PILLAYAR P.K.V.K.N. TRUST THRU RAMANATHAN A

v.

KARPAGA N.N.U.S. REP. BY SECRETARY & ORS.
(Civil Appeal Nos. 7305-7306 of 2010)

SEPTEMBER 1, 2010 B

[V.S. SIRPURKAR AND CYRIAC JOSEPH, JJ.]

Urban Development – Town planning – Trust acquiring certain land – Dividing of the land into plots – Approval of layout plan for the land – Trust selling off the plots except forty plots – On revalidation of the plan, the forty plots shown as reserved for public purpose – A subsequent layout plan, which cancelled the previous plan, demarcated the forty plots as residential area – Denial to make construction on two of the forty plots by Municipal Corporation on the ground that the plots were reserved for public purpose – Later in subsequent plan the forty plots shown as reserved for public purpose – The same being questioned, the State de-reserved the area earmarked for public purpose – Order of de-reservation set-aside by High Court – On appeal, held: Order of the High Court is erroneous – Challenge to the order of de-reservation was not correct – Madurai City Municipal Corporation Act, 1971 – s. 250(2) – Tamil Nadu Town and Country Planning Act, 1971 – ss. 37 and 38. C D E

Appellant-Trust acquired certain land to the extent of 76.12 acres. It divided the same into 910 plots and prepared a layout plan for the entire extent of the land. The plan contained provisions for roads which area was to the extent of 21 acres. This layout plan was approved by Town Panchayat in the year 1972 in P.R.No. 21/72. The Trust sold the plots, retaining 40 plots for its own use. After merger of the Town Panchayat with the City Municipal Corporation, the original plan (21/72) was revalidated as Plan No. 1/75 wherein the 40 plots were F G

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A shown as reserved for school. Thereafter in 1979-80, the local Planning Authority prepared a detailed development plan which also included the lands covered by the layout plan of the Trust and the same was approved as Plan No. 12/80. In this plan the 40 plots were demarcated as B residential area. It was later informed to the Municipal Corporation that Plan No. 1/75 was to be treated as cancelled and Plan No. 12/80 alone would be valid.

The Municipal Corporation granted approval to the C Trust for construction on one of the plots. But when the Trust sought approval for construction on other two of the plots, it was denied on the ground that the area was reserved for public purpose i.e. for school building. The denial of approval was held to be illegal by the High Court in a writ proceeding initiated by the Trust. The High Court D observed that the approval in respect of the area comprising of the 40 plots could be denied by Municipal Corporation only if the area would be classified as 'reserved for public purposes' within a period of three months from the date of the judgment. No action was E taken, as per rules, to covert the area 'reserved for public purposes'. When the Trust applied for approval of construction on other plots, the same was again denied on the ground that the area was reserved for construction of the school. The representation of the F Trust, questioning the Plan No. 9/92, was accepted by the State Government. The State, accordingly passed G.O. Ms. No. 244 dated 23.9.1994, whereby it granted permission to de-reserve 2.5 acres of land earmarked for the school in the plan No. 1/75 and held that the same G would be residential area subject to the condition that all the roads in the layout area were handed over to the Municipal Corporation. The Trust had pointed out that it had already surrendered all the roads to the Panchayat by executing a gift deed.

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The order of de-reservation passed by the State Government vide G.O. Ms. No. 244 dated 23.9.1994 was challenged. The High Court took notice of the facts that in the earlier writ petition filed by the appellant-Trustee, the High Court had not dealt with the development Plan No. 9/92, and thus the G.O. Ms. 244 dated 23.3.1994 was illegal and vitiated by *malafides* and was in excess of powers of the Government; and that the Municipal Corporation had made a demand u/s. 250(4) of Madurai City Municipal Corporation Act from the appellant and the said demand was quashed by the High Court. Therefore, the instant appeals were filed by the appellant-Trust.

Allowing the appeals, the Court

HELD: 1. The High Court was wrong in deducing that on the basis of the reading of the judgment passed in the earlier writ petition, G.O.No. 244 dated 23.3.1994 was illegal, vitiated by *malafides* and was in excess of powers of the Government. The said order also could not be faulted as being in violation of principles of natural justice. It is true that a reference to the High Court judgment is made in the order dated 23.9.1994 which was impugned before the High Court. However, that is not the only thing on which the Government has relied upon. In fact, the judgment of the High Court was studied by the Director of Town and Country Planning, who recommended the case for de-reservation, subject to the conditions that trustees may be required to hand-over all the roads to the Municipal Corporation. There is no reason to doubt the correctness of this recommendation made by the Director, who was aware of the earlier position. He was aware that this layout was part of 21/72 plan and it was duly approved by the Town Panchayat and it then continued to be so, vide plan No.12/80 to the exclusion of the plan of 1975. It is presumed that the

A **Director did consult the earlier correspondence on the subject. [Paras 13 and 14] [14-B-F]**

2. Even if it is presumed that the 40 plots were included under the plan of 1992, yet since the land was B **not acquired either by agreement or by acquisition, they would be deemed to have been released from reservation. In view of the admitted position that the land is not acquired by agreement till the date of the judgment of the High Court, the deeming clause as provided u/s. 38 of Tamil Nadu Town and Country Planning Act, 1971 would** C **certainly come into force and, therefore, the concerned land would certainly be deemed to have been released. [Paras 14 and 15] [15-A-C]**

Raju S. Jethmalani and Ors. vs. State of Maharashtra D *and Ors.* **2005(11) SCC 222;** *Bangalore Medical Trust vs. B.S. Muddappa and Ors.***1991 (4) SCC 54;** *Balakrishna H. Sawant and Ors. vs. Sangli Miraj and Kupwad City Municipal Corporation and Ors.* **2005 (3) SCC 61, distinguished.**

E **3. Reliance on Section 250(2) of Madurai City Municipal Corporation Act, 1971 by the High Court was completely uncalled for in the instant controversy. In the instant case, the Writ Petition was filed before the High Court challenging the G.O.Ms. 244 dated 23.9.1994. In fact, in the three questions which the High Court had posed,** F **Section 250 did not find place. Section 250 speaks about the obligation on the part of the owner to make a street while disposing of the lands as building sites. Sub-Section (2) on which a heavy reliance was placed by the High Court, speaks about the owner's liability to reserve** G **10% of the lay-out for the common purpose in addition to the area provided for laying out streets. It is nobody's case that the area of the 40 plots, in all, comes to 10% of the total area besides the area which was reserved for the streets. The High Court completely ignored the fact that**

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the appellant-trust had already parted with more than 21 acres of its land while getting the approval from the Town Panchayat for the layout. There is clear correspondence on the record to the effect that the appellant-Trust had not only parted with 21 acres, but had also effected a gift deed in respect of that land. It is nobody's case and indeed the High Court has also not found that the 40 plots would be the aforementioned 10% of the total lay-out area. There is absolutely no basis for the High Court to invite the applicability of Section 250(2) by making reference to 10% of the area. Therefore, the factual background, on which the provision is tried to be made applicable, itself, is not established and the finding to that effect is incorrect. The question as regards applicability of s. 250 had been decided by High Court in the writ petition filed by the Trust, and as such there was no question of invoking Section 250. This decision was also affirmed in appeal by the High Court. [Paras 18 and 19] [18-D-H; 19-A-E]

4. The High Court has also erroneously compared the provisions of Section 37 and 38 of the Tamil Nadu Town and Country Planning Act and Section 250 of the Madurai Corporation Act. There is no question of any such comparison. There was no necessity to consider as to whether Section 250 of the Madurai Corporation Act repealed the provisions of Tamil Nadu Town and Country Planning Act, 1971 for the simple reason that such question could never have fallen for consideration. Section 250 was not applicable to the controversy at all. It operates into an entirely different field and the factual basis for inviting that Section was also not available in the circumstances of the instant case. [Para 20] [19-F-H]

5. It cannot be contemplated that once the land, even if it was reserved for public purpose like construction of school in the plan of 1992 and got released, because it

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A was not acquired for more than three years in terms of Section 38 of Tamil Nadu Town and Country Planning Act, could be then taken away from the owner on the plea u/s. 250 of the Madurai Corporation Act. [Para 21] [20-A-B]

B 6. The High Court went on to record its comments on the judgment of the High Court passed in the earlier writ petition which was filed by the Trust. The original writ petitioner in the instant case was a party to that writ petition and to the judgment whereby specific permission C was granted for the construction in plot Nos. 276 and 269 which was part of the 40 plots. [Para 23] [20-G]

7. The High Court gave the direction that the plots covered in LP/MR 1/75 cannot be used for any purpose D other than public purpose mentioned therein with the exception of the plot Nos. 276 and 369. This was a completely incorrect direction particularly because way back in 1982, plan No.1/75 was treated as cancelled and there was no revival of that plan. Morever, respondent E No.1 has also filed a suit in the Court of Additional District Munsif, in his capacity as a resident of Karpaga Nagar Colony, wherein he had sought for an injunction restraining the Trust from selling or using the property for any purpose other than the purpose for which it was F reserved in LP MR 1/75. Therefore, the judgment of the High Court cannot be affirmed. The Writ Petition filed by the respondent is directed to be dismissed with costs of Rs.50,000/-. [Paras 25, 26 and 27] [21-D-H]

Case Law Reference:

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2005 (11) SCC 222	distinguished.	Para 16
1991 (4) SCC 54	distinguished.	Para 16
2005 (3) SCC 61	distinguished.	Para 16

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7305-7306 of 2010. A

From the Judgment & Order dated 27.4.2007 of the High Court of Judicature at Madras in W.P. No. 5051 & 19015 of 1996. B

K. Ramamoorthy, N. Shoba, Sriram J. Thalapathy for the Appellant.

Dayan Krishnan, Gautam Narayan, Nikhil Menon, Nikhil Nayyar, S. Thananjayan, T. Harish Kumar for the Respondents. C

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. Leave granted.

2. The appellant–a religious Trust challenges the judgment of the Division Bench of the High Court whereby the High Court allowed the Writ Petition filed by the respondent No.1 herein. The respondent No.1 claims to be the representative body of the residents of the area called Karpaga Nagar. The High Court while allowing the Writ Petition issued the following direction: D E

> "We allow the writ petitions and direct that the plots covered in LP/MR 1/75 cannot be used for any purpose other than the public purposes mentioned in such LP/MR 1/75."

The High Court, however, did not include two plots, namely, plot Nos. 276 and 369, meaning thereby that those plots could be used for any other purpose. F

3. Some factual background would be necessary before we approach the controversy. The appellant is a Trust formed in the year 1924 to look after religious and secular activities of Pillayarpatti Koil situated at Pillayarpatti and for the welfare of Nagarathar community. The Trust acquired properties in Tallakulam village in Madurai District including lands in S. No. 92, 94, 120 to 126, 130 to 133, 176/1 and 178. These G H

properties were sub-divided into 910 plots and they are named as Karpaga Nagar. The Trust thereafter prepared a detailed layout plan for the entire extent of 76.12 acres in all, in which the provision was made for 60 feet, 50 feet and 40 feet roads. The road area was to the extent of about 21 acres. This layout plan was submitted to Tallakulam Town Panchayat which was the appropriate authority in the year 1972. This layout plan was approved by Tallakulam Town Panchayat vide its order dated 19.5.1972 in P.R. No. 21 of 1972 under Rule 3 of the Tamil Nadu Panchayats Building Rules, 1970. Pursuant thereto, majority of the plots were sold by the Trust retaining about 40 plots for its use. The said Tallakulam Town Panchayat along with other Town Panchayats merged with Madurai City Municipal Corporation on 30.1.1974 and, therefore, the laws applicable to Madurai Corporation were made applicable to Tallakulam. The Madurai Corporation insisted to revalidate the plan. The Trust again applied for revalidation of the original plan in 21/72. Plan No.1/75 showed 40 plots as reserved for school. The appellants herein claimed that as per the savings clause the Corporation was bound by all rights and liabilities created by the erstwhile Town Panchayat before the date of merger.

4. Thereafter, in the year 1979-80, the Local Planning Authority of Madurai prepared a detailed development plan which also included the lands covered by the appellant's layout plan. This detailed development plan was approved as DTP (MR) 12/80. In this plan the area relating to the 40 plots which were retained by the appellant Trust, was demarcated and shown as residential area. Finding that they were contrary to plan No.1 of 75, clarification was sought and it is claimed that the Deputy Director, Regional Town & Country Planning, by his letter ROC No. 4589/82 dated 30.8.1982 informed the Corporation of Madurai that plan No.1/75 may be treated as cancelled and plan No.12/80 alone would be valid.

5. Thereafter when the Trust proposed to make some constructions in plot No.342, Madurai Corporation granted its

approval by order No. K.3/PR 533/82. However, when the fresh application was submitted for putting up construction in plot No. 276 and 369, the Corporation by its order dated 16.12.1986, rejected the application on the ground that this area was reserved for public purpose of putting up school building. Thereafter, the appellant filed a Writ Petition No. 1565 of 1987 for quashing the order of rejection and for a direction to the Madurai Corporation for grant of approval for putting up the construction. In this, the plea was taken by the Corporation that the detailed development plan bearing No.12/80 was sought to be modified and hence the plan could not be approved. The High Court by its order dated 21.11.1991 allowed this petition and held that the rejection of the plan was illegal. The High Court restored the applications in respect of plot Nos. 276 and 369 and directed Madurai Corporation to pass orders expeditiously. It was further stated that if the orders were not passed within three months of the said date, the application for sanction of construction would be deemed to have been granted. It was, however, made clear by the High Court that the applications could be rejected only if this area comprising of 40 plots was in the meantime classified as 'reserved for the public purposes' in the detailed development plan.

6. It seems nothing was done for inclusion of this area into the detailed development plan as per the procedure laid down under Section 25, 27, 29 and 33 of the Tamil Nadu Town & Country Planning Act, 1971 read with Rule 13,14 and 16 of the Preparation, Publication and Sanction of Detailed Development Plan Rules. The appellant thereafter applied for approval of plan in respect of four other plots bearing No.326, 331, 336 and 340 of the layout plan. However, by its order dated 27.4.1993, the Corporation rejected the said application on the ground that the plots were forming part of the area reserved for construction of a school and hence the application for construction could not be allowed. Quoting all these facts, the appellant made a representation to the Director, Town and Country Planning No.807 Annasalai, Madras dated 15.6.1993

and pointed out that the stance taken by the Corporation was not correct and that this new plan No. 9 of 92 would be completely illegal and against law. The appellant reminded the concerned authority that the plans were approved in the year 1972 itself by Tallakulam Town Panchayat by its order dated 19.5.1972 and the rights of the respective parties had been crystallized at that time itself and it would not be just to disturb it after a lapse of 20 years by introducing new modifications in the detailed development plan and, therefore, the stand taken by the Corporation that the said area was reserved for school purpose, was clearly in contravention of plan 12/80. In that representation the Trust gave the whole history which has been stated above by us. It was pointed out that the whole area was reserved for residential purpose under the approved plan and on that strength, several plots were sold to several persons and they would also be affected if the modified plan No. 9/92 is approved as it is. A prayer, therefore, was made that this petition to the proposed detailed plan No. 9 of 92 was liable to be considered in favour of the Trust on the basis of the detailed development plan No. 12 of 80, so that the Trust could utilize 40 plots for constructions. It seems that this representation was accepted by the State Government which passed G.O.Ms. No.244 dated 23.9.1994. In this order it was suggested that the Government accepted the recommendation by the Director, Town and Country Planning and the permission was accorded to de-reserve 2.5 acres of land earmarked for school in the approved layout LP/MR 1/75 in T.S. No.92/94 etc. and the same would be deemed to be residential area in Madurai Corporation subject to the condition that all the roads in the layout area should be handed over to the Madurai Corporation by Pillayarpatti Karpaga Vinayagar Koil Nagarthar Trust.

7. It appears that immediately after this order was passed, the appellant Trust pointed out that it had already surrendered before Tallakulam Panchayat all the roads in the Karpaga Nagar layout by executing a gift deed dated 11.5.1972. A copy of the aforesaid gift deed was also sent by the Trust. It was thereafter

informed by the Trustee on 28.2.1995 that the aforementioned gift deed was also registered and the roads were handed over to the Madurai Corporation.

8. It seems that this order of de-reservation passed by the State Government came to be challenged before the Madras High Court and by the impugned judgment, the Madras High Court set aside that order and directed that reserved area shown in the earlier plan LP/MR 1/75 cannot be used for any other purpose other than public purpose. The High Court, however, made an exception in case plots 276 and 369, perhaps because the earlier orders of the High Court were finalized in Writ Petition 1565 of 1987 to which reference has already been made earlier.

9. It is this judgment which has been challenged before us by the appellant Trust. Shri K. Ramamoorthy, learned Senior Counsel appearing on behalf of the appellant Trust, pointed out the earlier history starting right from 1972 and pointed out that out of that total 76.12 acres owned by the Trust, the Trust had already parted with 21.62 acres of land which was reserved for public purpose by way of a gift deed dated 11.5.1972 which was later reiterated in favour of the Corporation also. The learned Senior Counsel pointed out that it is only out of the remaining land that the Trust created as many as 832 plots out of which 40 plots were retained by the Trust. He then pointed out that after the whole plan was approved by the Tallakulam Town Panchayat on the basis of the Tamil Nadu District Municipalities Act, 1920 and Tamil Nadu Panchayat Act, 1958 as also under TN Panchayat Building Rules, 1970 framed by the Government by virtue of Section 178 of the Madras Panchayat Act, 1958. He then pointed out that the petitioners were the residents of the same plots and they had purchased the plots from the Trust and they were residing on the same plots. He also pointed out that on the merger (by taking recourse to Section 3 of Madras Corporation Act) of Tallakulam Panchayat in Madurai City Municipal Corporation on

A 30.1.1974, the matter went into the regime of the corporation. It was further pointed out that in the year 1975, the Trust applied for granting permission for layout which in fact was already granted by the Town Panchayat. The learned Senior Counsel further pointed out that in the year 1979-80, detailed draft plan B was prepared by Madurai Local Planning Authority under the Town & Country Planning Act, 1971 wherein the plots retained by the temple were shown as residential area. He also invited our attention to the communication dated 30.8.1982 on the consent by the Deputy Director of Town Planning to C Commissioner, Municipal Corporation, Madurai to the effect that the earlier lay out plan bearing No. 1 of 75 stood cancelled and the Commissioner was directed to proceed as per the approved scheme plan bearing No.12 of 80 wherein 40 plots were earmarked as residential area. The learned Senior D Counsel also invited our attention to the earlier Writ Petition No.1565 of 1987 dated 21.11.1991. The learned Senior Counsel invited our attention to the further representations made by the Trust to the Government and the ultimate order passed by the Government. The learned Senior Counsel E contended in this backdrop that it was absolutely incorrect on the part of the High Court to have revived the earlier plan of 1975. Learned Senior Counsel also pointed out that there was no *locus standi* to the respondents (petitioners before the High Court) as in fact they had themselves granted permission in F respect of plot No.342, which is one of the 40 plots reserved for the Trust. It was further pointed that that for all these years nothing has happened nor has the area been acquired by the government and, therefore, in fact the whole area has become de-reserved as per Section 38 of the Town Planning Act.

G 10. As against this, Shri Dayan Krishnan, learned Counsel appearing on behalf of the original writ petitioners and the respondents herein contended that the very look of the impugned order dated 23.9.1994 would suggest that it has been passed under a misnomer and is a result of H misunderstanding the High Court's judgment in W.P. No.1565/

87. According to the learned Counsel, the order gives an impression as if there is a direction contained in that judgment to de-reserve the concerned area of 40 plots. According to the learned Counsel, such direction was never given by the High Court. He further pointed out that in the absence of the amenities like school etc., the citizens would suffer. He also pointed out that no basic amenities like roads etc. were provided though the Corporation was collecting road costs from the plot owners as and when they applied for permission for construction.

11. It is on these rival claims that we have to see as to whether the High Court was justified in allowing the petition as it did. The High Court formulated the following points:

(1) Whether the challenged order G.O.Ms.244 dated 23.9.94 was vitiated by *mala fides* and in excess of the powers of the first respondent in violation of principles of natural justice?

(2) Whether the modification issued under Section 27 of the Town and Country Planning Act reserving disputed 40 plots for the public purpose under detailed development plan had become null and void in the absence of any final orders passed within three years from the date of publication under Section 38 of the Town and Planning Act?

(3) What is the effect of the approval of the earlier plan P.R. No.21 of 72?

12. It also took notice of the fact that when Madurai Corporation had demanded Rs.80,69,784/- under Section 250 (4) of Madurai City Municipal Corporation Act from the present appellant, the said demand notice was quashed as per order in W.P. No.8962 of 1988. The High Court also made reference to the order passed in W.P. No.1565 of 1987 and found that in that judgment the High Court had not dealt with the

A development plan No. 9 of 92. The High Court then came to the conclusion that G.O.Ms. 244 dated 23.3.1994 was illegal, vitiated by *mala fides* and was in excess of powers of the Government.

B 13. In our opinion, this deduction on the part of the High Court on the basis of the reading of the judgment in W.P. No.1565 of 1987 is wholly incorrect. There is nothing to suggest that the G.O.Ms. 244 was hit by *mala fides* or was in excess of the power of the Government. This finding has no basis. We also do not understand as to how the said order could be C faulted as being in violation of principles of natural justice. It is absolutely true that a reference to the High Court judgment is made in the impugned order dated 23.9.1994. However, that is not the only thing on which the Government has relied upon. In fact, the judgment of the High Court was studied by the D Director of Town and Country Planning who recommended the case for de-reservation subject to the conditions that trustees may be required to hand over all the roads in Madurai Corporation. There is no reason for us to doubt the correctness of this recommendation made by the Director, Town & Country E Planning, who was aware of the earlier position. He was aware that this layout was part of 9/72 plan and it was duly approved by the Tallakulam Town Panchayat and it then continued to be so vide plan No.12/80 to the exclusion of the plan of 1975.

F 14. We also presume that the Director did consult the earlier correspondence on the subject and, therefore, the High Court was completely in error in deducing that the order was in excess of the power of the Government or was hit by *mala fides* or was in violation of the principles of natural justice. In G our opinion, the deductions reached by the High Court in paragraph 11.5 are baseless. In the latter part of its judgment, the High Court has taken stock of the whole Act right up to Section 38. We have nothing to say about it excepting that the reference to all the provisions of the Act was not at all necessary. The High Court then referred to the argument made

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that admittedly 40 plots were private land and, therefore, even if it is presumed that it was included under the plan of 1992, yet since the land was not acquired either by agreement or by acquisition, they would be deemed to have been released from reservation.

15. The High Court has undoubtedly posed this question up to paragraph 16 but has chosen not to answer it till last. We, therefore, put the same question to the Counsel for the respondent as also to the Counsel for the Government and both the Counsel fairly conceded that the land is still not acquired.

16. Section 38 of The Tamil Nadu Town & Country Planning Act, 1971 runs as under:-

> 38. **Release of land:-** If within three years from the date of the publication of the notice in the Tamil Nadu Government Gazette under section2 6 or section 27- (a) no declaration as provided in sub-section (2) of section 37 is published in respect of any land reserved, allotted or designated for any purpose specified in a regional plan, master plan, detailed development plan or new town development plan covered by such notice; or
>
> (b) such land is not acquired by agreement,
>
> such land shall be deemed to be released from such reservation, allotment or designation.

In view of the admitted position that the land is not acquired by agreement till the date of the judgment of the High Court, the deeming clause would certainly come into force and, therefore, the concerned land would certainly be deemed to have been released. The High Court has also referred to the reported decision in *Raju S. Jethmalani & Ors. Vs. State of Maharashtra & Ors.* [2005 (11) SCC 222], where this Court has clearly held that the owner of the special land cannot be prohibited from using it since it is the private property and

A Government cannot deprive the persons from using their private property and, therefore, the acquisition of the property is a must before any such person is restrained from using the land. The High Court has again extensively referred to the earlier two decisions of this Court in *Bangalore Medical Trust Vs. B.S.* B *Muddappa & Ors.* [1991 (4) SCC 54] and *Balakrishna H. Sawant & Ors. Vs. Sangli Miraj & Kupwad City Municipal Corporation & Ors.* [2005 (3) SCC 61]. However, we do not find any answer in these judgments. The respondents had specifically raised these questions in view of the fact that the C concerned property has not so far been acquired. Therefore, it is clear that Section 38 will come in the way of the Government, and the appellant Trust could not have been stopped from using the property on the spacious ground that the said property was reserved for construction of school way back in the year 1975 D and thereafter in 1992.

17. However, the High Court seems to have proceeded on the basis of Section 250 of The Madurai City Municipal Corporation Act, 1971. Section 250 runs as under:-

E "250. *Owners Obligation To Make a Street When Disposing of Lands as Building Sites:*

(1) If the owner of any land utilizes, sells, leases or otherwise disposes of such land or any portion or F portions of the same as sites for the construction of buildings, he shall save in such cases as the site or sites may abut on an existing public or private street, layout and make a street or streets giving access to the site or sites and connecting with an existing public or private street.

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(2) In regard to the laying out or making of any such street or streets, the provisions of Section 251 shall apply, subject to the conditions that the owner shall remit a sum not exceeding 50 per cent of the H estimated cost of lay-out improvements in the land

and that the owner shall also reserve not exceeding 10 per cent of the lay-out for the common purpose in addition to the area provided for laying out streets. If any owner contravenes any of the conditions specified above, he shall be liable for prosecution.

(3) If in any case, the provisions of sub-Sections (1) and (2) have not been complied with, the Commissioner may, by notice, require the defaulting owner to layout and make a street or streets on such land and in such manner and within such time as may be specified in the notice.

(4) If such street or streets are not laid out and made in the manner and within the time specified in the notice, the Commissioner may lay-out and make the street or streets, and the expenses incurred shall be recovered from the defaulting owner.

(5) The Commissioner may in his discretion, issue the notice referred to in sub-Section (3) or recover the expenses referred to in sub-Section (4) to or from the owners of any buildings or lands abutting on the street or streets concerned but any such owner shall be entitled to recover all reasonable expenses incurred by him or all expenses paid by him, as the case may be, from the defaulting owner referred to in sub-Section (3)."

Relying on this Section and, more particularly, sub-Sections (1) and (2), the High Court was of the view that before the usurp of the land within the Municipal Corporation for a layout, 10% of such land was bound to be reserved for common purposes. The High Court firstly came to the conclusion that the Trust itself sought the approval of the layout plan from the Corporation after Tallakulam Town Panchayat merged with the Madurai Corporation. The High Court made a reference to the

A earlier plan being P.R. No. 21/1972 approved by the Tallakulam Town Panchayat, wherein the aforementioned 40 plots were not shown as reserved for the public purpose. It refuted the submission made by the appellant Trust to the effect that such plan which has crystallized the rights of the Trust in respect of B its property, was bound to be honoured after the Tallakulam Town Panchayat became a part of the Madurai Corporation by its merger. The High Court observed in para 19 of its judgment:-

> "19. .... To the extent any alienation or construction C had been made by virtue or Tallakulam Town Panchayat P.R. 21/1972, such acts are of course required to be protected."

18. In our opinion, the reference to Section 250 (2) was completely uncalled for in this controversy. This was a Writ D Petition for challenging the G.O.Ms. 244 dated 23.9.1994. In fact, in the three questions which the High Court had posed, Section 250 did not find place. Section 250 speaks about the obligation on the part of owner to make a street while disposing of the lands as building sites. Sub-Section (2) on which a heavy E reliance was placed by the High Court, speaks about the owner's liability to reserve 10% of the lay-out for the common purpose in addition to the area provided for laying out streets. It is nobody's case that the area of these 40 plots, in all, comes to 10% of the total area besides the area which was reserved F for the streets. The High Court completely ignored the fact that the appellant trust had already parted with more than 21 acres of its land while getting the approval from the Tallakulam Town Panchayat for this layout. There is clear correspondence on the record to the effect that the appellant Trust had not only parted G with 21 acres, but had also effected a gift deed in respect of that land. It is nobody's case and indeed the High Court has also not found that these 40 plots would be the aforementioned 10% of the total lay out area. There is absolutely no basis for the High Court to invite the applicability of the Section 250(2) H by making reference to 10% of the area. Therefore, the factual

background, on which the provision is tried to be made applicable, itself, is not established and the finding to that effect is incorrect.

19. In this behalf it is to be seen that earlier also this question under Section 250 had cropped up in between the Madurai Corporation and the Trust. The Madurai Corporation had sought the payment of 50% of the sum of Rs. 80,69,784/- being the total cost for laying roads in the area. The Trust had approached the High Court by way of a Writ Petition whereby the Learned Single Judge of the Madras High Court held that the roads shown in the lay out plan had already been handed over to the Tallakulam Town Panchayat and ultimately it was found that the roads were laid and it is only thereafter that Tallakulum Panchayat got merged with the Madurai Corporation and as such there was no question of invoking Section 250 of the Madurai City Municipal Corporation Act. This decision was also affirmed in appeal filed before the Madras High Court. The High Court just had quoted this issue by saying that the question regarding the land to be kept apart for the common use had not fallen for consideration in that appeal. We do not think that is the position. We have already shown that this question could not have come via Section 250 which was only inapplicable to the factual situation.

20. The High Court has also erroneously gone and compared the provisions of Section 37 and 38 of the Tamil Nadu Town and Country Planning Act and Section 250 of the Madurai Corporation Act. There is no question of any such comparison. There was no necessity to consider as to whether Section 250 of the Madurai Corporation Act repealed the provisions of Tamil Nadu Town and Country Planning Act, 1971 for the simple reason that such question could never have fallen for consideration. We have already shown that Section 250 was not applicable to the controversy at all. It operates into an entirely different field and the factual basis for inviting that Section was also not available in the circumstances of the case.

A 21. It cannot be contemplated that once the land, even if it was reserved for public purpose like construction of school in the plan of 1992 and got released because it was not acquired for more than three years in terms of Section 38 of Tamil Nadu Town and Country Planning Act, could be then taken away from B the owner on the spacious plea under Section 250 of the Madurai Corporation Act.

22. Besides all this, it is clear that on 19.5.1972, the Tallakulam Town Panchayat had approved the plan submitted by the temple for 76.12 acres thereby 910 plots were shown in C the plan and 40 plots were retained and the balance plots appear to have been sold. However, in the year 1972, when the Tamil Nadu Town & Country Planning Act, 1971 came into force, as Act No.25 of 1972, the whole area became part of the Madurai Corporation w.e.f. 30.1.74. It was then liable to be D seen that after the plan of 1975 was prepared, that plan was specifically referred in the communication dated 18.6.82 whereby the Commissioner, Madurai Corporation sought clarifications from the Deputy Director, Regional Town and Country Planning about the effect of DDP on the layout in LP. E 1/75 and on 30.8.82, the Deputy Director, Regional Town & Country Planning had specifically conveyed that the approved layout plan 1 of 75 required modifications and it should be treated cancelled and that the Corporation may act as per the approved plan No.12/80. This specific position was completely F ignored by the High Court. The High Court merely went on to record its comments on the judgment of the Madras High Court in W.P. No.1565/87.

23. We have nothing to say about those comments. G However, the fact of the matter is that the respondent herein and the original Writ Petitioner was a party to that Writ Petition and to the judgment whereby specific permission was granted for the construction in plot Nos. 276 and 269 which was part of the aforementioned 40 plots.

H 24. Further an application was filed as WMP 3338/92 for

extension of time to take appropriate decision in terms of the direction of the High Court which had given three months' time. It is specifically pointed out that the application for sanction could be rejected only in case the detailed development for this area, the two plots came under the classification 'reserved for public purpose'. Even giving three months' time, such step could not be taken and indeed it could not have been taken in view of the earlier factual scenario, more particularly, because of the decision dated 30.8.82 whereby the approved plan 12/80 was preferred to plan No.1/75. Though we need not go into the further question as to whether the decision in W.P.No.1565/87 would be *res judicata* as even otherwise it is clear that the State Government had taken a right stance in passing the order dated 23.9.94 vide G.O.Ms. 244.

25. The High Court in the last, has given the direction that the plots covered in LP/MR 1/75 cannot be used for any purpose other than public purpose mentioned therein with the exception of the plot Nos. 276 and 369. In our opinion, this was a completely incorrect direction particularly because way back in 1982, plan No.1/75 was treated as cancelled and there was no revival of that plan.

26. Last but not the least, respondent No.1 herein, Karpaga Nagar Nala Urimai Sangam represented by Shri A. Shamugavel had filed an Original Suit No.1106/86 in the Court of Additional District Munsif Court, Madurai Town in his capacity as a resident of Karpaga Nagar Colony wherein he had sought for an injunction restraining the Trust from selling or using the property for any purpose than the purpose for which it was reserved in LP MR 1/75.

27. For all these reasons, we cannot affirm the judgment of the High Court. It is set aside and the Writ Petition filed by the respondent is directed to be dismissed with costs of Rs.50,000/-.

K.K.T. Appeals allowed.