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WP-3463-2018

4. Mr. Kale, learned counsel for petitioners further submits that when it was noticed by the office of Town Planning Department of the State Government and the District Collector about the illegal sanction of the lay out, the enquiry was directed by the Collector and in that enquiry it was revealed that all these lay outs were sanctioned without permission of the authority and without showing open space. The petitioners have received various communications under the Right to Information, which shows that the act done by the owners and the Municipal Council in sanctioning the lay out is in violation of the provisions of law, but no action is taken. When all the attempts failed to get the property released from the reservation, the three owners issued notices under Section 127 of the M.R.T.P. Act. Thereafter, property was sold by Mr. Chandrakant Rathi, Mr. Dilip Kolhe and Mr. Kabra by registered sale deed dated 26.07.2016 to Mr. Rajesh Doshi, Kamchandra Soni and Hemant Depura and after purchase of the said plot they filed a writ petition bearing Writ Petition No.9685 of 2016 for release of the said land from reservation and the said writ petition is allowed. After decision of the writ petition, said property was again sold by them to the present respondent nos. 6 and 7. Infact, it is not considered that the property purchased by these respondents is a part of Gut No.478 and no legal lay out is sanctioned for the said area and without

considering the record they have purchased the property. The entire record clearly reveals that there is fraud played on the residents of the said area as well as Government agencies. The N.A. permission granted to this area is conditional one. The said conditions are flouted. The land is situated in the residential area and the permission is granted by the Authorities for commercial activities which is not permissible otherwise also in view of the provisions of Section 127 of the M.R.T.P. Act. The learned counsel submits that as per Sections 21 and 22 of the M.R.T.P. Act planning is to be made by the Planning Authority and the State Government has to sanction the development plan. The Planning Authority and the State Government are under obligation to see that all public amenities should be provided in the said plan and reservations are separately carved out under Section 22(C) of the M.R.T.P. Act.

5. The learned counsel further submits that the persons who have purchased the disputed property from the original owner are closely associated with the Municipal Corporation. Mr. Ramchandra Soni is one of the purchaser. His son is co-opt member of the Law Committee in the Municipal Corporation, Jalgaon. Since he was aware that purchase notice is received to the Corporation, therefore, they have purchased the property. Thereafter, the property was sold to present respondent nos.6 and 7. Out of that



respondent no.6 Jagannath is Ex. Town Planning Officer serving in Town Planning Office at Jalgaon and Kishor Mahajan is his son. The persons dealing the property are closely associated to the Municipal Corporation and the writ property is not the only property. There are other properties purchased by the persons who are closely associated with Dheeraj Soni. The complaint was filed by one such citizen. Perusal of the complaint reveals that there are serious allegations made against the persons who are involved in the land scam. The Government has taken serious cognizance of the same and has initiated enquiry thereby directing the Commissioner to take appropriate action. The Corporation could have awarded TDR, as is done in other matters, but in the present case nothing of that sort is done. The Corporation in some of the matters has shown their inability to purchase the land by acquisition. In some cases they have taken a stand that the land is required and acquisition proceeding should be initiated. In some cases they have offered the TDR. The Corporation is adopting double standards. Even enquiry is initiated on the basis of complaint of one Akshay Biyani and Atul Mundada. Pursuant to the same police machinery and Government has taken cognizance of the illegalities. However, said Dheeraj Soni has written a letter to the Government and the investigating machinery that they should not conduct any enquiry in the matter. The said

letters are given by Mr. Dheeraj Soni without any authority. Though, the police machinery has intimated to the Corporation about the complaint against Mr. Dheeraj Soni and the serious nature of the complaint, no cognizance has been taken as yet. The appointment of Mr. Dheeraj Soni as a member of Law Committee is in gross violation of Section 31 of the Maharashtra Municipal Corporation Act, 1949. He is neither a law graduate nor a corporator, but he is a businessman and a close relative of the mayor. Illegal activities are being done by Mr. Dheeraj Soni and the corporator. The learned counsel submits that, even, as per the Development Control Rules amended in 2013, the Municipal Corporation can consider the reservation in the context of FSI, TDR to be made applicable to the property. The learned counsel submits that the respondents be restrained from constructing over writ property and Government be directed to place reservation on plot nos.7 to 10. The learned counsel relies on the judgment of the Apex Court in a case of **Raju S. Jethmalani & Ors. Vs. State of Maharashtra & Ors.** reported in (2005) 11 SCC 222.

6. Mr. Bramhe, learned counsel for respondent nos.6 and 7 submits that the writ petition is not maintainable. The petitioners have no *locus standi* to maintain the present writ petition. Their prayers cannot be granted. The present writ petition is not public interest litigation nor review. The orders passed by the

Division Bench on 25.04.2017 in Writ Petition No.9685 of 2016 cannot be overturned in the present writ petition. It is further submitted that the petition is filed with oblique motive. The respondent nos.6 and 7 refused to comply the illegal demand of the councilors. The petitioners have suppressed that open places/garden are available in the vicinity of their plots. The lay outs are sanctioned in the year 1987, the same was never challenged. The properties have changed number of hands. After 30 years, it is impermissible to order enquiry. The petitioners themselves are beneficiaries of the lay out. They have constructed their properties. No illegality or fault can be attributed to respondent nos.6 and 7. They are bonafide purchasers for value. They have spend near about Rs.3.56 crores for the development. The construction is stalled because of the ex-parte order passed by this Court. The land was not acquired, as such after following due procedure it was de-reserved. Reservation again cannot be reimposed. Writ Petition deserves to be dismissed with heavy costs. The learned counsel relies on the following judgments:

(1) Shataram Shankar Jamsandekar & Ors. Vs. State of Maharashtra & Ors. reported in 2015 (1) Mah. L. J. 719.

(2) IDBI Bank Limited Vs. Aditya Logistics (1) Private Limited and Others reported in 2017 (5) Mah. L. J. 69.