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WP-3463-2018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3463 OF 2018
WITH CA/5220/2018 IN WP/3463/2018

Bhupendra Shridhar Wani & Ors. ..Petitioners

VERSUS

The State of Maharashtra & Ors. ..Respondents

Mr. Ajeet B. Kale, Advocate for the Petitioners.
Mr. S. P. Tiwari, AGP for Respondent Nos.1, 2 and 4.
Mr. S. P. Brahme with Mr. S. H. Tripathi, Advocates for Respondent Nos.6 and 7.
Mr. P. R. Patil, Advocate for Respondent Nos.3 and 5.

CORAM : S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.

Closed for Orders on : 20.12.2018.

Order Pronounced on : 11.01.2019.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The petitioners seek following reliefs in the present writ petition:

(i) To kindly direct the respondents to put reservation of children's park or play ground on Survey No.478/1B/3 plots No.7, 8, 9 and 10 by issuing writ of mandamus or any other writ or order in the like nature;

course.

17. In light of the above, no relief can be granted to petitioners as prayed for. Writ Petition as such stands disposed of. No costs.

18. In view of the disposal of the writ petition, nothing survives in the present civil application. Civil Application as such is disposed of. No costs.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

18. At this stage the learned counsel for petitioners prays for extension of the interim order passed by this Court earlier. Mr. Brahme, learned counsel for respondents apposes the said request and submits that because of the ex-parte order of the status quo, construction of respondents is stalled since eight months.

19. Considering the fact that the interim order was in force till date, the said interim order is extended for a period of three weeks from today. Needless to state that on lapse of three weeks, the status quo order shall come to an end.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/December-18

(ii) To kindly direct the respondents to allow petitioners to raise funds to acquire the plots in question to maintain reservation of children's park by issuing writ of mandamus or any other writ or order in the like nature;

(iii) To kindly direct the respondents to stop the construction going on the plots in question pending hearing and final disposal of this petition by issuing writ or mandamus or any other writ or order in the like nature.

2. Mr. Kale, learned counsel for petitioners strenuously contends that petitioners had purchased the plots in Survey No.478/1B/1, 478/1B/2, 478/1B/3 and 478/1B/4, situated at Telephone Nagar, Jalgaon under registered sale deeds. The petitioners had purchased the plots under the promise that plot nos.7 to 10 in Survey No.478/1B/3, were the open space of the said lay out and were reserved as Site No.162 under the Development Plan published on 15.03.1993. The learned counsel submits that subsequent to the purchase of plots by the petitioners the owner of plot nos.7 to 10 sold the said plots to other persons. The erstwhile owners served purchase notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 upon the respondents-Authorities. No action was taken by the Municipal Corporation for a long time. The subsequent owners filed Writ Petition No.9685 of 2016 before this Hon'ble Court seeking deletion of reservation on plot nos.7 to 10. The said writ

petition was allowed by this Court on 25.04.2017 and it was held that the reservation on the said plot is deemed to have lapsed. After the order is passed by this Court on 25.04.2017 in Writ Petition No.9685 of 2016, the Municipal Corporation granted permission to develop plot nos.7 to 10 and the construction commenced on the plots. The learned counsel submits that the same is against the interest of public at large. Plot Nos.7 to 10 were the only open land in the vicinity providing fresh air to the residents. Plot Nos.7 to 10 were earmarked for children's park. The benefit of ecology and larger interest of the public is required to be considered.

3. The learned counsel further submits that the open spaces, children's park are the lungs of the society. The same have to be maintained. If the Corporation is not acquiring the same, the citizens of the locality can raise funds for acquisition of land by the Government and the petitioners are ready to raise the funds required for the acquisition of the said plots. The learned counsel further submits that, in fact, a fraud is played upon the Municipal Corporation and the public at large by respondents. Initially Gut No.478/1B was totally admeasuring 1.40 hectares. The same was owned by one Mr. Vinay Shah. He obtained permission for lay out of the said land on 31.01.1985 from the erstwhile Municipal Council. The said property was sold by Mr. Vinay Shah to Mr.

Dilip Kolhe, Sunita Rathi and Mr. Madhusudan Kabra by four different registered sale deeds dated 27.02.1987. The said property was divided into Gut Nos.478/1B/1, 478/1B/2, 478/1B/3 and 478/1B/4. It is further submitted that when original lay out was sanctioned on 31.01.1985, reservation was for an area of 1198 sq. meter. After the purchase of the said property by Dilip Kolhe and others, immediately without cancelling the earlier lay out plan, three different applications were submitted on 20.03.1987 by Chandrakant Rathi of Survey No.447/1B/1, which was granted permission on 16.04.1987. Likewise separate applications were submitted for sanction of lay out of Survey No.478/1B/3 by Dilip Kolhe on 23.03.1987. The permission is given by Municipal Council on 29.03.1987. Without showing any open space in all these four parts the lay out is sanctioned by the Municipal Council. In fact there cannot be any permission for lay out without providing open space and that to by the very same owner. As the reservation is shown in Gut Number of Mr. Dilip Kolhe, he filed application on 10.05.1987 to delete the said reservation from the development plan. On 19.01.1988 Municipal Council passed resolution to delete reservation from the development plan. Inpite of the resolution, the Government maintained and sanctioned the revised development plan on 06.01.1993, thereby site no.162 of Survey No.478 is maintained for the reservation.