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

\+ **W.P.(C) 8859/2011 & CM No. 35029/2018**

Date of decision: 18th September 2019

SARITA GUPTA ..... Petitioner

Through: Mr. Ankur Mittal and Mr. Karan Setiya, Advocates.

versus

MCD ..... Respondent

Through: Mr. Sanjay Poddar, Senior Advocate with Ms. Pooja Kalra, Advocate for MCD.
Mr. Siddharth Panda, LAC.
Mr. Sanjay Kumar Pathak, Mr. K.K.Kiran Pathak, Mr. Sunil Kumar Jha, Mr. M.S.Akhtar, Advocates for R-LAC/GNCTD (L&B).

\+ **W.P.(C) 8867/2011 & CM Nos. 35100-101/2018, 49735/2018**

PUSHPA DEVI ..... Petitioner

Through: Mr. Ankur Mittal and Mr. Karan Setiya, Advocates.

versus

MCD ..... Respondent

Through: Mr. Sanjay Poddar, Senior Advocate with Ms. Pooja Kalra, Advocate for MCD.
Mr. Siddharth Panda, LAC.
Mr. Sanjay Kumar Pathak, Mr. K.K.Kiran Pathak, Mr. Sunil Kumar Jha, Mr. M.S.Akhtar, Advocates for R-LAC/GNCTD (L&B).

\+ **W.P.(C) 1601/2012 & CM No. 49734/2018**

TILAK RAJ JAIN ..... Petitioner

Through: Mr. Ankur Mittal and Mr. Karan Setiya, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI ..... Respondent

Through: Mr. Sanjay Poddar, Senior Advocate with Ms. Pooja Kalra, Advocate for MCD.
Mr. Siddharth Panda, LAC.
Mr. Sanjay Kumar Pathak, Mr. K.K.Kiran Pathak, Mr. Sunil Kumar Jha, Mr. M.S.Akhtar, Advocates for R-LAC/GNCTD (L&B).

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

JUDGMENT

ANUP JAIRAM BHAMBHANI, J.

The essential question that arises for consideration in the present matters is whether the Municipal Corporation of Delhi, now the North Delhi Municipal Corporation ("Municipal Corporation" for short) can widen a road by utilising a parcel of land from a plot owned by a private party, without acquiring such land and without paying any compensation to the owner. A relevant consideration, in the context of which the question must be answered, is that the land is situate in what was to begin with an 'unauthorised colony', which was subsequently 'regularised' under a regularisation policy of the Central Government.

2. There are three petitioners before this court, in three separate writ petitions filed under Article 226 of the Constitution of India; and these three

petitioners claim to be owners of plots of lands from which a total area of about 450 square feet ("subject land" for short) has been sought to be carved-out and taken-over to be used to widen a road that runs through the colony from its existing 65 feet Right-of-Way (RoW) to 100 feet RoW. The contesting respondent in the three petitions is the Municipal Corporation. Although in W.P. (C) No. 8859/2011 the Government of NCT of Delhi and the Union of India (through the Land Acquisition Collector) are also party-respondents, the matter has been contested in the main only on behalf of the MCD.

3. As per the averments made in the petitions, the petitioner in W.P.(C) No. 8859/2011 Smt. Sarita Gupta owns a portion of plot No. 39, Friends Enclave, Sultan Puri Road, Delhi; the petitioner in W.P.(C) No. 8867/2011 Smt. Pushpa Devi is owner of a different, though un-demarcated portion, of plot No. 39; and Sh. Tilak Raj Jain, the petitioner in W.P.(C) No. 1601/2012 is owner of plot No. 40 in the same colony.

4. Plots Nos. 39 and 40 are comprised in Khasra No. 5/25/2 admeasuring about 2 bighas in Village Nangloi Jat, New Delhi, all of which was originally 'agricultural' land. The petitioners claim ownership of their respective parcels of land by transfer of title/possession from the original owner, one Sh. Ram Singh. While there appears to be some ambiguity as regards the exact demarcation of the parcels of land owned by the petitioners, which issue cannot be adjudicated upon in the present writ proceedings, there is no dispute that the subject land which is sought to be taken-over by the Municipal Corporation for widening of the road falls within Khasra No. 5/25/2, from which several smaller plots and parcels of land have been carved-out. It may also be noted here that the land that is

subject matter of W.P.(C) No. 8859/2011 and W.P. (C) No. 8867/2011 is still in possession of the respective owners/petitioners ; whereas possession of the land that is the subject matter of W.P.(C) No. 1601/2012 has already been taken by the respondent and certain constructed portions demolished, for which reason the petitioner in that writ petition is seeking restoration of possession and reconstruction of a shop and room that existed there earlier.

5. While the colony in which the parcels of land are situate has been settled for a long time under the name 'Friends Enclave', it is the admitted position that the said colony was, to begin with, an 'unauthorised' colony, that is to say, the *colony was settled without requisite permissions and approvals* from municipal and governmental authorities under applicable laws. The colony was subsequently regularised under a Regularisation Scheme for Approval of Unauthorised Colonies in Delhi dated 16.02.1977 ("Regularisation Scheme" for short) framed by the Ministry of Works & Housing, Government of India ("Ministry" for short). The colony came to be regularised by Resolution No. 1030 dated 11.01.1984 passed by the Standing Committee of the then Municipal Corporation of Delhi ("Resolution" for short) whereby a regularisation plan was framed for the colony by the Standing Committee of the Municipal Corporation.

6. To be sure, petitioners Smt. Sarita Gupta and Smt. Pushpa Devi purchased an undivided half-portion each in plot No. 39 on 25.05.2001 by way of registered sale deeds from the owner *after regularisation* of the colony. Insofar as petitioner Sh. Tilak Raj Jain is concerned, his father is stated to have purchased plot No. 40 by way of a 'Deed of Sale Agreement' and General Power of Attorney both dated 24.03.1992 from the owner,

which transfer of rights is therefore also *after regularisation* of the colony. The properties presently comprise dwelling houses and/or land abutting dwelling houses; and the names of the petitioners in W.P.(C) No. 8859/2011 and W.P. (C) No. 8867/2011 have also been mutated by the Municipal Corporation in its records for purposes of payment of property tax on 28.12.2001.

7. The record also reveals that a report dated 28.05.2001 made by the Additional District Magistrate (Land Acquisition), Delhi confirms that there has been no notification for acquisition of the subject land under section 4 or section 6 of the Land Acquisition Act, 1894 ("Land Acquisition Act" for short).

8. All the above notwithstanding, the petitioners' grievance is that the Municipal Corporation is now proposing to demolish certain portions of their dwelling houses or otherwise subsume land abutting their dwelling houses, which land belongs to the petitioners, and use it for widening one of the roads running through the colony, to increase the RoW or width of the road from the existing 65 feet to 100 feet.

9. While the area of the land proposed to be taken-over from the petitioners is no more than about 450 square feet, yet the legal issue that arises is:

> Whether it is permissible in law for the State, in this case the Municipal Corporation, to simply 'take-over' land owned by a private party, otherwise than in accordance with the applicable statute relating to land acquisition, in this case the Land Acquisition Act 1894, and without paying any monetary

compensation to the owner, on the premise that the land is required for purposes of widening a public street ?

Put differently, the legal question is whether a private party can be divested of its ownership of land without following the procedures and provisions of the Land Acquisition Act, without being paid any monetary compensation, only because the land is required for purposes of widening a public road. It may be stated for completeness that there are other statutes that provide for acquisition of land for specific purposes, such as the National Highways Act 1957 and Defence of India Act 1962, but in the present case it is not in contention that any statute other than the Land Acquisition Act, 1894 would apply to the facts of the present case. The Municipal Corporation contends though, that since the subject land is required for road widening, the Land Acquisition Act also does not apply.

10. Mr. Ankur Mittal, learned counsel appearing for the petitioners contends that no legal dispensation permits divesting a private party of land and vesting such land in the State, without following the applicable law for acquisition of land and paying compensation in accordance therewith.

11. Mr. Sanjay Poddar, learned senior counsel appearing for the Municipal Corporation, on the other hand contends that municipal law permits such vesting of land for certain purposes, including for road widening. A significant aspect flagged by senior counsel is that the colony in which the subject land is situate was, to begin with, an unauthorised colony; and it came to be 'regularised' under the Regularisation Scheme framed by the Ministry, under which the Resolution was passed thereby approving the colony. It is contended that this fact materially changes the

rights of the owners inasmuch as the regularisation of the colony entails the preparation of a lay-out plan for the colony, which includes carving-out of roads of requisite width and providing spaces and areas for community facilities and public utilities, so as to make available requisite civic facilities and amenities for the residents of the colony as a planned development.

12. The legal case canvassed by the petitioners, as summarised from the petitions and the rejoinders is :

(a) that the subject land has admittedly never been acquired and in fact it is the respondent's case that the law does not require the respondent to acquire the land for purposes of road widening;

(b) that 'ownership' of land is a different and distinct aspect from the land being situate in an 'unauthorised colony'. Ergo, title/possessory title and ownership of land would remain in the hands of the petitioners, whether its location is considered legal or illegal as part of an 'authorised colony' in the books of the respondents; and merely because a colony is considered unauthorised, inasmuch as the colony was laid-out and developed without prior approval of the concerned governmental authorities and/or is not in accord with the development code/development norms or any other statutory dispensation, does not mean that the ownership of the land would stand vested in the State, as it were; and

(c) that as per the Resolution, land was to be *acquired* for 'community facilities' which would include widening of a

road ; and it is a specious argument when the respondent says that a 'road' is not a 'community facility' or that by its very nature, a road is different from a park, community centre, local shopping centre, school or other open spaces; since it matters little to the owner as to what use the land is put to once it is taken away from the owner.

13. In support of their contentions, the petitioners rely upon the following judgments of the Supreme Court : ***Pt. Chet Ram Vashist (dead) by LRs vs. Municipal Corporation of Delhi***: (1995) 1 SCC 47; ***Raju S. Jethmalani & Ors. vs. State of Maharashtra & Ors.*** : (2005) 11 SCC 222; ***M. Naga Venkata Lakshmi vs. Vishakhapatnam Municipal Corporation & Anr.*** : (2007) 8 SCC 748. These judgments have been considered and discussed subsequently.

14. The essence of the stand taken by the contesting respondent/MCD in the counter-affidavits filed in the three writ petitions may be paraphrased as follows:

(a) that since the colony in question was an unauthorised colony, as per the Regularisation Scheme, existing structures in the colony were to be regularised only after bringing them in consonance with the lay-out plan and after keeping clear spaces for roads and other community facilities. Since the Regularisation Scheme was in the nature of an amnesty scheme and a welfare measure, it was to be implemented strictly subject to development norms adopted by the

authorities for regularisation of the colony. One of the aspects of the Regularisation Scheme was that structures coming in the way of roads and other community facilities would not be protected since no regularisation was possible unless basic amenities were made available;

(b) that as long as the colony was unauthorised, no rights vested in its inhabitants and it is only after regularisation that rights accrued to the petitioners in relation to their properties, subject to applicable laws and norms;

(c) that in view of the regularisation of the colony, certain changes were made to the lay-out plan of the then existing unauthorised colony to bring in certain community facilities, after removing existing residential structures;

(d) that the petitioners' houses extended onto the public road and no notice was required for removal of encroachment on public land for widening of the road; and

(e) that by way of additional counter-affidavit dated 03.03.2015 filed by the respondent/MCD and short affidavit dated 04.07.2018 filed by the Government of NCT of Delhi, a new point has been raised, whereby the said respondents contend that the subject land which is to be applied for road widening is infact not part of the petitioners' property at all. This is sought to be canvassed on the basis of a survey conducted by respondent/MCD and from the revenue records now purportedly checked by the Revenue Department of the respondent/Government of NCT of Delhi.

15. In support of its contentions, the respondent relies upon the following judgments of this court and the Supreme Court : ***Municipal Board, Manglaur vs. Mahadeoji Maharaj*** : AIR 1965 SC 1147; ***State of U.P. vs. Ata Mohd.*** : (1980) 3 SCC 614 ; ***M/s. Govind Pershad Jagdish Pershad vs. New Delhi Municipal Committee*** :(1993) 4 SCC 69 ; ***Pt. Chet Ram Vashist (Dead) by LRs vs. Municipal Corporation of Delhi*** : (1995) 1 SCC 47; ***Municipal Committee, Karnal vs. Nirmala Devi*** : (1996) 1 SCC 623 ; ***Kamal Goods Carrier vs. Municipal Corporation of Delhi*** : 2011 (123) DRJ 449 ; and ***S. D. Rathi vs. North Delhi Municipal Corporation***, single Bench judgment dated 15.02.2018 in RFA No. 125/2018 and ***SDMC vs. Pawan Garg & Ors.***, Division Bench judgment dated 24.04.2019 in LPA No. 369/2016. These judgments have been considered and discussed subsequently.

16. The answer to the above legal queries would turn upon an interpretation of three main dispensations viz. the Regularisation Scheme, the Resolution and the DMC Act.

17. The relevant portion of the Regularisation Scheme is extracted below:

> *"2. The report of the Committee has been examined by Government and it has now been decided that various unauthorised colonies which have come up in Delhi including chose (sic) around village as outside that (sic) "Lal Dora" as also the unauthorised extension of approved colonies, from time to time will be regularized <u>on the terms and conditions set out below</u>:-*
>
> *x x x x x x*

(ii) Structures will be regularised after fitting them in a lay-out plan and after Keeping clear space for roads and other community facilities. To the extent Land is already available for roads and other community facilities in the immediate vicinity or neighborhood such land should be utilized for these purpose.

x x x x x x

(iv) The families which are displaced in the process of providing space for roads and other community facilities will be rehabilitated in the following manner:-

(a) Owners of the houses, who or any of whose family members do not own a plot/house in Delhi will be provide alternate land/flat.

x x x x x x ”

(Emphasis supplied)

18. It is also relevant at this point to extract portions of the Resolution, which pertains specifically to the regularisation of Friends Enclave, that is the colony in question, and reads as under :-

“The plan of the above colony has been recommended for approval by the Technical Committee under the chairmanship of Vice-Chairman, DDA in its meeting held on 5-12-1983.

The R.O.W. of Sultanpur Road has been kept as 100’-00” wide affecting some built up houses. The other roads are kept as existing but minimum 5.00 & 3.04 metres as per prescribed standards.

xxxxx

The community facilities sites have been calculated as per reduced standards approved by the Technical Committee. An area of 0.25 hects. is proposed to be acquired and developed by Public Authority.

xxxxxx

7. Acquisition — *The Secretary (L&B) Delhi Admn. shall acquire the land reserved for community facility sites only, in such colonies under consideration for regularisation in view of the decision of the implementation body under the Chairmanship of L.G. dated 1-2-78.*

xxxxxx

Details of community facilities provided

	Area requir-ed as (sic) Master Plan	*Area provided*	*Area required as/Reduced Standard*	*Deficiency*
1.Higher Secondary School	___	___	___	___
2.Primary School	*0.24 Hect.*	*0.18 Hect.*	___	___
3.Nursery School	___	___	___	___

4.Parks & Open Spaces	*0.60 Hect.*	*0.33 Hect.*	*0.08 Hect.*	___
5.Local Shopping	*0.06 "*	*0.10 "*	*0.06 "*	___
6.Community Hall *E.S.S. etc.* *Health Centre*	 *0.09 "*	*0.015 "* *0.045 "* *0.015 "*	 *0.03 "*	___
7.Community facility use *Total community facilities*				

The deficient community facility sites in this case is negligible since the sites are provided in adjoining areas.

xxxxxx

9. Alternative Plot compensation for affected plot holders.	*As per the decision of implementation body under the chairmanship of L.G. dated 1-2-78. The Secretary (L&B) shall make arrangement for allotment of alternative plots in lieu of plots affected in community facility sites in this area proposed for allotment of alternative plots within the colony and also in the DDA schemes provided for this purpose.*

xxxxxx

3. The sites which have been earmarked for parks, schools, open spaces and other community facilities would be immediately acquired through Secretary (L & B), Delhi Admn.

4. The houses constructed on plots adjusted in the regularisation plan shall only be considered for regularisation provided the construction existed before 16-2-1977as per Govt. of India's memorandum. The construction on the vacant land adjusted in the plan and the additions to the existing construction will be allowed as per B.B.L., provided other conditions are fulfilled.

5. Alternative plots should be provided on reasonable basis to persons whose plots are covered in this public utility area.

xxxxxx

(Emphasis supplied)

19. The provisions of the DMC Act that are relevant for considering the issue at hand are the following :

"***197. Acquisition of property.—****A Corporation shall, for the purpose of this Act, have power to acquire and hold movable and immovable property, or any interest therein.*

198. Acquisition of immovable property by agreement—*Whenever a Corporation decides to acquire any immovable property for the purpose of this Act, the Commissioner shall acquire such property on behalf of a Corporation by agreement on such terms and at such price as may be approved by the Standing Committee.*

199. Procedure when immovable property cannot be acquired by agreement—*Whenever the Commissioner is*

unable to acquire any immovable property under section 198 by agreement, the Government may at the request of the Commissioner procure the acquisition thereof under the provisions of the Land Acquisition Act, 1894 (1 of 1894), and on payment by a Corporation of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in a Corporation.

xxxxx

"***301. Power to make new public streets.—****The Commissioner may at any time with the previous sanction of a Corporation,*

(a) lay out and make new public streets;

(b) construct bridges and subways;

(c) turn or divert any existing public street; and

(d) lay down and determine the position and direction of a street or streets in any part of the area of the Corporation notwithstanding that no proposal for the erection of any building in the vicinity has been received.

xxxxx

"***304. Power to acquire lands and buildings for public streets and for public parking places—****Subject to the provisions contained in Chapter X the Commissioner may-*

(a) acquire any land required for the purpose of opening, widening, extending or otherwise

improving any public street or of making any new public street, and any building standing upon such land;

(b) acquire in relation to any such land or building, all such land with buildings, if any, thereon as a Corporation may think expedient to acquire outside of the regular line, or of the intended regular line, of such street;

(c) acquire any land for the purpose of laying out or making a public parking place.

xxxxxx

"***312. Owner's obligation when dealing with land as building sites****—If the owner of any land utilises, sells, leases out or otherwise disposes of such land for the construction of buildings thereon he shall lay down and make a street or streets giving access to the plots into which the land may be divided and connecting with an existing public or private street.*

313. Lay-out plans*—(1) Before utilising, selling or otherwise dealing with any land under section 312, the owner thereof shall send to the Commissioner a written application with a lay-out plan of the land showing the following particulars, namely:—*

(a) the plots into which the land is proposed to be divided for the erection of buildings thereon and the purpose or purposes for which such buildings are to be used;

(b) the reservation or allotment of any site for any street, open space, park, recreation ground, school, market or any other public purpose;

(c) the intended level, direction and width of street or streets;

(d) the regular line of street or streets;

(e) the arrangements to be made for levelling, paving, metalling, flagging, channelling, sewering, draining, conserving and lighting street or streets;

(2) The provisions of this Act and the bye-laws made thereunder as to width of the public streets and the height of buildings abutting thereon, shall apply in the case of streets referred to in sub-section (1) and all the particulars referred to in that sub-section shall be subject to the sanction of the Standing Committee.

(3) Within sixty days after the receipt of any application under sub-section (1) the Standing Committee shall either accord sanction to the lay-out plan on such conditions as it may think fit or disallow it or ask for further information with respect to it.

(4) Such sanction shall be refused—

(a) if the particulars shown in the lay-out plan would conflict with any arrangements which have been made or which are in the opinion of the Standing Committee likely to be made for carrying out any general scheme of development of Delhi whether contained in the master plan or a zonal development plan prepared for Delhi or not; or

(b) if the said lay-out plan does not conform to the provisions of this Act and bye-laws made thereunder; or

(c) if any street proposed in the plan is not designed so as to connect at one end with a street which is already open.

(5) No person shall utilise, sell or otherwise deal with any land or lay-out or make any new street without or otherwise than in conformity with the orders of the Standing Committee and if further information is asked for, no step shall be taken to utilise, sell or otherwise deal with the land or to lay-out or make the street until orders have been passed upon receipt of such information:

Provided that the passing of such orders shall not be in any case delayed for more than sixty days after the Standing Committee has received the information which it considers necessary to enable it to deal with the said application.

(6) The lay-out plan referred to earlier in this section shall, if so required by the Standing Committee, be prepared by a licensed town planner.

xxxxx

"***316. Right of owners to require streets to be declared public**.—If any street has been levelled, paved, metalled, flagged, channelled, sewered, drained, conserved and lighted under the provisions of section 315, the Commissioner may, and on the requisition of a majority of the owners referred to in sub-section (1) of that section*

shall, declare such a street to be a public street and thereupon the street shall vest in a Corporation."

(Emphasis supplied)

20. The definitions of some words that appear in the provisions extracted above are also necessary for understanding the meaning thereof. The relevant definitions are extracted below :

Section 2 (44) of the DMC Act defines 'public street' as under :

"(44) "public street" means any street which vests in a Corporation as a public street or the soil below the surface of which vests in a Corporation or which under the provisions of this Act becomes, or is declared to be, a public street;"

Section 2 (57) of the DMC Act defines 'street' as under :

"(57) "street" includes any way, road, lane, square, court, alley, gully, passage, whether a thoroughfare or not and whether built upon or not, over which the public have a right of way and also the roadway or footway over any bridge or causeway;"

(Emphasis supplied)

21. In the above backdrop the petitioners' contention is that while under the Regularisation Scheme the Municipal Corporation may divest owners of land for building roads and community facilities, para 2(iv)(a) of the Regularisation Scheme mandates that if families are displaced for providing roads and other community facilities, they must be rehabilitated by providing alternative property. It is also the petitioners' contention that the

Regularisation Scheme contemplates 'acquisition' of land for community facilities sites; and even though the *"Details of community facilities provided"* as listed in the Resolution mentions : schools, parks, open spaces, local shopping centres, community hall, electric sub-station (ESS), health centres and 'other community facilities' but does not specifically mention 'roads', clearly the community facilities listed are only illustrative and not exhaustive; and there is no reason why the phrase 'community facilities' should not include 'roads'. The submission therefore is that if land is required for construction or widening of roads, it must be acquired in accordance with the provisions of the Land Acquisition Act, in just the same way as land required for any other community facility. It is urged that it makes no difference whatsoever to an owner who is divested of a parcel of land, as to whether the land is used for purposes of a school, park, community centre or for the construction or widening of a road. It is argued that under our jurisprudence no law permits 'automatic vesting' of privately-owned land in the Government or any authority of Government for any purpose.

22. The petitioners also contend that from a cogent and fair reading of sections 197, 198 and 199 of the DMC Act, it is clear that there are only two ways that the Municipal Corporation may acquire land : either *by agreement* or *by acquisition*. Land may be acquired by the Commissioner by agreement on such terms and at such price as may be approved by the Standing Committee of the Municipal Corporation ; and failing that, land may be acquired by the Municipal Corporation through the Government under the provisions of the Land Acquisition Act, for which the Municipal

Corporation must pay compensation as may be awarded under the statute, apart from paying charges incurred by the concerned Government for the land acquisition proceedings.

23. Learned senior counsel appearing for the respondent on the other hand argues, that first and foremost, it is to be noted that the subject land was part of an *unauthorised colony*, which was subsequently regularised under the Regularisation Scheme, whereby a lay-out plan was prepared and approved in consonance with applicable development norms, rules and regulations. As part of the process of regularisation of the colony, *by operation of law*, land falling within the zone for construction or widening of roads *automatically* vested in the Municipal Corporation ; and the law does not require that such land be acquired by the Municipal Corporation, either by agreement or under the Land Acquisition Act. It is further argued that the Resolution itself spells-out that land was to be acquired *only* if it was required for purposes of *community facilities as specifically enumerated* in the Resolution, namely for schools, parks, open spaces, local shopping centres, health centre, community hall, electric sub-station (ESS); and read in the context of such facilities, even the phrase 'other community facilities' referred to in the Resolution does *not* include roads. It is also contended that since admittedly, a road already existed in the same location ; and upon regularisation of the colony, such road was only to be widened to a width of 100 feet, such road widening is different from construction or building of a community facility; and therefore the requirement of acquisition of land as stipulated the Resolution does not apply to the subject land.

24. It is also contended on behalf of the respondent that upon regularisation of the colony, the existing 65 foot road vested in the Municipal Corporation, as did the parts of the road sought to be widened being a 'public street' by reason of operation of sections 298 and 299 of the DMC Act. The aforesaid provisions read as under :

> "***298. Vesting of public streets in the Corporation***.—*(1) All streets within the jurisdiction of each Corporation constituted under sub-section (1) of section 3 of this Act which are or at any time become public streets, and the pavements, stones and other materials thereof shall vest in such Corporation:*
>
> *Provided that no public street which immediately before the commencement of the Delhi Municipal Corporation (Amendment) Act, 2011 vested in the Union, shall, unless the Central Government with the consent of the concerned Corporation so directs, vest in the Corporation by virtue of this sub-section.*
>
> *(2) All public streets vesting in a Corporation shall be under the control of the Commissioner and shall be maintained, controlled and regulated by him in accordance with the bye-laws made in this behalf.*
>
> *(3) Notwithstanding anything contained in sub-sections (1) and (2), the Government may, by notification, direct that all or any of the functions of a Corporation or the Commissioner, in respect of public streets under this Act shall be performed by such authority as may be specified therein.*

> ***299. Functions of Commissioner in respect of public streets****.—(1) The Commissioner shall, from time to time, cause all public streets vested in a Corporation to be levelled, metalled or paved, channelled, altered or repaired, and may widen, extend or otherwise improve any such street or cause the soil thereof to be raised, lowered or altered or may place and keep in repair fences and posts for the safety of foot-passengers:*
>
> *Provided that no widening, extension or other improvement of a public street, the aggregate cost of which will exceed five thousand rupees, shall be undertaken by the Commissioner except with the previous sanction of a Corporation.*
>
> *(2) With the previous sanction of a Corporation the Commissioner may permanently close the whole or any part of a public street:*
>
> *Provided that before according such sanction a Corporation shall by notice publish in the manner specified by bye-laws give reasonable opportunity to the residents likely to be affected by such closure to make suggestions or objections with respect to such closure and shall consider all such suggestions or objections which may be made within one month from the date of publication of the said notice*."

25. Senior counsel also argues that a road, by the very nature of the utility, is not the same as the other community facilities referred to in the Resolution; and also that in the present case, a road already existed which was only widened. He submits that land required for laying, or in this case

widening, a public street vests in the Municipal Corporation by operation of law, without need for acquiring such land, since section 298 of the DMC Act mandates that a 'public street' vests in the corporation.

26. The respondent's submission is that *so long as* the land taken from the petitioners continues to be utilised as a public street, it would continue to vest in the Municipal Corporation without obligation to either acquire it or to otherwise compensate the petitioners in any form. However, to be sure, the respondent concedes that the Municipal Corporation cannot change the use of such land, which must continue to be used as a road.

27. Senior counsel also draws attention to the specific terms of the Regularisation Scheme and the Resolution, as extracted above, which he contends, warrant the automatic vesting of the subject land in the Municipal Corporation.

28. I now propose to deal with the rival factual and legal contentions raised by the parties in the paragraphs that follow.

29. While it is true that the colony has been approved and regularised as an authorised colony, *upon and subject to* the terms and conditions contained in the Regularisation Scheme and the Resolution, it cannot be gainsaid that once the policy decision is taken and implemented to 'regularise' it, the colony must be treated like any other colony, with all development norms, rules and regulations being applicable to it, just as they would apply to a regular colony. Also, the terms and conditions upon which the colony was regularised by way of the Regularisation Scheme and the Resolution must be in conformity with applicable laws *inter-alia* the DMC Act and the Land Acquisition Act. If there is any ambiguity or doubt as to

the correct construction or interpretation of any provision of the Regularisation Scheme or the Resolution, the interpretation which conforms to the statute must be applied, else such conflicting provision would be rendered void.

30. The first precedent cited by the petitioner is the case of ***Pt. Chet Ram Vashist*** (supra) where the question was whether the Municipal Corporation of Delhi is entitled to sanction a plan for building activities with the condition that open spaces for parks and schools be 'transferred' to the corporation free-of-cost. In this case the standing committee of the corporation had passed the following resolution permitting building activities in the colony in question :

> *"2. .... Resolved that building activity in those parts of Ganga Ram Vatika be allowed where the services have already been completed subject to the condition that the open spaces for parks and schools be transferred to the Corporation free-of-cost...."*
>
> (Emphasis supplied)

While interpreting section 313 of the DMC Act and negativing this contention on point of law, the Supreme Court held as follows :

> *"4. .... None of its provisions entitled the Corporation to claim any right or interest in the property of the owner. Sub-section (3) empowers the Standing Committee to accord sanction to the lay-out plan on such conditions as it may think fit. The expression, 'such conditions' has to be understood so as to advance the objective of the provision and the purpose for which it has been enacted. The Corporation has been given the right to examine that the*

lay-out plan is not contrary to any provision of the Act or the rules framed by it. For instance a person submitting a lay-out plan may be required to leave certain open space or he may be required that the length and width of the rooms shall not be less than a particular measurement or that a coloniser shall have to provide amenities and facilities to those who shall purchase land or building in its colony. But the power cannot be construed to mean that the Corporation in the exercise of placing restrictions or imposing conditions before sanctioning a lay-out plan can also claim that it shall be sanctioned only if the owner surrenders a portion of the land and transfers it in favour of the Corporation free-of-cost. That would be contrary to the language used in the section and violative of civil rights which vests in every owner to hold his land and transfer it in accordance with law. The Resolution passed by the Corporation directing the appellant to transfer the space reserved for tubewells, school and park in its favour free-of-cost was depriving the owner of his property and vesting it in the Corporation against law. The finding of the High Court that such condition did not amount to transfer of ownership but it was only a transfer of the right of management cannot be accepted. The two rights, namely, of ownership and of management, are distinct and different rights. Once a vacant site is transferred in favour of another free-of-cost then the person transferring it ceases to be owner of it. Whereas in transfer of right of management the ownership continues with the person to whom the property belongs and the local authority only gets rights to manage it. But the conditions imposed by the Standing Committee clearly meant to transfer the ownership in favour of the Corporation. The Corporation

as custodian of civil amenities and services may claim and that would be proper as well, to permit the Corporation to regulate, manage, supervise and look after such amenities but whether such a provision can entitle a Corporation to claim that such property should be transferred to it free-of-cost appears to be fraught with insurmountable difficulties. The law does not appear to be in favour of the Corporation. Public purpose is, no doubt, a very important consideration and private interest has to be sacrificed for the welfare of the society. But when the appellant was willing to reserve the two plots for park and school then he was not acting against public interest. This cannot be stretched to create a right and title in favour of a local body which utmost may be entitled to manage and supervise only.

"5. ... There is no provision in this chapter or any other provision in the Act which provides that any space reserved for any open space or park shall vest in the Corporation. Even a private street can be declared to be a public on the request of owners of the building and then only it vests in the Corporation. In absence of any provision, therefore, in the Act the open space left for school or park in a private colony cannot vest in the Corporation. That is why in England whenever a private colony is developed or a private person leaves an open space or park to be used for public purpose he is required to issue what is termed as 'Blight Notice' to the local body to get the land transferred in its favour on payment of compensation. Section 313 which empowers the Commissioner to sanction a lay-out plan, does not contemplate vesting of the land earmarked for a public

> *purpose to vest in the Corporation or to be transferred to it. The requirement in law of requiring an owner to reserve any site for any street, open space, park, recreation ground, school, market or any other public purposes is not the same as to claim that the open space or park so earmarked shall vest in the Corporation or stand transferred to it. Even a plain reading of sub-section (5) indicates that the land which is subject-matter of a lay-out plan cannot be dealt with by the owner except in conformity with the order of the Standing Committee. In other words the section imposes a bar on exercise of power by the owner in respect of land covered by the lay-out plan. But it does not create any right or interest of the Corporation in the land so specified. The Resolution of the Standing Committee, therefore, that the area specified in the lay-out plan for the park and school shall vest in the Corporation free-of-cost, was not in accordance with law.*
>
> (Emphasis supplied)

Having held as above on point of law, *in the facts of that particular case*, considering that the corporation had been exercising rights over the land in dispute for a very long time and so as not to unsettle the state of affairs, the Supreme Court gave to the corporation the right to manage the land for school, park etc. provided that the corporation did not change the user of land; with the Supreme Court directing that the land would continue to be used for the beneficial enjoyment of the residents of the colony. In doing so the Supreme Court also clearly held that if the corporation wants to get the land transferred in its favour, it may do so after paying the market

price as prevalent on the date when the sanction for the lay-out plan was accorded.

31. The issue was addressed again by the Supreme Court in the case of ***Raju S. Jethmalani*** (supra) which concerned the earmarking of a privately owned parcel of land for creating a garden, in the draft and then in the final development plan of the colony, without however acquiring the land from the owner. In this backdrop, the Supreme Court held as under:

> *"3. ... It is true that when it was shown as a garden in the draft development plan no objection was raised and final notification declaring this land as earmarked for garden was published. It is true that a development plan can be prepared of a land comprising of a private person but that plan cannot be implemented till the land belonging to the private person is acquired by the Planning Authority. It is not that the Planning Authority was ignorant of this fact. It acquired some land from Plot No. 437 for developing garden but the land from Plot No. 438 was not acquired for garden. Therefore, the question is whether the Government can prepare a development plan and deprive the owner of the land from using that land? There is no prohibition of including private land in a development plan but no development can be made on that land unless that private land is acquired for development. The Government cannot deprive the persons from using their private property.....The question is whether without acquiring the land the Government can deprive a person of his use of the land. This in our opinion, cannot be done. It would have been possible for the Municipal Corporation and the Government of Maharashtra to acquire the land in order to provide civic amenities. But the land in question has not been acquired. We are quite conscious of the fact that the open park and garden are necessary for the residents of the area. But at*

> *the same time we cannot lose sight of the fact that a citizen is deprived of his rights without following proper procedure of law…."*

(Emphasis supplied)

Although in the afore-cited case, the governing statute was the Maharashtra Regional and Town Planning Act 1966, this court is of the view that the principles enunciated by the Supreme Court in the foregoing case would apply *a-fortiori* to actions taken by the Municipal Corporation under the DMC Act.

32. In a case very close on facts to the present matter titled ***M. Naga Venkata Lakshmi*** (supra) the Supreme Court was dealing with the issue of the Vishakhapatnam Municipal Corporation refusing to *regularise a plot* in a revised lay-out plan by which the colony was otherwise approved. In the said case, as in the present one, the legality and validity of the sale deed executed by the vendor in favour of the appellant was not in dispute. In fact in the said case, the sale deed was *prior* to the date of approval of the lay-out, unlike the present case where the sale deed in favour of the petitioners is *after* the lay-out plan was approved and the colony had already been regularised. In this backdrop, the Supreme Court held as under :

> "*6. The legality and/or validity of the deed of sale executed by vendor in favour of the appellant is not in dispute. It is also not in dispute that no layout plan existed in the area in question where she had purchased the land. Before making the zonal plan and the master plan, the Authority was required to give an opportunity of hearing to the persons who may be affected thereby. Neither the writ court not the court of appeal dealt with the question as regards the right of the appellant to be*

heard in the matter. If the allegations made in the writ petition were correct, we do not know why the fact that her land had been earmarked for the purpose of providing an open space to the other owners of the said layout had not been disclosed to her.

7. On what basis the layout plan had been drawn resulting in deprivation of a valuable right of the appellant, therefore, was required to be determined. Furthermore, if VUDA wanted to deprive the appellant from a valuable right of property, the question which should have been posed was as to whether therefor the authorities should have acquired the property or not."

(Emphasis supplied)

Furthermore, noticing its earlier decision in ***Chairman, Indore Vikas Pradhikaran vs. Pure Industrial Coke & Chemicals Ltd***. reported as (2007) 8 SCC 705, the Supreme Court reiterated the following :

"*8. We may notice that recently a Bench of this Court in Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd. held : (SCC p. 732, para 56)*

> *"56[58]. Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law."*

9. Prima facie, it appears that there is no provision in terms whereof the appellant could be deprived of her right to property without payment of any compensation."

(Emphasis supplied)

33. To canvass the contrary position, the respondent relies, firstly upon a decision rendered by the Supreme Court in ***Mahadeoji Maharaj*** (supra) to support the submission that once a road or space is *dedicated* to the public, it vests in the municipality ; and that if the public have been using the road for a long period of time, it must be deemed that the road has been so dedicated. This case was concerned with the rights of a municipality to a vacant piece of land adjacent to a metalled public road ; and it was the *admitted position* that the public had been using the road for decades and the municipality had been maintaining the road, by reason whereof, it was conceded that the land adjacent to the road was also dedicated to the public. Having held, on point of fact, that the *adjacent land was part of the public pathway,* the Supreme Court went on to observe :

> "*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 side-lands 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*."
>
> (Emphasis supplied)

whereby the Supreme Court opined that although the owner cannot ask for possession of any part of the public pathway which continues to vest in the municipality, the municipality also cannot put any structures on the land, in this case a Mahatma Gandhi statue, a *piao* and a library, which are

not necessary for the maintenance or use of the road as a public highway. In citing the above case however, the respondent misses the point that in the present case, there is no evidence much less proof, of dedication of the subject land for public use or of the long use thereof by the public, in order for it to be included as part of the public street. In fact, it is the respondent's own case that the public street had an RoW of 65 feet, which the respondent *now* seeks to widen to 100 feet by including the subject land within the public street. The respondent is seeking to demolish the dwelling houses or subsume vacant land abutting the dwelling houses, owned by or belonging to the petitioners, to widen the road. A public street vests in the municipal corporation by operation of law ; but the subject land is not part of the public street and therefore does not vest in the Municipal Corporation. Vesting of land in the Municipal Corporation *follows* such land being part of a public street; vesting does not *precede* it being so.

34. The respondent also cites the decision in ***Ata Mohd.*** (supra) where the Supreme Court deals with a similar concept of vesting of public street in the municipality under section 116(g) of UP Municipalities Act, 1916. In its verdict the Supreme Court again mandates *inter alia* that all public streets, pavements/stones and other materials vest in the municipality ; qualifying however, that what vests *is the street as a street* and not land over which the street is formed. Relying on other judgments, the Supreme Court notes :

> "9. …
>
> > *"The conclusion to be drawn from the English case-law is that <u>what is vested in urban authorities under statutes similar to the District</u>*

> *Municipalities Act, is not the land over which the street is formed, but the street qua street and that the property in the street that vested in a Municipal council is not general property or a species of property known to the common law, but a special property created by statute and vested in a corporate body for public purposes, that such property as it has in the street continues only so long as the street is a highway, by being excluded by notification of Government under Section 23 of Act IV of 1884 or by being legally stopped up or diverted, or by the operation of the law of limitation (assuming that by such operation the highway can be extinguished), the interest of the corporate body determines."*
>
> *It is, therefore, clear that when a street ceases to be a highway by its being diverted to some other use, the interest of the corporate body determines."*
>
> (Emphasis supplied)

Again therefore, reliance placed by the respondent on the above judgment is misconceived since the opinion of the Supreme Court proceeds on the basis that the *street being a public street* vests in the municipality ; and does not warrant the inference that a public street may be *created* or *widened* by simply usurping private land. In the present case, the whole dispute is that the Municipal Corporation *requires* the subject land for widening the road/public street; how then can the Municipal Corporation proceed on the basis that the subject land is *already* part of the road/public street and therefore vests in it.

35. The respondent relies next upon ***M/s. Govind Pershad Jagdish Pershad*** (supra) where the Supreme Court has held as under:

> ***"6.*** *The crucial question for determination is whether the verandah in dispute was a "street" in terms of Section 3(13)(a) of the Act. Once it is held to be a "street", then the right of public to use the same is irreversible. Sections 3(13)(a) and 171(4) of the Act are reproduced hereunder:*
>
> *xxxxx*
>
> "***10.*** *We see no ground to differ with the concurrent findings of the courts below and hold that the appellant has dedicated the verandah in dispute to the public use. It is being used for passing and repassing by the public at large and as such is a "street" in terms of Section 3(13)(a) of the Act. The appellant has, thus, surrendered his rights in the property for the benefit of the public. The user of the property is and always shall be with the public. Any space, passage, verandah, alley, road or footway dedicated to public by the owner for passing and repassing, partakes the character of a "street" and no longer remains under the control of the owner. The owner has no right at all times to prevent the public from using the same. When the owner of the property has, by his own volition permitted his property to be converted into a "street", then he has no right to claim any compensation when the same property is made a "public street" under Section 171(4) of the Act. The "streets" are meant for public use. It is necessary that the "streets" which are being used by the public are frequently repaired and are also saved from public abuse. It is common knowledge that in the absence*

> *of any regulatory control, the hawkers and squatters are likely to occupy the "streets" thereby creating nuisance for the public. In a situation like this it is necessary for the Committee to step in and exercise its powers under Section 171(4) of the Act. The Committee exercises regulatory control and is responsible for the repair and upkeep of the "public streets". The verandah in dispute is a "street". It has been declared as a "public street" for the better enjoyment of the public-right in the said street. We hold that when a "street" is declared as 'public street' the owner, of the property comprising the said "street", has no right to claim compensation."*
>
> (Emphasis supplied)

Yet again, the *ratio decidendi* of the above verdict is inapplicable, inasmuch as in the present case the petitioners have not dedicated or placed the subject land for the use of the public; nor have they surrendered their rights in it for the benefit of the public of their own volition. The conceded position is that the subject land comprises dwelling houses or abuts dwelling houses ; and there is no question of the subject land being already used as a public pathway. The principle laid down in the above judgment does not therefore foreclose the petitioners' right to claim compensation for utilisation of the subject land for road widening.

36. The respondent also relies upon ***Pt. Chet Ram Vashist*** (supra), a judgment cited by the petitioners as well ; and reads that judgment to say that rights to manage the subject land vest in the Municipal Corporation since the land is required for purposes of road widening, without title therein being transferred to the Corporation; and that this is acceptable in law so long as the Corporation does not change the user of the land.

37. The respondent also relies upon decision dated 24.11.1995 made by the Supreme Court in the case of ***Nirmala Devi*** (supra) where the question was whether a certain shop, though private property, was constructed by encroaching upon a public street and was therefore liable to be removed. Deciding the matter by way of an order, the Supreme Court held as follows :

> *"6. It would thus be clear that every street which is a public street vests in the Municipal Committee. If unauthorised construction is made by encroaching on it, after issuing the notice for demolition and service thereof, if the encroacher does not remove the same within the specified time, in addition to laying prosecution for contravention of the provisions of the Act, the Municipal Committee has power to have the unauthorised encroachments and construction removed and to recover the costs thereof from him. It is seen that notice was in fact given to the respondent for removal of the construction. When the husband of the respondent was examined, he admitted that he constructed the shop after the purchase. Though the District Judge found that it is the private property of the respondent, in view of the fact that it is on a public street, by operation of Section 3(21), even the private property which forms part of a public street, stands vested in the Municipal Committee. Thereby, the Municipal Committee has necessary power to have the unauthorised construction removed and the encroacher ejected. If the encroacher does not voluntarily remove the unauthorised construction, the Municipal Committee has power to have it removed by exercise of the power vested under Section 181(2) of the Act. Since the Committee has exercised the*

statutory power, the award of damages is clearly illegal, unwarranted and unsustainable."

(Emphasis supplied)

whereby the Supreme Court reiterated the unexceptionable position of law, *viz*. that a municipality has the power to remove even private construction if made by *encroaching upon a public street* ; and in this case the shop in question had admittedly been constructed upon a public street and was therefore unauthorised.

38. The respondent further places reliance on a decision of a Co-ordinate Bench of this court in ***Kamal Goods Carrier*** (supra) which quotes the above noted decisions of the Supreme Court in *Nirmala Devi* and *M/s. Govind Pershad Jagdish Pershad* as follows:

> ***"20.*** *The Supreme Court in Municipal Committee, Karnal v. Nirmala Devi, (1996) 1 SCC 623 held that every street which is a public street vests in the Municipal Committee and if unauthorised construction is made by encroaching on it, the Municipal Committee has the power to have the unauthorised encroachment and construction removed even if such encroachment is in the nature of a private property. The Supreme Court in Gobind Pershad Jagdish Pershad v. New Delhi Municipal Committee, (1993) 4 SCC 69 also held that even if a private space is dedicated by the owner thereof to the public and acquires the character of a street, the owner ceases to have any right thereto and the Municipality becomes entitled to exercise its powers with respect thereto as owner. Applying the said principle to the instant case, even a street open to the public in a development area belonging to the DDA would vest in the MCD and be governed by the provisions of the DMC Act."*
>
> (Emphasis supplied)

As discussed above, the principle laid down in these cases is that a municipality has the power to remove unauthorised encroachment and construction on a public street, even if such encroachment is in the nature of private property. There is no dispute with the foregoing proposition; except that it has no application to the facts of the present case. In the present case, it is not that any construction was undertaken on a public street ; or on a street dedicated for public use by the owner ; or on a street that has become a public street by prolonged use by the public at large. The case here is of the Municipal Corporation wanting to widen a public street by utilising land that admittedly belongs to private parties, without acquiring the land or paying any compensation therefor to the owners.

39. The respondent further relies on the case of ***S.D. Rathi*** (supra) in which *vidé* order dated 15.02.2018 made by a Co-ordinate Bench of this court in RFA No. 125/2018, the right of the Municipal Corporation to the vesting of land in the *same colony* and in relation to the *same road* was upheld in appeal. The respondent argues that the petitioners' case in the present matter is on all fours with that of the appellant in the said RFA. This, I am afraid, is not factually correct. The decision of the single Judge in the RFA is clearly distinguishable since in the said case, the appellant was shown to have *encroached* upon a part of the main road; and the contention of the Municipal Corporation was that since the appellant was an encroacher on public land, no right vested in an encroacher and therefore there was no requirement of giving any notice to the appellant. In that case, the appellant/plaintiff could not show that the land he claimed did not form part of the public road or that it formed part of any building in the regularisation

plan of the colony. The essential distinguishing factor is that the appellant/plaintiff in ***S.D. Rathi*** could not, in the suit, establish that the land in question belonged to his predecessor-in-interest by failing to file the complete chain of title documents. In the present case however, the following two factors are clear : (a) that the existing road of 65 feet RoW is intended to be widened to 100 feet RoW ; and (b) that there is no challenge on fact to the title/possessory title of the petitioners to the subject land, which has admittedly been conveyed by the predecessor-in-title to the petitioners by way of registered sale deeds/other documents, against which requisite mutation has also been made in the records of the Municipal Corporation for purposes of payment of property tax for two of the petitioners. Had it been the Municipal Corporation's case that the petitioners were rank encroachers on public land, the petitioners would have simply been ousted from the land, without canvassing any fancy legal notion of the land *vesting* in the Municipal Corporation under the provisions of section 298. By canvassing section 298, the Municipal Corporation obviously contends that even though the subject land is owned by the petitioners, since it is required for road widening the Municipal Corporation is not required to acquire such land and the same vests in it by operation of section 298.

40. A Division Bench of this court in ***Pawan Garg*** (supra) has relied upon *Pt. Chet Ram Vashist* in interpreting sections 312 and 313 of the DMC Act and held that *title* in the land does not vest in the public corporation, and what is created is a *custodial right* of the corporation, which creates an obligation in the nature of trust and may disentitle the owner from selling his interest in the land. However, the said principle does not apply in the facts

of the present case, since here *vesting* of the subject land is itself in question; and all that ***Pawan Garg*** says is that *if* land vests in a corporation, then and in that event, only custodial rights vest and not title.

41. The overarching issue that arises in the present case has been considered not long ago by the Supreme Court in a case titled ***Chairman, Indore Vikas Pradhikaran*** (supra), in which the Supreme Court has expatiated on the right to property as a constitutional, though not fundamental right. While interpreting certain provisions of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam 1973, the Supreme Court holds that the right to property is now considered to be not only a constitutional right but also a 'human right' in line with Article 17 of the Declaration of Human & Civic Rights of 26.08.1789, observing as follows :

> "***53.*** *The right to property is now considered to be not only a constitutional right but also a human right.*
>
> ***54.*** *The Declaration of Human and Civic Rights of 26-8-1789 enunciates under Article 17:*
>
> > *"17. Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid".*
>
> *Further under Article 17 of the Universal Declaration of Human Rights, 1948 dated 10-12-1948, adopted in the United Nations General Assembly Resolution it is stated that: (i) Everyone has the right to own property alone as well as in association with others. (ii) No one shall be arbitrarily deprived of his property.*
>
> ***55.*** *Earlier human rights were existed to (sic) the claim of individuals right to health, right to livelihood, right to shelter*

and employment, etc. but now human rights have started gaining a multifaceted approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights. As President John Adams (1797-1801) put it:

"Property is surely a right of mankind as real as liberty."

….."

In this case, the Supreme Court has further opined that the Madhya Pradesh statute, being regulatory in nature and operating to restrict the rights of owners of property *requires strict construction* when it observes :

*"**57.** The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain regulation in a statute or statutory rules. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right to property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable ones. (See Balram Kumawat v. Union of India ; Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd. and Union of India v. West Coast Paper Mills Ltd.) The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof by way of reservation or designation.*

58. *Expropriatory legislation, as is well-known, must be given a strict construction.*

59. *In Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai construing Section 5-A of the Land Acquisition Act, this Court observed: (SCC pp. 634-35, para 6-7)*

"6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of 'eminent domain' may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.

7. Indisputably, the definition of public purpose is of wide amplitude and takes within its sweep the acquisition of land for a corporation owned or controlled by the State, as envisaged under sub-clause (iv) of Clause (f) of Section 3 of the Act. But the same would not mean that the State is the sole judge therefor and no judicial review shall lie. (See Jilubhai Nanbhai Khachar v. State of Gujarat)"

It was further stated: (SCC p. 640, para 29)

"29. The Act is an expropriatory legislation. This Court in State of M.P. v. Vishnu Prasad Sharma observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also Khub Chand v. State of Rajasthan and CCE v. Orient Fabrics (P) Ltd.]

There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative."

....."

(Emphasis supplied)

On the touchstone of the law laid down in this verdict, any interpretation of the terms and conditions of a governmental scheme or action, in this case the Regularisation Scheme and the Resolution, that

permits or operates to divest an owner of the rights to property must be strictly construed ; and any action of the Municipal Corporation that is not in conformity with law would certainly not pass judicial muster. Now a plain reading of section 304(a) of the DMC Act, which is the controlling statute for the Municipal Corporation, requires *acquisition* of land *inter-alia* for road widening. Any provision of the Regularisation Scheme or of the Resolution which operates contrary to the mandate of section 304(a) would therefore be *ultra-vires* the statute.

42. An additional aspect that emerges in this case is that the lay-out plan prepared for the colony post its regularisation, was never prepared and finalised in accordance with the mandate of section 313 of the DMC Act. There is nothing on record to show that the procedures for drafting and finalisation of a lay-out plan under section 313 have been followed. There is nothing to show as to who filed for sanctioning of a draft lay-out plan for the colony; or whether any public notice was issued inviting objections to the draft lay-out plan; or whether any hearing was given to any party prior to finalising the lay-out plan. It would appear that the lay-out plan for the colony has been drawn-up by the Municipal Corporation on its own as part of the Regularisation Scheme and the Resolution. There is therefore no lay-out plan as envisaged by, or as is required to be sanctioned under, section 313. A Co-ordinate Bench of this court has had the occasion to address the aforesaid question in the case of ***Khubi Ram Sharma & Ors. vs. Yashpal & Ors.*** *vide* order dated 24.10.2016 in RSA Nos. 78/2013 and 94/2013 reported as MANU/DE/2915/2016, in which case the court has opined as under :

"12. A reading of the aforesaid relevant Sections of the DMC Act read with the ratio of the judgment of the Supreme Court in the case of Pt. Chet Ram Vashist (Dead) by LRs. (supra) shows that when an undeveloped land is to be made into a colony then a lay-out plan has to be got sanctioned under Section 313 of the DMC Act. It is only when a lay-out plan is sanctioned under Section 313 of the DMC Act would any street be vested for the purposes of management and administration in the Municipal Corporation and the actual owners would thereafter only be owners in trust having no rights to construct and utilise the same as a private owner of a property. Thus, unless there is a lay-out plan which is sanctioned under Section 313 of the DMC Act as a sine qua non, it cannot be that a private street would become a public street.

"13. …Therefore once the respondents No. 1 and 2/defendants have failed to prove any lay-out plan showing a private gali as a public street forming part of the lay-out plan, the subject private gali DGHI cannot be said to be a public street unless the land in the gali was acquired by the Government under the Land Acquisition Act and as stated in the case of Pt. Chet Ram Vashist (Dead) by Lrs. (supra)….

"14. The only other method for entitling any person to use a street as a public street would be if the street is declared as a public street under Section 316 of the DMC Act. Under Section 316 of the DMC Act only if majority of the owners of a private street ask the Commissioner of the MCD to declare the private street as a public street would the private street/gali become a public street. Admittedly, there is no case made out by the respondents No. 1 and 2/defendants that Commissioner of the MCD in exercise of powers under Section 316 of the DMC Act has declared the private gali DGHI as a public street

on account of the Commissioner of the MCD having been approached by the majority of the co-owners of the private street. By the very language of Section 316 of the DMC Act merely because a street is levelled or paved or that there may exist water or sewer lines in the same, yet, such a private street cannot become a public street in the absence of declaration by the Commissioner under Section 316 of the DMC Act.

..... "

(Emphasis supplied)

Applying the ratio of the above decision to the facts of the present case, there is no basis to hold that the subject land would stand vested in the Municipal Corporation, since the subject land never came to be included as part of a public street in a duly sanctioned lay-out plan.

43. A Division Bench of the Allahabad High Court has had the occasion to deal with a similar issue, arising from a closely comparable fact situation, in the case titled ***Rai Ajay Kumar & Ors. vs. State of U.P. & Ors***. reported as (2019) 134 ALR 1 : MANU/UP/5481/2018 where the question was about vesting of a public street in the municipality under the U.P. Municipal Corporation Act, 1956 *inter-alia* by operation of sections 274, 278 and 285 of the said Act. The following observations of the Division Bench in the case are relevant :

"37. But, the private land which falls within the limit of width of the road shown in the Master Plan does not automatically vest with the development authority or the State. According to the future need, the width of the road can be increased keeping in view the growing population and increasing number of vehicles to avoid traffic congestion in future. Thus, if in

amended Master Plan/Zonal Plan a private land/building comes within the width of the road, it cannot be demolished treating it unauthorised construction or encroachment. The only course open to the development authority/municipal corporation is to acquire the land/building in accordance with law and pay compensation thereof to the owner."

xxxxx

"40. For example, if width of a road shown in the amended Master Plan/Zonal Plan is 40 feet to 60 feet then any private building/land which comes within sixty feet cannot be said to be an encroachment. It is simply contrary to the plan and it can be removed/demolished only in accordance with law. If for the road widening some area of the building is required, for that purpose the State has power under the doctrine of eminent domain to acquire the part which comes within the width of the road under the Master Plan and after giving compensation, the said portion can be demolished or removed in public interest. But the said part cannot be treated as encroachment and cannot be demolished without giving any compensation. If a person has title over the private land and he has raised construction thereon in accordance with law, that cannot be demolished without giving opportunity and the compensation."

(Emphasis supplied)

In the aforesaid judgment, the Allahabad High Court relies heavily upon the decision of a Constitution Bench of the Supreme Court in ***K.T. Plantation Private Limited & Anr. vs. State of Karnataka*** reported as (2011) 9 SCC 1, quoting extensively from the said judgment; the relevant extracts being the following :

"57. ... A Constitution Bench of the Supreme Court in the case of K.T. Plantation Private Limited and another v. State of Karnataka, MANU/SC/0914/2011 : (2011) 9 SCC 1, went elaborately into all implications of power of eminent domain, rule of law, scope of Article 300A, distinction between "Nil Compensation" relative scope of meaning of 'deprived', 'deprivation' 'acquisition' and 'requisition'. Relevant paragraphs of the judgment read thus:

> *"168- Article 300A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression 'Property' in Art. 300A confined not to land alone,it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law.*
>
> *169. This Court in State of W.B. and others v. Vishnunarayan& Associates (P) Ltd. and another, MANU/SC/0199/2002 : (2002) 4 SCC 134, while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300A that the State or executive offices cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights.*
>
> *1.190. Article 300A would be equally violated if the provisions of law authorizing deprivation of property have not been complied with. While enacting Article 300A Parliament has only borrowed*

Article 31(1) (The "Rule of law" doctrine) and not Article 31(2) (which had embodied the doctrine of Eminent Domain). Article 300A enables the State to put restrictions on the right to property by law. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest. The limitation or restriction must not be disproportionate to the situation or excessive.

219. One of the fundamental principles of a democratic society inherent in all the provisions of the Constitution is that <u>any interference with the peaceful enjoyment of possession should be lawful.</u> Let the message, therefore, be loud and clear, that rule of law exists in this country even when we interpret a statute, which has the blessings of Article 300A.

(emphasis supplied)"

(Emphasis supplied)

The Allahabad High Court further expatiates on the meaning of the phrase 'by authority of law' relying upon another Supreme Court judgment in ***M/s Bishambhar Dayal Chandra Mohan & Ors. vs. State of U.P. & Ors.*** reported as AIR 1982 SC 33, observing as under :

"59. The next question arises what is true import of the words "by authority of law" and where it can be said that the State or its instrumentalities or local bodies have taken the land of a citizen for public purpose by 'authority of law', the words used also in Article 300A of the Constitution. The Supreme Court has answered the question in the case of M/s. Bishamber Dayal Chandra Mohan etc. etc. v. State of U.P. and others etc.

etc, MANU/SC/0056/1981 : AIR 1982 (1) SC 33. The Court has ruled thus:

> *"41. ... 300A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Art. 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Art. 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Art. 300A. The word 'law' in the context of Art. 300A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order; having the force of law, that is positive or State made law."*

60. Same view has been taken by the Supreme Court in the case of Hindustan Times and others v. State of U.P. and another, MANU/SC/0903/2002 : (2003) 1 SCC 591, wherein it has held that the expression 'law' within the meaning of Article 300A would mean a Parliamentary Act or an Act of the State Legislature or a statutory order, having the force of law. Paragraph-23 of the judgment reads thus:

> *"23. The expression "law", within the meaning Article 300-A, would mean a Parliamentary Act or an Act of the State Legislature or a statutory order having the force of law."*
>
> (Emphasis supplied)

In conclusion, the Allahabad High Court issued the following directions :

> *"65. From the analysis of the abovementioned statutory provisions of the Act, 1959 and the Act, 1973 as well as the*

judgments of the Supreme Court mentioned above following principles emerge:

(i) A citizen cannot be deprived of his/her property without following the law. His/her property can be acquired only in accordance with law but not by the Government Order (See: Hindustan Times and others (supra).

(ii) The authorities shall publish a notice in two leading newspapers, one in vernacular newspaper having wide circulation in the locality, mentioning the house numbers which they intend to demolish. The person who has raised the illegal construction shall be given time to file his objections alongwith the documents to demonstrate that his construction is on his private land and he is owner thereof. If it is found that it is a private property, it shall be acquired in accordance with law and the compensation shall be paid.

(iii) The authorities shall make separate categories of the construction viz. (i) illegal construction on the State land; and (ii) the constructions raised on the private property, which is required for the road widening according to Master Plan. Both the constructions cannot be treated at par as the owners of the private property, whose construction is not illegal but is required for road widening, constitutes a separate class and their case is required to be treated in terms of Article 300A of the Constitution."

(Emphasis supplied)

44. It is important to appreciate that 'road widening' has been consistently held to be a 'public purpose' within the meaning of the Land Acquisition Act. In support, the following judgments of the Supreme Court may be referred to: ***Ambalal Purshottam etc. vs. Ahmedabad Municipal***

Corporation of the City of Ahmedabad & Ors. reported as AIR 1968 SC 1223:

> *"7. The Land Acquisition Act authorises the appropriate Government to notify land for acquisition which is or is likely to be needed for a public purpose: and road widening in a town is undoubtedly a public purpose. ..."*
>
> *xxxxx*
>
> *"9. On a review of these provisions it is clear that the municipality under the Bombay Municipal Boroughs Act, 1925, had the power to acquire land needed for municipal purposes including widening, opening, enlarging or otherwise improving any public street or municipal road. .... For the purpose of widening the street, the municipality had the power under Section 114 to purchase the land, and under Section 52 the municipality could request the local Government to take action for compulsory acquisition of the land and for vesting the same in the municipality. ...."*
>
> (Emphasis supplied)

as also the case of ***Vishakhapatnam Urban Development Authority vs. S.S. Naidu & Ors.*** reported as (2016) 13 SCC 180:

> *"14. The fact remains that the land in question is required for a public purpose i.e. for widening of a road. There is no need to say that under the Act, the State has power to acquire land for a public purpose and widening of a public road is definitely a public purpose for which the land can be acquired."*
>
> (Emphasis supplied)

45. While considering the matter in depth, this court came upon a judgment in W.P. (C) No. 1974/2015 and other connected matters titled ***Shivi Talwar & Ors. vs. Government of National Capital Territory of Delhi & Ors.*** decided on 08.03.2019 reported as MANU/DE/0872/2019, where the Division Bench of our High Court has taken the view that the residents of an *unauthorised colony* do not have *locus standi* to seek declaration in relation to lapsing of a notification under the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013. It is necessary to consider this judgment in the correct perspective. The view taken in that case arises from the conceded position in that case that the land upon which constructions were erected, and which was sought to be acquired, did not belong to the persons claiming relief from the court. The colony in that case constituted encroachment on either public or private land; the persons claiming relief from the court did not have any valid, legal title or interest in the said land; and in fact the issue of regularisation of that colony was pending. The critical difference between the decision of the court in ***Shivi Talwar*** (supra) and the present case therefore is that the colony in the present case stands regularised back in 1984; the petitioners hold title/possessory title, having purchased the subject land by way of sale documents *after the colony already stood regularised;* and also having obtained requisite mutation in municipal records thereafter. The petitioners in the present case are therefore neither encroachers on any public or private land; nor are they persons with no demonstrable right, title or interest in the subject land.

46. The conclusions that emerge from the above discussion are the following :

(a) First and foremost, the subject land concededly belongs to the petitioners. The subject land is not encroached-upon public land but is private land which was transferred to the petitioners, also followed by mutation of the names of two of the petitioners in the records of the Municipal Corporation for purposes of payment of property tax, which tax the said petitioners have been bearing. This position has not been disputed or denied by the respondent. Ergo, this is not a case of rank encroachers laying any false claim to the subject land;

(b) In any case, the issue whether the Municipal Corporation is entitled to take-over the subject land for road widening without acquiring it or paying any compensation, would not turn upon whether the ownership of the land lies with the petitioners or with any other person. What is required to be decided is whether the Municipal Corporation can simply take-over the subject land without acquisition or payment of compensation, whether from the petitioners or from any other person, it being admitted that the subject land does not belong to the Municipal Corporation or to the Government;

(c) The Regularisation Scheme is dated 16.02.1977 ; the Resolution is dated 11.01.1984 ; and documents whereby the petitioners came to hold title/possession of the subject land

are dated between 1992 and 2001. Therefore the parcels of land, of which the subject land is a part, came into the petitioners' hands *much after* the colony had already been approved as a regularised colony by way of the Resolution under the Regularisation Scheme;

(d) The respondent has not been able to show any statutory or regulatory requirement that the road in question must have an RoW of 100 feet, except the administrative decision contained in the Resolution which says :

> *The R.O.W. of Sultanpur Road has been kept as 100'-00" wide affecting some built up houses. The other roads are kept as existing but minimum 5.00 & 3.04 metres as per prescribed standards.*

The fact that the road is a 'street' under section 2(57) over which the public have a right of way and is therefore a 'public street' under section 2(44) does not, *of and by itself*, imply that the public street must necessarily be 100 feet wide. What vests in the Municipal Corporation by law is an existing public street which is 65 feet wide ; and no law, rule or regulation gives to the Municipal Corporation the right to widen this public street by usurping privately-owned land, whether in the name of 'vesting' or in any other name;

(e) A perusal of the clause 12.3(2) of the Master Plan for Delhi, 2021 shows that only the widest type of intra-city road viz. 'arterial roads' are required to be over 30 meters RoW, which is about 100 feet. Nowhere in law or in any building regulation is it provided that the road in question, which is clearly a road within the colony, must have an RoW of 100 feet ; and the decision of the Municipal Corporation that the RoW would be 100 feet was therefore taken without compulsion of law and without any reference to the petitioners;

(f) The drawing-up a lay-out plan for a colony, though the flip side of the same coin as the regularisation of the unauthorised colony, is yet a distinct stage and process. It is the conceded position that the petitioners were neither put to notice nor asked to file objections nor heard in the matter of utilising the subject land for widening of the existing 65 foot road. No draft lay-out plan of the colony was published by the Municipal Corporation ; nor any objections invited to such draft plan from the public. That the road in question must have an RoW of 100 feet in the lay-out plan was decided unilaterally by the Municipal Corporation/Government ;

(g) While it may be undisputed that the existing 65 foot road, being a 'street' that was already in existence in the unauthorised colony was being used regularly and

indiscriminately by the public at large and was therefore a 'public street' which vests in the Municipal Corporation under section 298 the DMC Act, whether the *proposed* 100 foot road, *before it is widened,* already vests in the Municipal Corporation is the question. If that be so, then upon the mere *intention* of a municipality to widen a public street, the land *within the contemplation* of the road widening exercise, would automatically vest in the corporation without anything further. If that be the legal position, then road widening would be an exercise in utter and complete unilateralism, which would not require even informing private parties which own land that may be required for road widening, much less would it be necessary to pay any compensation. Such position, in my view, would be anathema to all tenets of the rule of law, not to mention basic notions of justice and fairness. Road widening cannot be an excuse for summary usurpation of private land by a State entity ;

(h) Under section 298 a 'public street' vests in the Municipal Corporation but *only after* it is validly and lawfully a public street. The legal device of 'vesting' of the subject land in the Municipal Corporation cannot kick-in before it becomes part of a public street in the first place. For a widened road to vest in the Municipal Corporation, it must first be *lawfully* widened;

(i) The proposition that *once a street is declared* to be a 'public street' it shall vest in the corporation (section 316) does not imply that land for building or widening a public street shall automatically vest in the corporation without need for acquiring it (section 304). It is not the law that whenever land is required for building or widening a public street, it is not necessary to acquire such land. Road building and widening does *not* enjoy blanket exemption from land acquisition law ;

(j) The Municipal Corporation is attempting to put the cart before the horse, inasmuch as it is proceeding on the presumptive basis that the 'public street' in question is 100 feet wide; and being a 'public street' automatically vests in the Municipal Corporation by operation of section 298 of the DMC Act. However such argument is unacceptable since to widen the street from 65 feet to 100 feet RoW, the Municipal Corporation must first *lawfully take-over* the land required to widen the public street and only thereafter will the widened public street vest in the Municipal Corporation in its entirety;

(k) There is no *express exclusion* in the Regularisation Scheme or in the Resolution to the effect that land required for building or widening a road will *simply vest* in the Municipal Corporation without necessity of acquiring it or paying any compensation to the owners;

(l) The respondent has not filed on record decision dated 01.02.1978 of the implementing body under the

Chairmanship of the Lieutenant Governor referred to in the Regularisation Scheme. It would appear that this decision is therefore not central to the respondent's case. In any case, decision dated 01.02.1978 aforesaid which speaks of acquisition of land for community facilities *only* must be construed so as to be in conformity with and not *de hors* the law; and regardless of any justification to the contrary contained in such decision, any interpretation thereof that is in violation of constitutional principles (Article 300A), statutory provisions (section 304(a)) and/or of basic notions of justice and fairness cannot be accepted. The legal construct presented by the respondent is in fact squarely in the teeth of section 304(a) of the DMC Act which contemplates acquisition of land inter-alia for :

> *" ... the purpose of opening, widening, extending or otherwise improving any public street or for making any new public street"* .
>
> (Emphasis supplied)

(m) For abundant clarity, the issue of any portion of the petitioners' land vesting in the Municipal Corporation has nothing to do with the petitioners having carried-out unauthorised construction on such land. Unauthorised construction, if any, on the petitioners' land would obviously have to be addressed by either charging compounding fee to compound permissible deviations; and failing that, by directing the petitioners to demolish the unauthorised

construction or by the Municipal Corporation undertaking such demolition itself. Land belonging to the petitioners cannot vest in the Municipal Corporation *merely* on account of the petitioners having undertaken unauthorised construction, if any, thereupon;

(n) If there is any conflict between the provisions of the Regularisation Scheme and the DMC Act, the provisions of the scheme must yield and be read so as to conform to the statute ; and to the extent there is irreconcilable discordance between any terms of the Regularisation Scheme and the DMC Act, such terms of the scheme would be invalid. This would apply equally to the Resolution, inasmuch as if any provision of the Resolution is contrary to the Regularisation Scheme or to the DMC Act, ultimately the provisions of the DMC Act would prevail;

(o) To say in the Regularisation Scheme that *structures* will be regularised after fitting them in a lay-out plan and after keeping clear space for roads and other community facilities is not the same as saying that in order to regularise structures, the land upon which such structures stand, shall vest in the Municipal Corporation without acquisition and without payment of any compensation to the owners;

(p) Once the Regularisation Scheme itself provides that land required for community facilities shall be acquired, then nothing warrants the inference that there is no need for

acquiring land required for building or widening roads. The distinction sought to be drawn by the respondent between 'community facility' and 'road' *in this context* is specious and cannot be countenanced in law. In my view, even if the term 'community facility' as defined by illustration does not expressly include 'road', the requirement of acquisition of land would nevertheless apply equally whether land is required for a community facility or for building/widening a road. It must be borne in mind that the Regularisation Scheme is a policy document and not a statutory instrument. The Regularisation Scheme must therefore *not* be interpreted literally or pedantically but in a practical, purposive, just and fair manner so as to be *in consonance with* the statute, *not as* a statute;

(q) Keeping the issue of regularisation of an unauthorised colony aside, it is well accepted, that whenever land is required for building or widening a road, such land *is* acquired by the Government. Regularisation of the colony must be seen in its true perspective, namely that regularisation has been done as a *matter of Government policy* by way of amnesty and *not as a special favour* to any individual petitioner, against which the Municipal Corporation may extract a special price in the form of divesting the subject land from the petitioners. To say, as the respondent contends, that since the colony was at one time an unauthorised colony that gives to the respondent

the right to take-over land for road widening free-of-cost is, to my mind, wholly unacceptable. I say so for the following reason: unless specifically prohibited by law, land can be bought and sold whether comprised in a forest, on a mountain, in a city or a village. A 'colony' is a concept that refers to urbanisation of land whereby parcels of land are organised in an ordered development, with certain civic amenities such as connecting roads, facilities for electricity and water, provision of parks and recreational spaces, green belt etc., under some system of municipal governance. Every colony would comprise land, but every parcel of land is not necessarily situate in a colony. A person may enjoy rights to land without such land being part of a colony. A colony may be authorised or unauthorised, which would decide the *use* to which the land in a colony may legally be put. But *ownership* of the land comprised in a colony would not depend on whether the colony is authorised or unauthorised. An owner cannot be divested of title merely because the land is situate in an unauthorised colony. The Municipal Corporation cannot usurp land merely because it is situate in an unauthorised colony;

(r) The provision of the Regularisation Scheme that says that houses constructed on plots *adjusted in the regularisation plan* shall only be considered for regularisation provided the construction existed before 16.02.1977, again, would have no

relevance or application to the issue at hand, since whether a house is regularised, or the whole or some part of it is to be demolished to bring it in conformity with applicable building bye-laws, does not lend itself to the inference that land beneath an unauthorised part of a house will automatically vest in the Municipal Corporation for road building or road widening. That in any case is not the respondent's argument. The respondent's case is simply this : since the subject land is required for road widening, it vests automatically in the Municipal Corporation, without need for acquisition or payment of compensation to the petitioners;

(s) If the fact that the subject land was validly purchased *after* the colony had already been regularised *makes no difference* to implementation of the Regularisation Scheme and the Resolution, then the respondent must answer if it is the Municipal Corporation's contention that it could *at any future time*, even decades later, simply helps itself to land owned by a private party for road building or widening on the ground that the colony was unauthorized *to begin with*. If we are to be governed by the rule of law and if Article 300A is to have any meaning, the answer to this question would clearly be in the negative;

(t) In so far as the question of whether the petitioners get any better right than the original owners of the subject land, since the petitioners purchased the subject land *after* the colony

was regularised, the answer is contained in the question itself. The rights, titles and interests get transferred to the petitioners as subsequent owners *subject to* all encumbrances and liens that existed upon the title. So merely because the petitioners became owners of the subject land subsequent to regularisation of the colony does not confer upon them any extra right or title. However, since there is nothing to show that the colony was regularised upon the pre-condition that the road would be 100 foot wide, this question is irrelevant and does not change the decision in any manner;

(u) As regards the respondent's belated contention contained in short affidavit dated 04.07.2018 that the petitioners are not the recorded owners as per their Revenue Records, such contention is as vague and ambiguous as it is irrelevant, since the respondent does not say that someone else, and if so who, is the recorded owner. And even if someone else is the recorded owner, that would only mean that the respondent is liable to acquire the subject land from such other owner ; it does not mean that the land would vest in the respondent. In contrast to such belated and ambiguous allegation of the respondent, the petitioners rely upon documents of sale, which evidence a chain of title ; apart from mutations in the records of the Municipal Corporation for purposes of payment of property tax, which makes it clear that at the least the subject land is not Government property.

50. The respondents have accordingly failed to cite any provision of law or any precedent to bear-out the contention that the petitioners can be deprived of the subject land without the Municipal Corporation acquiring it, either by agreement or under the Land Acquisition Act (through the Delhi Government) and after payment of requisite compensation.

51. As a sequitur to the above inferences and conclusions, the present petitions succeed.

52. In view of the foregoing, a mandamus is issued restraining the respondent/North Delhi Municipal Corporation from disturbing the peaceful, physical possession of the petitioners in W.P.(C) No. 8859/2011 and W.P. (C) No. 8867/2011 over their respective parcels of the subject land; and directing the said respondent to hand-over peaceful, vacant, physical possession of the parcel of the subject land that belongs to the petitioner in of W.P.(C) No. 1601/2012 within two weeks of the date of this judgment. Since, according to the petitioner in W.P.(C) No. 1601/2012, the existing construction on his parcel of land was demolished by the Municipal Corporation, the said petitioner is entitled to construct/re-construct on the land, subject of course to complying with the building bye-laws, rules and regulations as may be applicable to such construction.

53. The present petitions are allowed in the above terms ; without however any order as to costs.

54. Pending applications, if any, stand disposed of.

ANUP JAIRAM BHAMBHANI
(JUDGE)

18th September 2019/j/*uj*/Ne