

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

**WRIT PETITION NO. 5044 OF 1999
WITH
CIVIL APPLICATION NO. 2049 OF 2000
WITH
CIVIL APPLICATION NO. 3842 OF 2001
WITH
CIVIL APPLICATION NO. 3837 OF 2001**

1. Vasant Rao s/o Vinayakrao Deshmukh
Age : 47 years, Occu : Municipal Corporator and
Social Service, resident of Ward No. 31, Jinsi,
Aurangabad.
2. Punjab Rao S/o Shrihari Wadje,
Age : 39 yrs, Occu: Engineer & Social Service,
R/o. Wadje Residency, Manjeetnagar,
Jalna Road, Aurangabad.

...Petitioners..

(Orig. Respondents)

Versus

1. Aurangabad Municipal Corporation
Aurangabad through Municipal Commissioner.
2. Deputy Director of Town Planning,
Aurangabad Municipal Corporation,
At & Dist. Aurangabad.
3. State of Maharashtra,
through Secretary
Urban Development Department,
Mantralaya, Mumbai – 400032.
4. Collector, Aurangabad.
At & Dist. Aurangabad.
5. Nisarga Mitra Mandal,
120, Shastri Nagar,
Garkheda, Aurangabad.

..Respondents.

Mr P. G. Godhamgaonkar, Advocate for the petitioners
Mrs Y. M. Kshirsagar, AGP for respondent/State
Mr S. N. Pagare, Advocate for respondent No. 3

ALONG WITH
WRIT PETITION NO. 1073 OF 2001

Disha Shrishti Residents Association at Rana Nagar,
Opp. Atithee Hall, Jalna Road,
Aurangabad, through its Secretary,
Shri Mukund S/o Shivram Vatve,
Age : 43 years, Occu : Service,
R/o Flat No. 1, Mogra Apartments,
Disha Shrushti, Jalna Road,
Rana Nagar, Aurangabad.

- 1) Milind Madhukar Apte,
Age 43 years, Occu : Business,
r/o Flat No. 2, Jaswand,
Disha Shristi Rana Nagar,
Jalna Road, Aurangabad.
- 2) Mukund Shivram Vatve,
Age 43 years, Occu : Service,
r/o Flat No. 1, Mogra,
Disha Shrishti Rana Nagar,
Jalna Road, Aurangabad.
- 3) Prakash Narayandas Makhija,
Age 30 years, Occu : Business,
r/o Flat No. 4, Gulmohar,
Disha Shristi Rana Nagar,
Jalna Road, Aurangabad.
- 4) Vilas Vishnupant Joshi,
Age : 48 years, Occu : Service,
r/o Flat No. 3-A, Gulmohar,
Disha Shristi Rana Nagar,
Jalna Road, Aurangabad.
- 5) Bharat Ganesh Deshmukh,
Age : 39 years, Occu : Service,
r/o Bakul, Disha Shrishti,
Rana Nagar, Jalna Road,
Aurangabad.
- 6) Ashutosh Umakant Tamboli,
Age 38 years, Occu : Service,
r/o Pushpavihar, Disha Shristi Rana Nagar,
Jalna Road, Aurangabad.
- 7) Nagesh Digambar Sevekar,
Age : 42 years, Occu : Advocate,
Laxminarayan, Disha Shristi, Rana Nagar,
Jalna Road, Aurangabad.

- 8) Sudhir Krishnaji Deshpande,
Age 34 years, Occu : Service,
r/o Gulab C, Disha Shristi,
Rana Nagar, Jalna Road,
Aurangabad.
- 9) Sunil Sudhakar Deshmukh,
Age 38 years, Occu : Service,
r/o Sadaphuli,
Disha Shristi Rana Nagar,
Jalna Road, Aurangabad.
- 10) Bhagwanth Gopalkrishnarao Gamle,
Age : 32 years, Occu : Business,
r/o Flat No. B/5, Nishigandha,
Disha Shristi Rana Nagar,
Jalna Road, Aurangabad.
- 11) Deepak Ramachandra Yermalkar,
Age 39 years, Occu : Service,
r/o Khardekar Stop, Near Sakolk AUSA Road,
Latur.

...**Petitioners..**

Versus

- 01) The Aurangabad Municipal Corporation,
through it's Municipal Commissioner.
- 02) The State of Maharashtra
through it's Secretary,
Urban Development Dept.,
Mantralaya, Mumbai.
(Copy to be served on Government Pleader at High Court
Mumbai, Bench at Aurangabad).
- 03) M/s Rana Sahebram Mannulal
4-17-17, Old Mondha, Aurangabad
through it's Partner Anil Jagannath Rana,
Age, 43 years, Occ : Business,
r/o 4-17-17, Old Mondha, Aurangabad.
- 04) Disha Constructions Pvt. Ltd.,
Behind Gopal Cultural Hall,
New Osmanpura, Aurangabad,
through it's
Chairman & Managing Director
Devanand Narayan Kotgire,

Age, 38 years, Occu: Business,
R/o C/o Disha Constructions Pvt. Ltd.,
Behind Gopal Cultural Hall,
New Osmanpura, Aurangabad.

...Respondents..

Mr V. J. Dixit, Sr. Counsel with Mr A. M. Gaikwad, Advocate for the petitioners
Mrs Y. M. Kshirsagar, AGP for respondent/State
Mr S. P. Shah, Advocate for respondent No. 4
Mr N. B. Suryawanshi, Advocate for respondent No. 3
Mr S. N. Pagare, Advocate for respondent No. 1

ALONG WITH

WRIT PETITION NO. 3836 OF 2000

Pagariya Builders,
through its Partner -
Zumberlal Kanhyalal Pagariya,
Age : 50 years, Occupation : Business,
Resident of 20, Raj Nagar,
Railway Station Road, Aurangabad.

...Petitioner

Versus

1. The State of Maharashtra;
2. The Collector,
Aurangabad District
Aurangabad.
3. Municipal Corporation, Aurangabad,
Through its Municipal Commissioner;
4. The Deputy Director of Town Planning,
Municipal Corporation, Aurangabad.

...Respondents

Mr M. V. Deshpande, Advocate for the petitioners
Mrs Y. M. Kshirsagar, AGP for respondent/State
Mr S. N. Pagare, Advocate for respondents No. 1, 2, 3 and 4

ALONG WITH

WRIT PETITION NO. 2110 OF 2001

1. Sow. Supriya Kishore Patil,
Age - 36 yrs., Occu. - House hold & Business,
R/o. -Kulkarni Plot, Bhusawal, Dist. Jalgaon.
2. Sow. Jayashri Vikas Patil,

Age- 30 yrs., Occu. - House hold & Business,
R/o. -Kulkarni Plot,
Bhusawal, Dist. Jalgaon.

3. Shri. Madhukar Nago Bhangale,
Age- 61 yrs., Occu.- Retd. Servant,
R/o.-Plot no. 8, Shitalnagar,
Shahanoor Wadi, Aurangabad.

...Petitioners..

Versus

1. The State of Maharashtra
2. Aurangabad Municipal Corporation,
Aurangabad.
3. The Commissioner,
Aurangabad Municipal Corporation.

...Respondents..

Mr A. M. Gholap, Advocate for the petitioners
Mrs Y. M. Kshirsagar, AGP for respondent/State
Mr S. N. Pagare, Advocate for respondents No. 2 and 3

**CORAM : A. V. NIRGUDE &
V. L. ACHLIYA, JJ.**

**DATE OF RESERVING THE JUDGMENT : NOVEMBER 28TH, 2014.
DATE OF PRONOUNCING THE JUDGMENT: MARCH 5TH, 2015.**

JUDGMENT: (PER A. V. NIRGUDE, J.)

1. As common issue is involved, these petitions are disposed of by this common Judgment. For convenience, the facts of writ petition No. 5044 of 1999 are taken into consideration.

2. The facts leading to these Writ Petitions, in short, can be summarized as under: -

Prior to 1981, Aurangabad town was governed by a Municipal Council established under the provisions of the Maharashtra Municipalities Act, 1965 which was 'A' class Municipal Council. It had certain Development Control Rules which *inter alia* provided that in case a land having area of more than 0.4 hectare is proposed to be developed through a layout, 10% of the total area should be reserved as open space for recreation. Accordingly, till 1982, said layouts with such compulsory open space for recreation were sanctioned. On 3rd December, 1982, significant change took place in respect of Municipal Council of Aurangabad. In exercise of power provided by Section 3 of the Bombay Provincial Municipal Corporations Act, 1949 (herein after referred to as "BPMC Act" for the sake of brevity), the Government of Maharashtra after previous publication as required by the law, constituted and established Aurangabad Municipal Corporation. The Government of Maharashtra also prescribed boundaries of said Corporation. Earlier the boundaries of Municipal Council of Aurangabad thus changed and a larger area became Corporation area. The Government of Maharashtra further declared that, on 8th December, 1982, provisions of the BPMC Act would come into

operation in the city of Aurangabad and on the same day, the State of Maharashtra appointed Shri. Tripathi as the Administrator of the Municipal Corporation, for a period of one year etc. On the same day, the Government of Maharashtra also directed through a notification which is as follows:

**BOMBAY PROVINCIAL MUNICIPAL CORPORATION
ACT, 1949.**

No. AMC, 1082/207 (IV)-UD.2]. - Whereas, by Government Notification, Urban Development Department No. AMC. 1082/207 (i)-UD 21, dated the 3rd December 1982, issued under sub-section (2) of section 3 of the Bombay Provincial Municipal Corporation Act, 1949 (Bom. LIX of 1949) (hereinafter referred to as "the said Act"), the local areas which were previously comprised in the whole of the municipal area of the Aurangabad Municipal Council and also in a part of the area of the Aurangabad Zilla Parishad have been constituted to be the City of Aurangabad for the purposes of the said Act, with effect from the 8th day of December 1982 (hereinafter referred to as "the appointed day");

And Whereas, it is expedient to direct that all or any of the appointments, notifications, notices, taxes, orders, schemes, licenses, Permissions, rules, by-laws or forms made, issued, imposed or granted in any area of a specified Municipal Council included in the City as aforesaid, under the Maharashtra Municipalities Act, 1965, or any other law and in force in that area

immediately before the appointed day, shall continue to be in force throughout the area of the said City, for the sake of having uniformity in all the area merging in the said City;

Now, therefore, in pursuance of the provisions of paragraph 5A in Part] of Appendix IV to the said Act, and of all other powers enabling it in this behalf, the Government of Maharashtra hereby directs that, save as otherwise provided in Section 129A or any other provisions of the said Act, all the appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, by-laws or forms made, issued, imposed or granted in the Municipal area of the Aurangabad Municipal Council, under the Maharashtra Municipalities Act, 1965, or any other law and in force in that area immediately before the appointed day, shall in so far as they are not inconsistent with the provisions of the said Act, continue to be in force throughout the area of the said City, until they are superseded or modified under the said Act or under any other law as aforesaid, as the case may be.

Within few days thereafter, on 25th December, 1982, the State of Maharashtra directed to the Municipal Corporation, Aurangabad, vide a letter dated 21st December, 1982, to adopt Standardized Building By-laws and Development Control Rules and copy of which enclosed with the letter. They further directed the Corporation that the corporation should submit a proposal for modification of by-laws and development control

rules, if any, by following procedure under Section 37 of the Maharashtra Regional and Town Planning Act, 1966 (in short "MRTP Act"). It is a fact that, the Corporation thereafter started implementing the Standardized Building By-laws and Development Control Rules for permissions given for development. The Standardized Building By-laws and Development Control Rules provided that if a layout is proposed of a land *ad measuring* more than 0.4 hectare, 15% of such land should be reserved as open space for recreation. A significant change thus came into force from December 1982. It is a fact that, layouts of land *ad measuring* more than 0.4 hectare which were submitted for sanction after December, 1982, were sanctioned with 15% of the plot as open space for recreation. It is also an admitted fact that, some of the land owners were protected on the ground that, previously the Municipal Council was permitting layouts with 10% of the land as open space for recreation, nonetheless the Corporation compelled all such owners of land to keep 15% of the land as open space for recreation. It is also fact that, from December, 1982 till 1992, this practice prevailed. Hundreds of layouts were sanctioned with the above mentioned condition. In June, 1983, the Administrator issued a notice thereby calling objections to the proposed building by-laws and development control rules. The proposal for change in development control rules was

submitted to the Government in February, 1986 and on 17th February, 1992, the Government sanctioned the amended building by-laws and the development control rules. But, this time they specifically mentioned that the proposal to change the previous 10% for open space for recreation would not be changed to 15%. In the meantime, some significant changes took place in respect of open spaces for recreation left out in various layouts all over the State as per the development control rules that were applicable to most of the towns in Maharashtra including Aurangabad. As per the development control rules, after layout is sanctioned, the portions of land which are left out for road would vest in the Corporation or Council as the case may be for being developed as roads and for being provided amenities as street lights, storm water drain etc. The open spaces reserved for recreation were also transferred to Corporation / Council for proper utilization and management. An impression was created then that, the open spaces for recreation thus were vested in Council / Corporation. After the Council / Corporation believed that such open spaces stood vested in them, they started transferring 10% of such open spaces to certain public trusts with a condition that they would develop that part of the open space for public purpose. But, the Government noticed that number of public trusts to whom such lands were handed over, misused this facility. Therefore, on 10th

June, 1996, the government issued a circular under Section 154 of MRTP Act, that, thenceforth, part of open spaces reserved for recreation should be given for development only to the original owner of the layout or to the Cooperative Housing Society formed by the Plot Holders or to the Federation of Cooperative Societies. The Government of Maharashtra also directed that, whenever open spaces are transferred to Council / Corporation, they would be entitled to transfer 10% of such land to the above mentioned three parties. This Circular thus stopped Councils / Corporations from giving away part of open spaces for recreation to third parties.

3. As said above, in 1992, the Government sanctioned revised building by-laws and development control rules where 10% of a piece of land subjected to layout would be reserved as open space for recreation. Earlier in Municipal Corporations of Aurangabad, several layouts were approved in which the owners of the lands were asked to keep 15% of the land as open space for recreation. In view of this change, number of owners of layout land demanded to the Corporation that their layout should be suitably changed for providing only 10% of the land as open space for recreation. In other words, they wanted a revised layout in which they would be permitted to sale 5% land for development purpose. Due to their demand, the Corporation

took a policy decision and to give retrospective effect to building bye-laws from 1992 and development control rules from 1982. The Corporation, thereafter, passed a resolution in a General Body Meeting of 19th December, 1998, that revision in layouts would be permitted on certain conditions. One of the significant conditions was that the owner of layout land should deposit with them certain amount for getting permission to develop 5% land of the layout for development. The petitioners in Writ Petition No. 5044 of 1999, took a strong objection to such a resolution. On 19th June, 1999, they sent legal notice to the Corporation and the State of Maharashtra raising objection to the resolution urging them to cancel the resolution and to keep the previous layouts intact so that open spaces left out earlier would be protected as open spaces, but the Corporation not only did not pay any heed to the request, but also started entertaining applications for revision of layouts. They permitted revision in 17 layouts and released some portion of open spaces for development. Accordingly, some layout owners sold in open market some plots of land. Some of them in turn started development of the plots by getting building permission sanctioned. Some of them started raising constructions on their plots. In the meantime, Writ Petition No. 5044 of 1999 was filed on 1st August, 1999 and within few days thereafter, this Court directed the parties not to continue development on such plots.

On 15th February, 2000, this Court granted interim relief as under: -

“Pending hearing and disposal of this Writ petition, the execution and operation of resolution dated 19th December, 1998 is stayed and the Corporation was restrained on acting on the impugned resolution.”

In view of this order, further development on the plots referred to above was stopped and we hope that the concerned parties have not violated the order of this Court.

4. Municipal Corporation submitted reply to the petition and opposed the petition filed by the petitioners justifying their action and the impugned resolution.

5. The State of Maharashtra filed affidavit-in-reply sworn by Deputy Director of Town Planning, Aurangabad Division, Aurangabad. The deponent of the State of Maharashtra stated that the resolution is not proper also because the Corporation did not obtain the consent of all plot owners of sanctioned layouts while giving permission for revised layouts. Due to the interim order passed by this Court, several owners of layout approached this Court by filing either applications seeking intervention in Writ Petition No. 5044 of 1999 or by filing independent petitions. They all supported the impugned

resolution passed by the Corporation. The contentions raised on behalf of the Corporation as well as intervenors and layout owners are as under: -

- (1) Despite of the Government direction issued under Section 154 of MRTP Act, vide letter dated 21st December, 1982, the building by-laws and development control rules of Aurangabad Municipal Council were lawfully applicable till 1992.
- (2) The layouts sanctioned between 1983 to 1992, providing 15% open space for recreation were illegal to the extent of 5% difference.
- (3) The land within a layout reserved for open space belonged to the Corporation and, therefore, they could deal with it as per their wish and so the resolution is not illegal.

6. The questions that arose for our consideration in these petitions are as under: -

- (i) Whether the layouts sanctioned after December, 1982 till 1992, providing 15% open space for recreation were lawful?
- (ii) Whether the resolution of the Corporation is lawful?

7. The learned Counsel for the Corporation as well as

intervenors and layout land owners etc., took us through the facts of this case and the law that was applicable to the facts of this case in detail. They tried to show that, firstly the Government had no power under Section 154 of the MRTTP Act for directing the Corporation to adopt 'Standardized By-laws and Development Control Rules' in 1982, and so whatever was done pursuant to such illegal direction, was unlawful and had caused wrongful loss to their clients. We have given gist of Government notification issued by Urban Development Department dated 3rd December, 1982, through which Municipal Council of Aurangabad is converted into a Municipal Corporation with an enlarged territory. This was issued under the provisions of BMC Act. We would now quote the direction given by letter dated 21st December, 1982, verbatim in this judgment.

*"To,
The Administrator,
Aurangabad Municipal Corporation,
Aurangabad.*

Subject : - Maharashtra Regional and Town Planning Act, 1966 Standardized Building regulations and Development Control Rules for Municipal Corporation.

Sir,

The erstwhile Aurangabad Municipal Council has been elevated to the status of Corporation. Before its upgrading the said Municipal Council has been controlling development

activities under the development plan and development control rules framed by it under the Maharashtra Regional and Town Planning Act, 1966. In para 4 of the Government Resolution U.D.&P.H.D. No. TPS 3678/814-B/UD.5 dated 16th July, 1980 (copy enclosed) directives have been issued to all 'A' class Municipal Councils to adopt the Standardized Building Bye laws and Development Control Rules. However, since the erstwhile Municipal Council has been elevated to the status of Municipal Corporation it may further be necessary to adopt the Standardized Bldg. Byelaws and Development Control Rules of Corporation towns.

2. I am , therefore, directed to convey this directive under section 154 of the Maharashtra Regional and Town Planning Act , 1966 that the Aurangabad Municipal Corporation shall immediately bring into force the Standardized Building Bye laws and Development Control Rules for Corporations towns . (copy enclosed)

3. I am further directed to convey a further directive to your Corporation under section 37 of the M.R.&T.P. Act , 1966 that your Municipal Corporation should take action for adopting the said Standardized Building Byelaws and Development Control Rules for Corporation towns by following the procedure prescribed therein also.

*Yours faithfully,
Sd/-
(G. S. Pantoalekundri)
Under Secretary to Govt."*

8. The Government was of the firm view that after a Municipal Council is elevated to the status of a Municipal

Corporation, it is necessary to adopt Standardized Building By-laws and Development Control Rules' devised for Corporation towns. The reason for this opinion was obvious. Development of a Corporation towns is more important and would affect larger number of people than development of land within limits of a Municipal Council. At that time, the Government had already framed the standardized compilation of building by-laws and development control rules. The Municipal Corporation Aurangabad, in view of this opinion of the government, was directed to immediately bring into force the standardized building by-laws and development control rules devised for Corporation towns. Copy of such Rules was enclosed with the letter. The Government clearly mentioned that this is a direction given utilizing powers under Section 154 of MRTP Act. Let us now read the provisions of Section 154 of MRTP Act.

“154.(1) Every Regional Board, Planning Authority and Development Authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by any Regional Board, Planning Authority or Development Authority under this Act, any dispute arises between the Regional Board, Planning Authority or Development Authority, and the State Government, the decision of the State Government

on such dispute shall be final.

9. These provisions have given wide powers to the State of Maharashtra to issue directions to the Corporations and others. Sub-section 2 thereof further provided that, if any dispute arises between a Corporation and the State of Maharashtra, the decision of the Government would be final. The direction referred to above practically compelled the Municipal Corporation to bring into force the standardized building by-laws etc., for the Aurangabad Corporation towns. As said above, that the Corporation faithfully enforced these standardized building by-laws which provided 15% and not 10% of a layout land to be reserved as open space for recreation. This change was certainly beneficial to overall development of Corporation town. More area would be kept open for recreation. We are aware that open spaces provided in a layout are not only for recreation of the neighbourhood but, is also considered to be lungs of such locality. Open spaces provide fresh air and greenery. On the day when this direction was given, there was no dispute between the Corporation and the State of Maharashtra as to whether such direction was permissible under Section 154 of MRTP Act, neither any land owner questioned this direction. All the land owners who were interested in getting their layouts sanctioned, followed the direction and kept 15% of their lands as open space for

recreation either willingly or grudgingly. They did not challenge this direction being beyond the scope of Section 154 of MRTP Act.

10. The learned Counsel for the Corporation as well as the layout holders argued that the direction in fact was beyond the scope of Section 154 of MRTP Act. In order to support their contention, they placed reliance on a judgment of Division Bench of this Court in Writ Petition No. 2287 of 2010 (unreported judgment). In this judgment, limits of powers of the State under Section 154 of MRTP Act, are discussed. The facts of the reported case were different. The State Government had, on 15th September, 2010, issued directions to all the Municipal Corporations and Municipal Councils to initiate process for modification in their sanctioned development control rules for including new regulations/rules. It was directed that the Planning Authority should publish requisite notice inviting suggestions to the proposed modification and then, after completion of legal formalities, as required under Section 37, should submit proposed modification to the Government for final sanction. The Court held that part of the direction was illegal because the process of modification would come to an end only after sanction is accorded by the government to the modification. The modification thus would come into force only

after granting of such sanction and not prior thereto.

11. The facts of our case are completely different and we have discussed them above. We have no doubt in our mind that the reported judgment would not affect our judgment on the issue as to whether the directions under Section 154 of MRTP Act given by the State of Maharashtra in 1982 were beyond the scope of Section 154 of MRPT Act. We hold that the direction was quite within the powers of the State of Maharashtra, and such direction was necessary for efficient administration of MRTP Act.

12. The learned Counsel for the respondents suggested that there was no reason for the State of Maharashtra to issue this direction because the notification through which the Municipal Corporation was established took sufficient care as to which building bye laws etc., would apply in interregnum. They pointed out the Government notification, a gist of which is already quoted above. The quoted portion of the G.R. is used in support of this submission.

13. The argument based on the above quoted Government Notification of 3rd December, 1982, is erroneous. This Government Notification brought uniformity in all the areas

emerging into Corporation city limits. It did not preclude possibility of a direction being issued under Section 154 of MRTP Act. Had there been no direction under Section 154 of MRTP Act, Government Notification referred to above would have prevailed. In that case, the Corporation which got newly established in December, 1982, would have permitted layouts with only 10% area reserved for recreation. But, in the wisdom of the State of Maharashtra, they consciously took a decision that different set of building bye-laws and development control rules should be enforced in the newly formed area of the Corporation town. In this new set, a layout would be permitted with 15% open space for recreation. This change was consciously made by the State of Maharashtra and Section 154 of MRTP Act, apparently gives such powers to the Government. The judgment referred to above laid down a rule that the Government cannot issue a direction under Section 154 of the MRTP Act, for implementing a change in by-laws unless a procedure prescribed under Section 37 of MRTP Act is properly followed. Even in this case, the building by-laws of Municipal Council were enforced prior to and after 8th December, 1982, but there were building by-laws of Municipal Council and not of Municipal Corporation. In our view, exigency of the situation that prevailed at that time, permitted the Government to give direction to the Corporation to enforce new set of building by-laws. As indicated above, this change

was not only implemented but no one raised any objection to it. This direction of the Government was never challenged in any Court of law till the respondents filed their reply. We are of the view that the direction to enforce a new set of bye-laws cannot be held to be illegal after thirty years or more. So, if the building by-laws that were made applicable during December, 1982 till 1992, were held to be lawfully, the impugned resolution appears to be incorrect and illegal step. The question does not arise as to whether owners of lands, who submitted layouts under the new building by-laws, were put to loss if they were asked to keep 15% land reserved for recreation.

14. They would have calculated the costs of land which they had lost as unsalable area while fixing rate of land which was salable area. In other words, the owners did not suffer any loss. Even though incorrect building by-laws were enforced on them, the cost of the land which was lost to them is recovered in the sale of plots. A piece of land which was earlier either an agricultural land or a fallow land, was sought to be used for urban development in limits of a Corporation town. The provisions of MRTP Act provided that before development could be commenced on such undeveloped land, the same is required to be processed with a layout. The conversion of a open plot into a layout is a serious change that takes place in respect of

the status of the land. Earlier the entire land could have been sold but, after the layout is made and sanctioned, proper plots of definite size with provisions of road and open spaces for recreation would be sold. The land thus after getting subjected to layout becomes more valuable. It is only after layout is sanctioned the same can be utilized for urban development. If one peruses by-laws which governed conditions imposed while converting a land into a layout, one gets a clear idea that a specific care is taken to provide amenities to the proposed residents of the area. They would be under obligation to use the plots which they purchased for their residents or such other permissible use under by-laws and not to encroach on land left for road or open spaces for recreation etc. Step for seeking sanction of layout in respect of a piece of land is apparently the first step for subjecting a piece of land to urban development. Once such layout is finalized, if the development takes place, the layout virtually becomes unalterable. The plot in such layout are sold and are developed by individuals. The land reserved for road and open spaces are utilized for such purposes and none else. In an ideal case, the plot owners would form a cooperative society and using contributed funds they would keep spaces for recreation, clean and tidy and usable for recreation. They may develop garden or play ground on such lands. The building by-laws also contemplated that such plots would be handed over to

the Municipal Corporation so that they would not only protect them but would also develop them as play grounds or gardens. It is not only the plot holders in the locality but even outsiders who would come in this locality would be entitled to use the land for its designated purpose such as; road and open spaces for recreation. In other words, right of user of this open spaces and roads accrued to public at large. No one can interfere in such right. In view of this also, the attempt of the Municipal Corporation to allow the layout owners to use open spaces for further development was inappropriate and illegal. The resolution of the Municipal Corporation for the reasons above, cannot be said to be lawful. The petitions are allowed in terms of following order.

ORDER

- (i) Impugned resolution dated 19.12.1998 of the Aurangabad Municipal Corporation is quashed and set aside.
- (ii) All actions pursuant to the said resolution shall stand set aside.
- (ii) Rule made absolute accordingly. No order as to costs.

15. In view of disposal of main writ petitions, connected civil applications no more survive and same are disposed of.

(V. L. ACHLIYA, J.)

(A. V. NIRGUDE, J.)

sgp