunction is concerned, once this Court arrived a conclusion that the portion occupied by the 1st respondent is a public road as per the approved layout and further, the adjacent areas were developed and connecting roads are to be provided as per the master plan, the injunction granted stands as an obstruction for the authorities to provide adequate facilities and under these circumstances, the Corporation authorities are empowered to clear the road as per the approved layout and make the road for the usage of the public at large and other issues between the parties shall be adjudicated before the trial Court.

23. Under these circumstances, this Court has no hesitation in arriving a conclusion that the interim injunction granted by the trial Court only in respect of the public road is perverse and consequently, the Fair and Decreetal order dated 10.04.2017 passed in I.A.No.1057 of 2016 in O.S.No.169 of 2016 stands set

aside and consequently, the Civil Miscellaneous Appeal in C.M.A.No.2688 of 2018 is allowed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Principal District Court of Kancheepuram District
Chengalpattu.

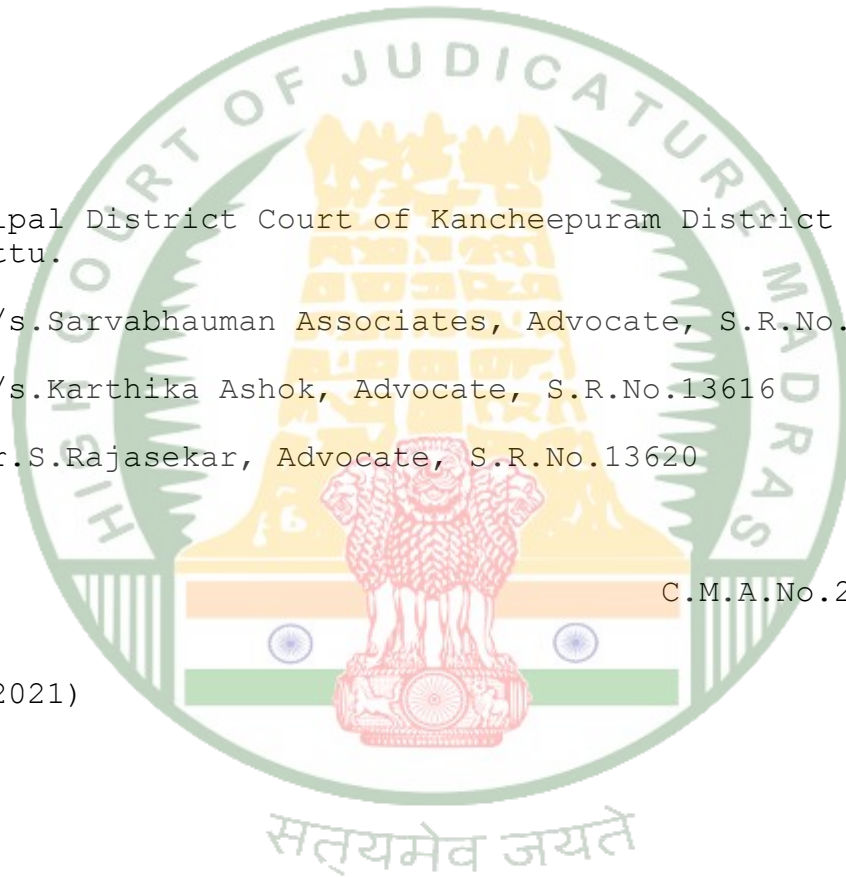
+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.13438

+1cc to M/s.Karthika Ashok, Advocate, S.R.No.13616

+2cc to Mr.S.Rajasekar, Advocate, S.R.No.13620

C.M.A.No.2688 of 2018

KJ(CO)
KM(20/04/2021)



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