
D. Anki Reddy Vs State of Andhra Pradesh

Writ Petition No. 28765 of 2013

Court: Andhra Pradesh High Court

Date of Decision: Oct. 7, 2014

Acts Referred:

Constitution of India, 1950 – Article 14, 21, 300A

Citation: (2015) 1 ALD 720 : (2015) 5 ALT 136

Hon'ble Judges: M.S. Ramachandra Rao, J

Bench: Single Bench

Advocate: K.S. Murthy, Advocate for the Appellant; Tuhin Kumar, Standing Counsel, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M.S. Ramachandra Rao, J.

Heard Sri K.S. Murthy, learned counsel for the petitioners, learned Government Pleader for Municipal

Administration and Urban Development, Government of Andhra Pradesh, Hyderabad, appearing for 1st respondent and Sri Tuhin Kumar, learned

Standing Counsel for Municipal Corporation, Guntur, appearing for 2nd respondent.

2. This Writ Petition is filed by the petitioners seeking a Writ of Mandamus to declare the Endorsement bearing B.A. No. 340/13/G3 dt. 12-08-

2013 of 2nd respondent refusing to grant building permission to the petitioners in respect of property admeasuring 875 sq. yds. situated in Sy. No.

673 at Old Ward No. 16 (corresponding to new Ward No. 22), Block No. 11 at Sampath Nagar, Guntur (for short the subject land).

3. The petitioners purchased the above property from Smt. N. Sarojini under registered sale deed being document No. 7960 dt. 09-07-2012 for

valuable consideration. She had obtained the property as a legal heir of her father Abburi Srimannarayana Rao (for short ASR) who had

purchased the same under a sale deed dt. 04-07-1957 from one Komanduri Sampath Kumar.

4. This land forms part of T.S. No. 660,673 and part of 661. In 1961 a Lay out was approved at the instance of the said Sampath Kumar with

certain conditions that reserved sites should be handed over to the erstwhile Guntur Municipality. But he did not do it. He demanded that the

Guntur Municipality pay him compensation for it or de-reserve it or delete it from reservation. He contended that the A.P. (Andhra Area) District

Municipalities Act, 1920 which was in force till 1957 contained no provisions for such reservation. So a resolution was passed by the Guntur

Municipal Council no. 148 dt. 5.6.1968 stating that soil was treacherous and loose and not fit for any building purpose or public use and resolving

to request the Director of Town planning to delete the reservations made in the lay out proposals to avoid litigation.

5. Some of the residents of Sampath Nagar where the above property is located filed O.S. No. 155 of 1969 on the file of the District Munsif

Court, Guntur for declaration that the resolution No. 148 dt. 05-06-1968 passed by the then Guntur Municipality was illegal, void and without

jurisdiction and for consequential injunction restraining Sampath Kumar, the original owner, from alienating the property covered under the said

resolution in favour of others. In that suit, the Guntur Municipality, the predecessor of 2nd respondent was arrayed as a party. The said suit was

dismissed on 03-10-1972. The civil court held that the Guntur Municipalities resolution was valid as the A.P. (Andhra Area) District Municipalities

Act, 1920 contained no provision for reservation of sites for school or park or public purpose and the Municipality had no financial capacity to

purchase the site. It also held that there was no valid gift by Sampath Kumar to Guntur Municipality and possession was also not delivered to it. It

further held that there was no sanction for the lay out even by 13.6.1963 as required roads were not formed. As a result the decision of the Guntur

Municipality that the subject land is de-reserved was upheld and it thus ceased to be part of the lay out.

6. In 2002, ASR started construction of a small house in the said site but 2nd respondent demolished the brick wall erected by him on the ground

that the property purchased by him was reserved for a public purpose according to the layout plan of Sampath Nagar in LP No. 18/1960.

7. ASR made a representation to the Deputy City Planner, Guntur on 19-06-2003 stating that his son-in-law intended to construct a house and

sought permission for building construction but there was no response to the same. Later ASR made another application to 2nd respondent stating

that he himself wanted to construct and paid a challan on 27-09-2004 for building permission but the same was not received and he was informed

that no sanction would be given in respect of the said land.

8. Since 2nd respondent was not processing the building application of ASR, he filed W.P. No. 362 of 2005 seeking a writ of Mandamus to

declare the action of 2nd respondent in not receiving his building application dt. 05-11-2004 and failing to process the same as illegal, arbitrary,

unconstitutional and contrary to the judgment dt. 03-10-1972 in O.S. No. 155 of 1969 on the file of the District Munsif, Guntur. Along with the

said Writ Petition, he filed W.P.M.P. No. 505 of 2005 seeking direction to 2nd respondent to receive the building application made by him and

process the same as per the judgment in O.S. No. 155 of 1969 pending disposal of the writ petition. An interim order was granted in the said

W.P.M.P. Subsequently ASR died and his daughter Smt. N. Sarojini was impleaded in the writ petition vide W.P.M.P. No. 23079 of 2005.

9. The said Writ Petition was allowed on 31-03-2006. This Court held that 1st respondent Corporation has passed a resolution dt. 05-06-1968

to delete reservation made in the layout to save all further litigation; that the said resolution was questioned in O.S. No. 155 of 1969 by the

residents of the locality; the said suit was dismissed on 03-10-1972; and therefore 2nd respondent was not correct in contending that the

petitioners application for building permission cannot be considered since the property of the petitioner was earmarked in the layout for common

amenities/open space. Liberty was given to Smt. N. Sarojini to submit fresh application seeking permission to put up constructions on the site in

question in accordance with the compliance of the provisions of law in force by paying necessary fee, and directing 2nd respondent to consider her

application as expeditiously as possible and pass appropriate orders.

10. This judgment was challenged in W.A. No. 325 of 2007 by 2nd respondent. By order dt. 10-04-2008, the said Writ Appeal was dismissed.

In the Writ Appeal, it was contended by 2nd respondent that some third party had shown the land belonging to ASR as his land and got layout

approved and therefore, the petitioners application for building permission cannot be considered. The Division Bench held that the land belonging

to ASR could not have been shown by someone else as his land and the Corporation had committed a mistake in accepting the land of ASR as

someone else land. It held that action, in accordance with law, can be taken against the person who had wrongly shown the land of ASR as his/her

land.

11. This was questioned by 2nd respondent in S.L.P. No. 18460 of 2008 in the Supreme Court. The said S.L.P. was also dismissed on 11-04-

2008.

12. In the meantime, Smt. N. Sarojini had filed Contempt Case No. 179 of 2007 before this Court for willfully disobeying the order dt. 31-03-

2006 in W.P. No. 362 of 2005 after dismissal of the S.L.P. by the Supreme Court. In the said Contempt Case, the Municipal Commissioner of

2nd respondent Corporation was given one more chance to comply with the orders of this Court in W.P. No. 362 of 2005 dt. 31-03-2006. In

view of the said order of the Court, the Commissioner-2nd respondent Corporation issued an Endorsement dt. 16-07-2012 approving the building

permission made by ASR/Smt. N. Sarojini. In that view of the matter, the contempt case was dismissed on 27-07-2012.

13. In the meantime, the petitioners herein purchased this property under registered sale deed dt. 09-07-2012 being document No. 7960/12 from

Smt. N. Sarojini, daughter of ASR.

14. After purchase of the property, mutation was also effected by 2nd respondent in favour of the petitioners vide Endorsement TTP No.

1967/2012/A-19 dt. 15-02-2013.

15. Thereafter, the petitioners made an application for building permission to 2nd respondent on 05-03-2013. Petitioners also executed a

mortgage deed creating mortgage in respect of 10% of the built up area of site on 06-03-2013 in favour of 2nd respondent.

16. When the application for building permission made by the petitioners was not being considered, they filed W.P. No. 17717 of 2013

complaining that respondent Nos. 2 and 3 were not processing the petitioners application for building permission.

17. On 21-06-2013 in W.P.M.P. No. 21543 of 2013 in W.P. No. 17717 of 2013, an interim direction was granted to the petitioners directing

2nd respondent to process building permission application submitted by the petitioners in accordance with law. When the said direction was not

complied with, the petitioners filed C.C. No. 1535 of 2013 in this Court. Only thereafter, the impugned order dt. 12-08-2013 was placed before

the Court stating that petitioners application for building permission was rejected on the ground that the land purchased by the petitioners was an

open space, thus reiterating the stand of 2nd respondent which had been previously rejected by this Court in W.P. No. 362 of 2005, W.A. No.

325 of 2007 and S.L.P. No. 18460 of 2008.

18. Questioning the same, the present Writ Petition is filed.

19. The petitioners submit that the said Endorsement dt. 12-08-2013 of 2nd respondent is vitiated by non-application of mind and is illegal,

arbitrary and violative of Articles 14, 21 and 300A of the Constitution of India. They assert that once ASR has been granted sanction on 16-07-

2012 by 2nd respondent for construction of a house and the same property was sold by his daughter to the petitioners, the petitioners would get all

the rights which ASR had in the said property including the right to construct therein and that the benefit obtained by Smt. N. Sarojini, the daughter

of ASR, by virtue of the orders passed by this Court in W.P. No. 362 of 2005 which was confirmed in W.A. No. 327 of 2007 and also S.L.P.

No. 18460 of 2008, would enure to the petitioners. It is further contended that the reason given by 2nd respondent to reject the petitioners

building application that the property of the petitioners is earmarked as reserved for open space is also untenable because in the civil suit O.S. No.

155 of 1969, no such plea was raised by the predecessor of 2nd respondent i.e. Guntur Municipality and it had specifically taken a stand that the

property was not reserved and that the A.P. (Andhra Area) District Municipalities Act, 1920 did not contain any provision for reservation of open

spaces in a layout and the layout rules, which came into force only subsequently and would not apply to petitioners. The petitioners further contend

that they are entitled to make constructions on the property purchased by them and this property is not forming part of Sampath Nagar layout and

it is distinct and independent property as already held by this Court in W.P. No. 362 of 2005 and that the respondents cannot refuse sanction on

the ground that property is shown as open space in the said layout.

20. The 2nd respondent has filed counter affidavit setting out most of the facts referred to above and admitting the orders passed in W.A. No. 325

of 2007 (confirming the orders in W.P. No. 362 of 2005) and dismissal of S.L.P. No. 18460 of 2008. But it contends that the directions obtained

by the petitioners vendor ASR and his daughter Smt. N. Sarojini would not apply to the petitioners automatically and that the approval of the

building plan of ASR or Smt. N. Sarojini was done only as a one time measure and cannot be treated as a precedent. Reference is also made to

the decision of the Supreme Court in Bangalore Medical Trust Vs. B.S. Muddappa and others and Machavarapu Srinivasa Rao and another Vs.

Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority and others. It is the contention of 2nd respondent that the Supreme Court

had opined that the any building or construction in open space necessarily affects the health, sanitation and environment and adversely affects the

residents of the locality. The 2nd respondent also placed reliance on G.O. Ms. No. 72 MA & amp; UA dt. 20-02-2002 directing the Municipal

Corporations in the State not to propose utilization of reserved open places in a layout for a purpose other than the intended original use such as a

park, play-ground, community structure, urban forestry and similar eco-conservation program and that reserved open places shall be used as long

spaces of the layout only.

21. Reply affidavit was filed by the petitioners to the counter affidavit by the 2nd respondent. Petitioners contend that when property was

purchased by ASR, there was no provision for reservation under AP (Andhra Area) District Municipalities Act, 1920; that the then Guntur

Municipality has passed resolution dt. 05-06-1968 de-notifying the subject land as an open space; and had taken a stand in O.S. No. 155 of

1969 before the District Munsif, Guntur (filed by the residents of the locality to declare the said resolution as illegal) that its resolution is valid, and

that the said suit was dismissed. Reference is also made to the orders in W.P. No. 362 of 2005, W.A. No. 325 of 2007 and S.L.P. No. 18460 of

2008. Petitioners contend that the permission which was granted ultimately on 16-07-2012 to Smt. N. Sarojini, daughter of ASR, permitting her to

make construction is qua the property and not qua the individual. The petitioners also denied the allegation of 2nd respondent that the necessary

charges were not paid by them and pointed out that on four previous occasions charges for the same purpose were paid [(i) by way of challan dt.

01-11-2004 to the 2nd respondent; (ii) Rs. 7770/- was paid to the Vijayawada, Guntur and Tenali Urban Development Authority on 01-02-

2005; (iii) on 19-09-2006 fee was paid by challan in 2009; and (iv) again by way of challan on 05-03-2013]. It is specifically asserted that the

property of the petitioners is not a reserved space and it was always property belonging to ASR and that in W.P. No. 362 of 2005, this Court has

rejected the objections raised by 2nd respondent that the site in question was earmarked as reserved open space. Copy of the order dt. 02-08-

2012 in C.C. No. 179 of 2007 has also been filed wherein this Court reiterated its view (as held in W.P. No. 362 of 2005) that the ground for

refusal by 2nd respondent that the petitioners property falls in reserved layout space in LP. No. 18 of 1960 at Sampath Nagar, is rejected in the

Writ Petition and that unmindful of the finding in the Writ Petition as confirmed in the Writ Appeal, 2nd respondent had issued a proceeding

rejecting the application of ASR on the same ground vide Endorsement dt. 29-09-2006.

22. The 3rd respondent has filed a counter affidavit supporting the stand taken by 1st respondent that the land of the petitioners is shown as an

open space in LP No. 18 of 1960 and is reserved for a park and that 2nd respondent has rightly rejected the proposal of the petitioners for

making construction therein.

23. A reply affidavit is filed to the counter affidavit filed by 3rd respondent. Petitioners contended that they have purchased the property from

ASR, who had previously purchased the same under registered sale deed dt. 04-07-1957; that by the time the property was purchased in 1957,

there is no layout; that layout No. 41/58 and LP No. 18/60 came into existence only subsequently; and that 3rd respondent is not correct in taking

the stand that the petitioners property is shown as open space in LP 41/58 and it could not have been sold. The petitioners called upon 3rd

respondent to produce the layout register relating to layout No. 41/58 in which according to him, the property of the petitioners is earmarked as a

park. No such layout register has been placed by 3rd respondent.

24. The learned counsel for the petitioners and the learned Standing Counsel for 2nd respondent have reiterated the stands of the respective

parties.

25. Therefore, the point for consideration is whether the impugned Endorsement dt. 12-08-2013 issued by 2nd respondent is valid in law?

Point:-

26. It is not in dispute that ASR had approached this Court in W.P. No. 362 of 2005 when his application for granting of building permission dt.

05-11-2004 was not received by 2nd respondent. That Writ Petition was opposed by 2nd respondent taking the plea that as per approved layout

plan No. 41/58, the subject property was earmarked as a reserved open space and that the entire plan came to be revised in LP No. 18/60. This

Court allowed the writ petition, and declared:

9. The objection of the respondents seems to be that the site claimed by the petitioners is earmarked as reserved open spaces as per Lay Out No.

18/60. The 1st petitioner purchased house site admeasuring 875 square yards on 4-7-1957, by then the provisions of Andhra Pradesh (Andhra

Area) District Municipalities Act, 1920 were in force, where under there is no provision of reserving certain areas for public purpose. The lay out

plan came to be approved initially in 1961, as noticed in the judgment dated 3-10-1972 passed in O.S. No. 155 of 1969 on the file of the District

Munsiff, Guntur. The Municipal Corporation is a party to the said suit, had filed a written statement stating that the lay out for T.S. No. 660, 673

and part of 661 was approved in 1961 with certain conditions that the reserved site therein has to be handed over to the Municipality by executing

a proper registered gift deed by Komanduri Sampath Kumar.

10. It appears the 1st respondent-Municipal Corporation passed resolution on 5-6-1968 to delete the reservation made in the layout to save all

further litigation. The said resolution came to be questioned by some of the residents of the locality and said suit ended in dismissal upholding the

reservation. The judgment passed in O.S. No. 155 of 1969 has been placed before me along with the material papers. When such is the situation,

the contention of the 1st respondent-Municipal Corporation that the application filed by the petitioner for building permission cannot be considered

on the ground that the area is earmarked for common amenities. The only reasonable conclusion is that the objections raised by the respondents

that the site in question is earmarked, as reserved open place is unsustainable.

27. Thus this Court has categorically held that 2nd respondents contention that ASRs application for building permission cannot be considered on

the ground that the property belonging to him was earmarked for common amenities/reserved open space, is unsustainable.

28. Admittedly the order of the learned Single Judge was confirmed in W.A. No. 325 of 2007 by a Division Bench of this Court. The Division

Bench categorically rejected the contention of 2nd respondent and held that somebody else cannot show the land belonging to ASR as his land

and get his lay out approved and if 2nd respondent Corporation has considered the petitioners land as someones else land, it had done a mistake

and that action in accordance with law should be taken against person who had shown the land of ASR as his/her land.

29. Although this was questioned in S.L.P. No. 18460 of 2008 by the 2nd respondent, the said S.L.P. was also dismissed on 11-08-2008.

30. When this order was not implemented, C.C. No. 179 of 2007 was filed by the daughter of ASR. When this contempt case is pending, an

Endorsement was given on 29-09-2006 by 2nd respondent again taking the plea that the property of ASR was reserved for open space in LP No.

41/58-revised layout LP No. 18/60.

31. On 02-08-2010, in the said C.C. No. 179 of 2007, this Court disproved the attitude of 2nd respondent and observed that unmindful of

observations made in W.P. No. 362 of 2005 as confirmed in Writ Appeal, 2nd respondent has proceeded to reject the application of ASR on the

selfsame ground and one final opportunity was given to the Commissioner of 2nd respondent to pass orders. This Court specifically observed that

the contention that property in question falls in the reserved layout space is not available to 2nd respondent Corporation. It was thereafter that

building permission was granted to Smt. N. Sarojini, daughter of ASR vide BA No. 27/2010/G4 on 16-07-2012 by 2nd respondent.

32. This very same land was purchased by the petitioners under registered sale deed 09-07-2012. Merely because the property has been

transferred to the petitioners, it is not open to 2nd respondent to refuse to grant building permission to the petitioners particularly when the 2nd

respondent had granted such a permission on 16-07-2012 to Smt. N. Sarojini.

33. Therefore, it is not open to 2nd respondent to reject the application of the petitioners for building permission vide impugned Endorsement dt.

12-08-2013 reiterating its untenable stand that the land in question is earmarked as an open space in LP No. 18/60. Such a plea is not available to

the respondents at all in view of judgment in W.P. No. 362 of 2005 wherein this Court has categorically held that the land in question cannot be

said to be reserved open space and the said judgment was confirmed in W.A. No. 325 of 1997 and in S.L.P. No. 18460 of 2008.

34. The findings in W.P. No. 362 of 2005 and in W.A. No. 325 of 2007 are findings qua the subject property and not qua ASR or his daughter

N. Sarojini. In this view of the matter, it is not open to respondent Nos. 2 and 3 to take a stand that the decisions in the W.P. No. 362 of 2005

and W.A. No. 325 of 2007 would not apply to the petitioners. Since the petitioners are claiming through Smt. N. Sarojini who inherited the

property from her father ASR, the principle of res judicata would also apply and petitioners are entitled to the benefit of the orders in W.P. No.

362 of 2005 and W.A. No. 325 of 2007 and the respondents are bound to treat the property purchased by the petitioners from Smt. N. Sarojini

as not reserved for open space, and as their private property, in which they are entitled to make construction in accordance with law.

35. The reliance placed on the judgments of the Supreme Court in Bangalore Medical Trust Vs. B.S. Muddappa and others, and Machavarapu

Srinivasa Rao and Another Vs. The Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority and Others, by respondent no. 2 is

totally misplaced since this Court in W.P. 362 of 2005 has already held that the subject land (purchased by the petitioners from Smt. N. Sarojini,

daughter of ASR) is not land reserved for open space/park in L.P. 41/1958 or L.P. No. 18/1960. I am also of the opinion that G.O. Ms. No. 72

dt. 20-02-2002 being relied upon by the respondents also has no application for the same reason.

36. I also find that the stand taken by 3rd respondent is equally untenable and the basis of his contention that the subject land falls in the layout

open space in LP No. 41/58 cannot be accepted for the reason that the purchase of the property by ASR was in the year 1957 under the

registered sale deed dt. 04-07-1957 and the existing law at that time i.e. Andhra Pradesh (Andhra Area) District Municipalities Act, 1920

contained no provision of reservation for any area for public purpose.

37. Moreover, the 2nd respondent, being a successor to the erstwhile Guntur Municipality, is also bound by the judgment dt. 03-10-1972 in O.S.

No. 155 of 1969 on the file of the District Munsif, Guntur. In that case the Said Municipality had taken a stand that the subject land was de-

reserved by a resolution No. no. 148 dt. 5.6.1968 of the Guntur Municipal council since it had no financial resources to buy it and to avoid further

litigation, and the said resolution was upheld by the said Court. Therefore, it is not open to 2nd respondent to take a contrary stand and insist that

the land is still reserved for open space in the lay out.

38. Its stand that this court in its order dt. 31.3.2006 in CC No. 179/2007 had observed that permission granted to petitioner cannot be taken as

precedent, in case of any other person approaching the Municipal Corporation for approval of the building permission, and this observation also

comes in its way to grant permission to petitioners, is perverse. These observations cannot be construed as applicable to petitioners who are

seeking to make construction in land which has been found to be not reserved for open space in the lay out by this Court in W.P. No. 362 of 2005

and would apply only to persons who wish to make constructions in other land reserved for open spaces in lay outs.

39. In Collector (D.M.) v. Raja Ram Jaiswal, the Supreme Court had held:

Where power is conferred to achieve a purpose it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to

effectuate the purpose. And in this context in good faith means for legitimate reasons. Where power is exercised for extraneous or irrelevant

considerations or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of power is vitiated.

40. In State of NCT of Delhi v. Sanjeev, the Supreme Court explained:

Before summarising the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in Associated

Provincial Picture Houses Ltd. v. Wednesbury Corpn. (KB at p. 229: All ER pp. 682 H-683 A). It reads as follows:

It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to

exercise of statutory discretions often use the word unreasonable in a rather comprehensive sense. It has frequently been used and is frequently

used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct

himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration

matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting

unreasonably. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority.

In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in

fact, all these things run into one another.

Lord Greene also observed (KB p. 230: All ER p. 683 F-G)

it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what

the court considers unreasonable. The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another.

(emphasis supplied)

Therefore, to arrive at a decision on reasonableness the court has to find out if the administrator has left out relevant factors or taken into account

irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could

have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices

open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view.

41. Judged by the above standards, in my considered opinion, for the reasons stated supra, the decision of the 2nd respondent in refusing

permission to petitioners to construct in the subject land is vitiated by arbitrariness and is unreasonable. The 2nd respondent, on irrelevant

considerations, i.e. that petitioners are different from Smt. N. Sarojini, that land is reserved for open space in lay out, has passed the impugned

order.

42. Moreover, the duty of the respondents to respect this Courts orders in W.P. No. 362 of 2005 is paramount. The following observations of the

Supreme Court, in Daroga Singh v. B.K. Pandey, though in the context of Contempt jurisdiction, need to be remembered:

33. For the survival of the rule of law the orders of the courts have to be obeyed and continue to be obeyed unless overturned, modified or stayed

by the appellate or revisional courts. The court does not have any agency of its own to enforce its orders. The executive authority of the State has

to come to the aid of the party seeking implementation of the court orders. The might of the State must stand behind the court orders for the

survival of the rule of the court in the country. Incidents which undermine the dignity of the courts should be condemned and dealt with swiftly. If

the judiciary has to perform its duties and functions in a fair and free manner, the dignity and the authority of the courts has to be respected and

maintained at all stages and by all concerned failing which the very constitutional scheme and public faith in the judiciary runs the risk of being lost.

43. I am of the opinion that the adamant and cantankerous attitude adopted by 2nd respondent practically amounts to open defiance/contempt of

this Courts earlier orders and deserves to be strongly deprecated. Rule of Law depends on the obedience by the public officials of Court orders

and repeated disobedience of Court orders should be visited with punitive costs to discourage such behaviour.

44. In this view of the matter, the Writ Petition is allowed and a Writ of Mandamus is issued declaring Endorsement bearing PA No. 340/13/G3

dt. 12-08-2013 of 2nd respondent as arbitrary, illegal, violative of Articles 14 and 300A of the Constitution of India and a direction is given to the

respondents to pass orders on the application bearing BA/340/13/G3 dt. 05-03-2013 made by the petitioners for grant of permission for

construction of a building in the subject property without treating it as reserved space/open place in LP No. 41/58 or LP No. 18/60, in

accordance with law within a period of four weeks from today. The 2nd respondent shall also pay costs of Rs. 20,000/- (Rupees Twenty

thousand only) to the petitioners for the vexatious attitude adopted by him, within a period of three weeks from the date of receipt of a copy of this

order.

45. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.