IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE K.S.BHARATH KUMAR

WRIT APPEAL NO. 529 OF 2023 (LB-BMP)
C/W
WRIT APPEAL NO. 612 OF 2023 (LB-BMP)

IN WA No. 529/2023

BETWEEN:

1. V. CHANDRASHEKAR
AGED ABOUT 64 YEARS
S/O LATE M. VENKATARAMAIAH
RESIDING AT NO.9/1A
GROVER ROAD
SARVAGNANAGAR
COX TOWN
BENGALURU-560 005

Digitally signed by PAVITHRA N
Location: High Court of Karnataka

2. V. VASUDEV
SINCE DEAD BY LR'S

2(A) GEETHA
AGED ABOUT 49 YEARS
W/O LATE.V.VASUDEV

2(B) V.ZAINKAR
AGED ABOUT 26 YEARS
D/O LATE V. VASUDEV

2(C) V.VINAY
AGED ABOUT 22 YEARS

S/O LATE V. VASUDEV

ALL ARE RESIDING AT NO. 9/1
GROVER ROAD
SARVAGNANAGAR
COX TOWN
BENGALURU-560 005

3. V.VINAYAKUMAR
AGED ABOUT 57 YEARS
S/O. LATE M. VENKATARAMAIAH
RESIDING AT NO.9
GROVER ROAD
SARVAGNANAGAR
COX TOWN
BENGALURU-560 005

4. SRI SATHYANARAYANA EDUCATIONAL TRUST
(FORMERLY A SOCIETY REGISTERED UNDER THE
KARNATAKA SOCIETIES
REGISTRATION ACT, 1960 AND
SUBSEQUENT THERETO CONVERTED IN TO A TRUST
UNDER INDIAN TRUST ACT)
HAVING ITS OFFICE AT NO.10/4
RAMAMURTHYNAGAR MAIN ROAD
BANASWADI
BENGALURU-560 033
REPRESENTED BY ITS FOUNDER SECRETARY
MR.T. VENUGOPAL
S/O LATE THIMMAIAH

…APPELLANTS

(BY SRI. AJOY KUMAR PATIL, ADV. FOR
SRI. GANESH BHAT Y. H., ADV.)

AND:

1. V. KAMALA
AGED ABOUT 65 YEARS
W/O LATE M. VENKATESH

2. SHRI. M. VENKATESH
AGED ABOUT 74 YEARS
S/O LATE M. MUNISWAMAPPA

BOTH ARE RESIDING AT NO.105
DAMODAR MUDALIAR STREET
ULSOOR, BENGALURU-560 008

3. BRUHATH BENGALURU MAHANAGAR PALIKE
BENGALURU-560 001
BY ITS COMMISSIONER

4. THE COMMISIONER
BRUHATH BENGALURU MAHANAGAR PALKE
N.R. SQUARE
BENGALURU-560 001

5. ASSISTANT EXECUTIVE ENGINEER
BRUHATH BENGALURU MAHANAGAR PALKE
MARUTHI SEVANAGARA
SUB-DIVISION
BENGALURU-560 033

…RESPONDENTS

(BY SRI. B.M.ARUN, ADV. FOR CAVEATOR/R1 & R2;
SRI. B.S.SATHYANANDA, ADV. FOR R3-R5)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961 R/W ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO ALLOW THE ABOVE WRIT APPEAL BY SETTING ASIDE THE ORDER DATED 20.04.2023 IN WRIT PETITION No.14685/2014 (LB-BBMP) PASSED BY THE LEARNED SINGLE JUDGE AND CONSEQUENTLY DISMISS THE WRIT PETITION No.14685/2014 (LB-BBMP).

IN WA NO.612/2023

BETWEEN:

1. BRUHATH BENGALURU MAHANAGARA PALIKE
   BENGALURU - 560001
   BY ITS COMMISSIONER

2. THE COMMISSIONER
   BRUHATH BENGALURU MAHANAGARA PALIKE
   N R SQUARE
   BENGALURU - 560001

3. ASSISTANT EXECUTIVE ENGINEER
   BRUHATH BENGALURU MAHANAGARA PALIKE
   MARUTHI SEVANAGARA
   SUB DIVISION
   BENGALURU - 560033

...APPELLANTS

(BY SRI. SATYANAND B S, ADV.)

AND:

1. V. KAMALA
   AGED ABOUT 65 YEARS
   W/O LATE M VENKATESH

2. SHRI M VENKATESH
   AGED ABOUT 74 YEARS
   S/O LATE M MUNISWAMAPPA

   BOTH ARE RESIDING AT NO.105
   DAMODAR MUDALIAR STREET
   ULSOOR, BENGALURU - 560008

3. V CHANDRASHEKAR
   AGED ABOUT 64 YEARS
   S/O LATE M VENKATARAMAIAH

RESIDING AT NO 9/1A
GROVER ROAD
SARVAGNANAGAR
COX TOWN BENGALURU - 560005

4. V VASUDEV
SINCE DEAD BY LRS

4(A) MRS GEETHA
AGED ABOUT 49 YEARS
W/O LATE V VASUDEV

4(B) V ZAINKAR
AGED ABOUT 26 YEARS
D/O LATE V VASUDEV

4(C) V VINAY
AGED ABOUT 22 YEARS
S/O LATE V VASUDEV

ALL ARE RESIDING AT NO.9/1
GROVER ROAD
SARVAGNANAGAR
COX TOWN
BENGALURU - 560005

7. V VIJAYAKUMAR
AGED ABOUT 57 YEARS
S/O LATE M VENKATARAMAIAH
RESIDING AT NO.9
GROVER ROAD
SARVAGNANAGAR
COX TOWN
BENGALURU - 560005

8. SRI SATYANARAYANA EDUCATIONAL TRUST
(FORMERLY A SOCIETY REGISTERED UNDER THE
KARNATAKA SOCIETIES REGISTRATION ACT, 1960

AND SUBSEQUENT THERETO CONVERTED IN TO A
TRUST UNDER INDIAN TRUST ACT)
HAVING ITS OFFICE AT NO.10/4
RAMAMURTHYNAGAR MAIN ROAD
BANASWADI
BENGALURU - 560003
REPRESENTED BY ITS FOUNDER SECRETARY
MR T VENUGOPAL
S/O LATE THIMMAIAH

...RESPONDENTS

(BY SRI. ARUN B M., ADV. FOR R1 & R2;
SRI. AJAY KUMAR PATIL &
SRI. GANESH BHAT Y.H., ADV. FOR R3, R4(A-C), R5 & R6)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT RULES, 1961, PRAYING TO ALLOW THIS WRIT APPEAL AND SET ASIDE THE IMPUGNED DIRECTIONS AGAINST THESE APPELLANTS AS PER PARA NOS.24.16 AND PORTION OF THE PARA NO.25.1.ii, (BBMP IS ALSO DIRECTED TO MAINTAIN THE SAID PASSAGE/STREET AND ENTER THE SAME IN ITS PROPERTY REGISTER) IN ORDERS DATED 20/04/2023, PASSED BY THE LEARNED SINGLE JUDGE IN WP NO.14685/2014 (LB-BBMP), AND CONSEQUENTLY, ALLOW THE WRIT PETITION NO.14685/2014 (LB-BBMP), TO THE EXTENT OF THE WRIT PETITION PRAYER i.e., IN SO FAR AS IMPLEMENTATION OF ANNEXURES-U AND V, DATED 13/10/2011 AND 18/11/2011, RESPECTIVELY.

THESE WRIT APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 29.10.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE K.S.BHARATH KUMAR

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

Writ Appeal No.529/2023 is preferred by respondents No.4 to 7 in the writ petition and Writ Appeal No.612/2023 is preferred by Bruhat Bengaluru Mahanagara Palike ('BBMP' for short) and its officers challenging the order dated 20.04.2023 passed by the learned Single Judge in Writ Petition No.14685/2014 (LB-BBMP), whereby the writ petition filed by respondents No.1 and 2 herein was allowed, directing the BBMP to implement the notice/order dated 13.10.2011 and 18.11.2011, remove the compound wall and gate constructed across the passage measuring 40 feet × 159 feet, keep the said passage free from encroachments, maintain the same and enter it in its property register.

2. We have heard Shri. Ajoy Kumar Patil, learned counsel appearing for the appellants in Writ Appeal No.529/2023 and for respondents No.3 to 6 in Writ Appeal No.612/2023; Shri. B.M. Arun, learned counsel appearing for respondents No.1 and 2 in both the appeals and Shri. B.S Sathyananda, learned counsel appearing for respondents

No.3 to 5 in Writ Appeal No.529/2023 and for the appellants in Writ Appeal No.612/2023.

3. The property bearing Corporation No.10, situated at Ramamurthy Nagar Main Road, Banaswadi, Bengaluru, measuring about 49,613 sq.ft. originally belonged to one Shri. M. Venkataramaiah. During his lifetime, he executed two registered Gift Deeds and a Will dated 22.04.2004, whereby different portions of the property were gifted to his daughters and bequeathed to his sons. Under the registered Gift Deed dated 22.04.2004, a portion of the property was gifted to his daughter, Smt. V. Kamala, respondent No.1 herein, while the remaining portions were bequeathed in favour of his sons, namely Shri. V. Chandrashekar, Shri. V. Vasudev and Shri. V. Vijayakumar, who are appellants No.1 to 3 in Writ Appeal No.529/2023. A passage measuring 40 feet × 159 feet, leading to Ramamurthy Nagar Main Road, was shown in the documents relating to the respective properties.

4. Pursuant to the aforesaid transactions, BBMP by Special Notice dated 04.01.2006, effected separate khatas in

respect of the respective portions: No.10, 10/3 and 10/4 for the sons and No.10/1 and 10/2 for the daughters. The passage measuring 40 feet × 159 feet was not included in any of these numbers. Building plans were sanctioned by BBMP, including the plan dated 30.06.2009 for a school and hostel building on No.10/4. Appellants No.1 to 3 leased their properties to appellant No.4, an educational institution, which runs New Baldwin Residential School. Respondent No.1 gifted a 50% undivided share in her property to her husband - respondent No.2, on 18.04.2009. Thereafter, BBMP assigned No.10/5 to the rear portion and sanctioned a plan for it on 23.11.2010 on the basis of access through the passage. In January 2011, appellant No.4 enclosed the passage with a compound wall and gate for the safety of the students and hostel inmates.

5. On 21.02.2011, respondents No.1 and 2 lodged a complaint before the Commissioner, BBMP alleging encroachment upon a public road by construction of the compound wall and gate. Pursuant thereto, BBMP issued a notice dated 03.03.2011 calling upon the appellants No.1 to

3 to submit their explanation. By reply dated 08.03.2011, they contended that the passage was a private passage forming part of the property of their father, Shri. M. Venkataramaiah, and was intended for ingress and egress to their respective properties. Thereafter, BBMP issued an endorsement dated 20.05.2011 stating that the 40 feet road, which respondent No.1 described as a passage to her property, was the subject matter of a joint family dispute which BBMP had no jurisdiction to adjudicate, and advising the parties, to approach the competent Civil Court to decide which of the property owners alone could use the said road.

6. Subsequently, BBMP issued a notice dated 13.10.2011 concerning the construction of the compound wall and gate across the disputed passage, stating that the Legal Advisor had instructed that action be taken and calling upon appellants No.1 to 3 to immediately remove the iron gate and compound wall built across the 40 feet road relating to property No.10/1, 10/3, 10/4, 10/5 and 10, and to explain why cement concrete had been laid on the said road without the prior approval of BBMP. A further

communication dated 18.11.2011 was issued by the BBMP recording that appellants No.1 to 3 had not complied with the notice, and seeking police protection from the BMTF so that BBMP could remove the compound wall, security building and iron gate. In the meanwhile, the educational Institution instituted a Civil Suit as O.S.No.7544/2011 before the City Civil Court, Bengaluru, against the BBMP seeking permanent injunction against interference with its possession and enjoyment of the property. The said suit came to be decreed by judgment dated 29.11.2012, permanently restraining BBMP and its officials from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule properties. Thereafter, respondents No.1 and 2 instituted Writ Petition No.14685/2014 seeking a direction to BBMP to implement the notice and communication dated 13.10.2011 and 18.11.2011 and remove the compound wall and gate.

7. The writ petition was initially dismissed by order dated 08.11.2017, relegating the parties to the remedy before the competent Civil Court. The said order

was subsequently recalled by order dated 23.02.2021 in Review Petition No.155/2019 and the writ petition was restored for consideration. During the pendency of the writ petition, BBMP conducted a spot inspection on 30.09.2021, and the spot mahazar recorded that no BBMP road was found on the property, that no road ID was found on verification of the road history website and that the property was found to be private property. BBMP placed on record the spot mahazar, road identification map and photographs. BBMP also filed an affidavit dated 14.01.2022, asserting that the disputed passage had not been relinquished in favour of BBMP and did not vest in it, and produced the building plan sanctioned on 30.06.2009 for the school and hostel building.

8. Subsequently, an affidavit **dated 21.04.2022** was filed on behalf of BBMP in April 2022 expressing willingness to implement the earlier notice and communication within three weeks, pursuant to which directions were issued for compliance by order dated 21.04.2022. The said directions were challenged in Writ Appeal No.407/2022 and, by order dated 25.08.2022, the Division Bench interfered with the

direction and directed the writ petition be considered afresh on merits, after hearing all the parties, while retaining the affidavit on record.

9. The learned Single Judge, upon consideration of the pleadings and material on record, noticed that BBMP had taken inconsistent stands regarding the nature of the disputed passage. Though BBMP had initially issued notices for removal of the alleged encroachment, it subsequently contended that the passage was private property which had not been relinquished in its favour. The learned Single Judge further notice that BBMP, while effecting khata bifurcation, assigning separate municipal numbers and sanctioning building plans in favour of the respective parties, had recognised the existence of the passage measuring 40 feet × 159 feet as a means of access to their properties and that betterment charges had been paid only on 43,253.75 sq.ft. out of the total extent of 49,613 sq.ft. leaving out the passage measuring about 6,360 sq.ft. The stand of the BBMP that the passage had not been handed over to it under a Relinquishment Deed was a dishonest stand.

10. Referring to Section 17 of the Karnataka Town and Country Planning Act, 1961 and Section 505 of the Karnataka Municipal Corporations Act, 1976, the learned Single Judge held that, though no permission for subdivision had been obtained from the Planning Authority, BBMP had nevertheless effected khata bifurcation and sanctioned building plans by recognising the passage. It was held that the actions undertaken by BBMP in the year 2006 need not be disturbed at that stage, but were required to be construed harmoniously with the statutory provisions. The learned Single Judge further held that BBMP could not disclaim its responsibility to maintain the passage merely because no registered Relinquishment Deed had been executed in its favour. It was also observed that the passage did not form part of the properties bearing separate municipal numbers and that neither the writ petitioners nor the contesting respondents could claim any independent right, title or interest over the same so as to enclose it by constructing a compound wall and gate. Since the passage had not been specifically gifted or bequeathed to any

particular person, the children of Shri. M. Venkataramaiah were held to have equal rights therein. It was further held that the contesting respondents could not have leased the passage to the educational institution.

11. Insofar as the civil suit instituted by the educational institution was concerned, the learned Single Judge noticed that the suit had been filed after issuance of the notice by BBMP and that BBMP, despite entering appearance, had failed to effectively contest the proceedings. It was observed that the suit proceeded on an incorrect description of the properties as a composite unit, notwithstanding the existence of separate municipal numbers and the absence of amalgamation of khatas. The learned Single Judge held that the Civil Court ought to have examined the maintainability of the suit and that the decree of permanent injunction would not prevent BBMP from taking action in accordance with law. The learned Single Judge also expressed concern over the conduct of BBMP officials in defending the civil proceedings and directed the Chief Commissioner to initiate an enquiry, besides issuing

directions for effective monitoring of litigation involving BBMP and conducting a survey of roads within its jurisdiction. Accordingly, the learned Single Judge allowed the writ petition and directed BBMP to implement the notice/order dated 13.10.2011 and 18.11.2011, remove the compound wall and gate constructed across the disputed passage measuring 40 feet × 159 feet, keep the passage free from encroachments, maintain the same and enter it in its property register.

12. The learned counsel appearing for the appellants in Writ Appeal No.529/2023 contends that the learned Single Judge erred in adjudicating disputed questions of title and ownership in proceedings under Article 226 of the Constitution of India. It is submitted that the passage measuring 40 feet × 159 feet forms part of the larger private property originally belonging to Shri. M. Venkataramaiah and was provided exclusively for ingress and egress to the properties bequeathed to his sons. The passage had neither been relinquished in favour of BBMP nor acquired by it in accordance with law and, therefore, could

not be treated as a public street. It is further contended that respondents No.1 and 2 have independent access to their property and no right, title or easementary right over the disputed passage. The original owner had merely gifted and bequeathed portions of his property to his children and had not formed any layout requiring approval under Section 17 of the Karnataka Town and Country Planning Act. Mere khata bifurcation, sanction of building plans or collection of property taxes would not result in vesting of the passage in BBMP.

13. It is further contended that the findings of the learned Single Judge are mutually inconsistent, inasmuch as, having observed that the children of Shri. M. Venkataramaiah have equal rights over the passage, the learned Single Judge proceeded to direct BBMP to maintain the same as a public street. It is submitted that such disputed questions could not have been determined without recording evidence before the competent Civil Court. The compound wall and gate were constructed for the safety and security of the students and hostel inmates, the passage

was never intended for public use. It is also contended that the notice dated 13.10.2011 was merely a show-cause notice and the communication dated 18.11.2011 was an internal communication, neither of which constituted a final statutory order. It is contended that the learned Single Judge failed to consider the spot mahazar, inspection reports and affidavits of BBMP indicating that the passage had not vested in the Corporation.

14. It is also submitted that the educational institution had instituted a civil suit for permanent injunction, which was decreed on 29.11.2012 and the judgment and decree had attained finality. The learned Single Judge could not have virtually nullified the decree or questioned the maintainability of the suit in writ proceedings. It is therefore contended that the directions issued for removal of the compound wall and gate and for treating the passage as a public street are legally unsustainable.

15. The learned counsel appearing for the appellants in Writ Appeal No.529/2023 has placed reliance on the following decisions:-

- ***Commissioner of Sales Tax and Others v. M/s. Subhash and Company*** reported in ***(2003) 3 SCC 454;***
- ***Kalabharati Advertising v. Hemant Vimalnath Narichania and Others*** reported in ***(2010) 9 SCC 437;***
- ***Mohd. Abdul Quayyum v. State of Karnataka and Others*** reported in ***2013 SCC OnLine Kar 10363;***
- ***Ramamurthy N. v. Bruhat Bangalore Mahanagara Palike and Others*** passed in ***W.P.No.22305/2016*** decided on ***24.03.2023;***
- ***Sri Vinod Damji Patel v. The Hoskote Yojana Pradhikara*** passed in ***W.P.No.15103/2022*** decided on ***17.04.2023;***
- ***Tukaram Kana Joshi and Others v. Maharashtra Industrial Development Corporation and Others*** reported in ***(2013) 1 SCC 353, and***
- ***Hindustan Petroleum Corporation Limited v. Darius Shapur Chenai and Others*** reported in ***(2005) 7 SCC 627 : AIR 2005 SC 3520.***

16. The learned counsel appearing for the appellants in Writ Appeal No.612/2023 contends that the learned Single Judge exceeded the scope of the writ petition by directing BBMP to maintain the disputed passage as a public street and enter it in its property register, though the relief sought was confined to implementation of the notice dated 13.10.2011 and the communication dated 18.11.2011 and removal of the compound wall and gate. It is submitted that no declaration regarding the nature or vesting of the passage in BBMP had been sought. Mere khata bifurcation, sanction of building plans or collection of property taxes would not convert a private passage into a public street, particularly when the passage had neither been acquired by nor relinquished in favour of BBMP.

17. It is further contended that the learned Single Judge erred in applying Section 17 of the Karnataka Town and Country Planning Act and Section 505 of the Karnataka Municipal Corporations Act, as the original owner, Shri. M. Venkataramaiah, had merely gifted and bequeathed portions of his property to his children without forming any layout or

public road. The statutory provisions relating to formation of layouts and relinquishment of roads were therefore inapplicable. It is also submitted that BBMP maintains a Road History Register under Section 293 of the Karnataka Municipal Corporations Act and that the general directions issued by the learned Single Judge for conducting a survey of roads throughout Bengaluru were neither sought by the writ petitioners nor warranted for adjudication of the dispute concerning the particular passage.

18. It is also submitted that the affidavit filed on behalf of BBMP in April 2022, expressing willingness to implement the earlier notice and communication, could not be treated as an admission that the disputed passage vested in BBMP or as conferring any statutory authority over the same. It is therefore contended that the directions requiring BBMP to maintain and register the passage as a public street, as also the wider directions concerning the survey of roads, are legally unsustainable and liable to be set aside.

19. The learned counsel appearing for respondents No.1 and 2 in both the appeals contends that the disputed

passage measuring 40 feet × 159 feet was specifically provided under the registered Will and Gift Deeds dated 22.04.2004 executed by Shri. M. Venkataramaiah and is reflected in the boundaries of the respective properties. It is submitted that the passage was intended to provide access to the properties allotted to his children, including respondent No.1 and that the appellants in Writ Appeal No.529/2023 cannot claim exclusive rights over the same. It is further submitted that BBMP, having recognised the passage while effecting khata bifurcation, assigning separate municipal numbers and sanctioning building plans, cannot subsequently contend that it is not a public street. It is also pointed out that, out of the total extent of 49,613 sq.ft., betterment charges were paid only in respect of 43,253.75 sq.ft., leaving out approximately 6,360 sq.ft. comprising the disputed passage, which, establishes that the passage vests in BBMP.

20. It is further contended that, having regard to the definitions of private and public streets under Sections 2(30) and 2(31) of the Karnataka Municipal Corporations Act, the

disputed passage, being accessible to the public, constitutes a public street. Reliance is placed on Sections 265, 280, 285, 287, 288, 288-A and 288-D of the Karnataka Municipal Corporations Act to contend that BBMP is empowered and obligated to prevent and remove unauthorised obstructions over streets and that the compound wall and gate could not have been constructed without obtaining the requisite statutory permission.

21. We have considered the contentions advanced. We notice that the writ petition itself was filed specifically alleging that the entire property belonged to Shri. M. Venkatramaiah and that the owner had bifurcated the property into 5 portions and had executed a Will and 2 Gift Deeds, dividing the property among his three sons and two daughters. It is contended that the passage road measuring 40 feet x 159 feet leading to Ramamurthy Nagar Main Road, which bifurcated the properties allotted in favour of the petitioner No.1 and respondents No.4 to 6, vested in respondent No.1's authority, under Section 265 of the Karnataka Municipal Corporations Act, 1976. It is on these

contentions that the writ petition was filed, seeking directions to the respondent No.3 to remove the encroachment and dismantle the compound and gate legally installed in the 40 feet road.

22. The learned Single Judge, after considering the contentions, held that the order of injunction passed in the suit file by the Educational Institution as against the BBMP could not come in the way of this Court directing the BBMP to remove the compound wall and gate put upon its passage/street, which was deemed to have been vested with the BBMP on account of the respondents No.4 to 6 having obtained bifurcation of khata.

23. The finding of the learned Single Judge is to the effect that since the khata of the property had been bifurcated and since the passage was not included in any of the khata so bifurcated there is a deemed vesting of the road in favour of the BBMP. We are unable to accept the said contention. Section 265 of the Karnataka Municipal Corporations Act, 1976 reads as follows:-

"265. Vesting of public streets and their appurtenances in corporation.-

(1) All public streets in the corporation reserved under the control of the Government, with the pavements, stones and other materials thereof and all work materials, implements and other things provided for such streets, all sewers, drains, drainage works, tunnels and culverts whether made at the cost of the corporation fund or otherwise, in or 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 Government may, after consulting the corporation by notification withdraw any such street, sewer, drain, drainage work, tunnel, culvert or tree from the control of the corporation."

24. The provisions of Section 17 of the Karnataka Town and Country Planning Act also provides for sanction for subdivision of plot or layout of private street, though it is stated in the instant case that no particular permission under Section 17 of the KTCP Act had been taken by appellant No.1, there was a subdivision of plots and a mention of the road in the plan sanctioned obtained by the appellants. It is on these grounds that the learned Single

Judge has held that there is a deemed surrender and vesting of the road in question in the BBMP.

25. The BBMP in its affidavit filed on 14.01.2022 had specifically stated as follows:-

> *"I Submit that, to clear the ambiguity and to ascertain the actual facts, on 30.09.2021, I, along with the Assistant Engineer of Maruthi Sevanagar Sub-Division, BBMP visited the spot and conducted an inspection. In the said inspection, it was found that there is no encroachment on the public road. The alleged 40 feet road, which is in fact a passage, does not belong to the BBMP. Copy of the Sport Mahazar Report, Road ID Map and Photographs depicting the spot in question are produced herewith and marked as Document Nos.1, 2 & 3 respectively."*

26. Further, the Civil Court by judgment and decree dated 29.11.2012 in O.S.No.7544/2011 filed by the School against the BBMP, held that in the absence of pleading and evidence on the part of the BBMP to prove the acts stated in the Notice dated 13.10.2011, it was not possible to believe that appellants No.1 to 3 had put up the compound wall and iron gates across the 40 feet road or had laid the concrete road illegally. It was held that appellant No.4 had proved its lawful possession of the suit schedule properties and the threat of interference, therefore, the Civil Court permanently

restrained the BBMP and its officials from interfering with appellant No.4's possession and enjoyment of the suit schedule properties. Even from the pleadings of the petitioners in the writ petition there is absolutely no whisper as to any relinquishment of the passage in question in favour of the BBMP so as to enable the BBMP to treat the property as a Public Road. The learned Single Judge has also noticed that there is no such relinquishment of the road in question.

27. In the facts and circumstances of the instant case, where, admittedly, no sanction under Section 17 of the Karnataka Town and Country Planning Act was ever sought for or obtained by the parties, the finding of the learned Single Judge that there was a deemed vesting in the BBMP of the road formed in a private property by agreement of the owners of the plots, cannot be accepted under any circumstances.

28. We notice that the learned Single Judge also has not adverted to any vesting of the road in question in the BBMP by any specific order or act and has relied on a

deemed vesting on account of the fact that Khata in respect of the 5 separate plots had been subdivided and the road was not included in any of such plots.

29. We are of the opinion that in view of the fact that there is no specific vesting of the road which is admittedly formed within a private property in the BBMP, the finding of the learned Single Judge cannot be sustained.

30. Appeal is accordingly ***disposed of*** with the following observations:-

(i) Findings of the learned Single Judge with regard to vesting of the road in the BBMP shall stand vacated.

(ii) In case the parties have any disputes with regard to use of the road may agitate the same in appropriate proceedings before the competent Civil Court.

All pending Interlocutory Applications shall stand *disposed of.*

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(K.S.BHARATH KUMAR)
JUDGE

PN/CP*