

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

SECOND APPEAL NO.: 1552 OF 2004

1. Vikramrao Punjai Dongare,
Age: 51 years, Occu: Agriculture
and Advocate.
2. Popatlal Lalchand Patwa,
Deceased. No L.Rs.
3. Sau. Chabubai Navnath Palve,
Age: 43 years, Occu.: Household,
4. Sau. Satyabhamabai Shivajirao Athare,
Age: 62 years, Occu.: Household,
5. Ashok Dattatraya Darandale,
Age: 50 years, Occu.: Agri.
6. Ramkrishna Hari Kute,
Age: 75 years, Occu: Agri.,
7. Ramrao Abaji Funde,
Deceased. No L.Rs.

All R/o Nathanagar, Pathardi,
Taluka Pathardi, District
Ahmednagar.

... **APPELLANTS**
[ORIGI. PLAINTIFFS]

VERSUS

1. Mohanlal Vithuram Daga,
(Deceased) deleted vide Exh.36)
2. Rajendrakumar Motilal Dagar,
Age: 55 years, Occu. Business,
R/o. Dalmandai, Ahmednagar.
3. Vitthal Ganpat Raut,
Age: 55 years, Occ: Business,

4. Sau. Padmabai Raghunath Avhad,
Age: 50 years, Occu.: Household,
76. Dinkarrao Sawalaram Palve,
Age: 60 years, Occ: Adv.,
7. Rasul Bapuji Atar,
Age: 55 years, Occu.: Business,
8. Smt. Chandbi W/o Hussain Shaikh,
Age: 50 years, Occ: Household,
9. Shivnarayan Chunilal Daga,
(Deceased) (deleted vide Exh.36).
10. Satyanarayan Chunilal Daga,
(Deceased) (deleted vide exh.36)
11. Vijaykumar Surajmal Lahoti,
Age: 45 years, Occ: Business.
12. Bhaskar Shankarrao Garje,
Age: 45 years, Occu.: Business.
13. Pandurang Ambadas Bahirat,
Age: 55 years, Occu.: Business.
14. Sau. Sulochana Damodhar Karkhele,
Age: 52 years, Occ: Household.
15. Damodhar Poatilbuva Karkhele,
Age: 55 years, Occ: Business.
16. Rahunath Shankar Belage,
Age: 70 years, Occ: Business.
17. Tulasiram Gangaram Ghule,
(Deceased) (deleted vide Exh.36)
18. Amir alias Baba Mohammad Pathan,
Age: 52 years, Occu: Fitter,
19. Hanif Kasam Shaikh,
Age: 60 years, Occu: Fitter.

20. Changdeo Dhondiba Bhoite,
Age: 70 yuears, Occ: Agri.,
21. Sunil Nivrutti Palve,
Age: 45 years, Occ: Agri.
22. Shaikh Jahagir Kalande,
Age: 42 years, Occ: Cycle shop.
23. Smit. Krishnabai D/o Girjabuiva Garje,
Age: 65 years, Occ: Household.
24. Vishwanath Dattu Kakane,
Age: 50 years, Occ: Hotel.
25. Sau. Parwatabai Kisan Mhaske,
Age: 70 years, occ: Hotel.
26. Navnath Madhavrao Andhale,
Age: 45 years, Occ: Agri.,
27. Prabhakar Janardhan Channe,
Age: 48 years, Occ: Carpenter.
28. Smt. Chhabutai Vitthal Argade,
Age: 45 years, Occ: Household.
29. Sau. Hafijabi Shaikh Kasam,
Age: 60 years, Occ: Household.
30. Sau. Suman Giraju Supeerkar,
Age: 48 years, Occ: Household.
31. Rambhau Baburao Satre,
Age: 65 years, Occ: Agri.
32. Laxman Punjaji Wadekar,
Age: 60 years, Occ: Business.
33. Tulashiram Kashinath Pawar,
Age: 60 years, Occ: Service.
34. Khandu Eknath Tupe.
Age: 60 years, Occ: Service.
35. Shaikh Ishak Badasha,
Age: 45 years, Occu: Business.

36. Shaikh Madar Nabiobhai,
Age: 70 years, Occu: Shop.
37. Gafoor Lalbhai Attar,
Age: 75 years, Occ: Shop.
38. Laxman Baburao Satre,
Age: 50 years, Occ: Business.
39. Popatlal Ratanchand Khater,
Age: 45 years, Occu: Business.
40. Bhaskar Janardhan Channe,
Age: 50 years, Occu: Agri.

Resp. Nos.3 to 15, 19, 21, to 32, 34 to 39 All R/o. Pathardi,
District Ahmednagar.

Resp. No.16 R/o Walunj, Tal. Pathadi.

Resp. No.20 R/o Malibabhulgaon, Taluka Pathardi.

Resp.No.40 R/o Kambi, Taluka Shevgaon,
District Ahmednagar.

... **RESPONDENTS**
[ORIG.DEFENDANTS]

Advocate for the Appellants: Mr. M. R. Sonawane.

Advocate for Respondent Nos.7, 12 to 15, 18: Mr. K. D. Bade
Patil.

@@@

CORAM:-
DATED:-

T. V. NALAWADE, J.
15th SEPTEMBER, 2015.

JUDGMENT:

1. The proceeding is filed to challenge the judgment and decree of Regular Civil Suit No.106 of 1983 and judgment and order of Regular Civil Appeal No.143 of 1998. The suit filed by present Appellants for relief of declaration and

perpetual injunction is dismissed. The suit was filed in representative capacity and it was contended that some plots of Survey No.3/1 from Pathardi were reserved for giving amenities to the plot holders from the lay out plan and those plots were to be used for construction of school, for play ground etc. and it was a contention of the plaintiffs that they need to be kept as such forever. It was their case that defendant, owner was attempting to sell plots to third parties for other purpose, for making construction for residential purpose and so there was necessity to give the declaration and injunction. The Courts below have held that the said disputed plots were not required to be reserved as per the then Rules for Development and it is further held that in view of the permission given by the authority to use those plots for other purpose and as the said permission order is upheld by High Court, there is no possibility of giving any relief to the plaintiffs. Both the sides are heard.

2. While admitting the appeal, this Court, other Honourable Judge, had formulated the substantial question of law as follows:

“Whether the Courts below have erred in not considering any order dated 9th February, 1963 made by District Deputy Collector in which the suit plots were shown to be reserved for common enjoyment and for benefit of the plot holders from the lay out plan?”

3. Different contentions are made by the plaintiffs and the main contentions are as follows:

- (i) As the plots were reserved for the enjoyment of other plot holders, the owner cannot be allowed to use those plots for other purpose than the purpose for which the reservation was made viz. for creating gardens, for construction of schools etc.
- (ii) That, the authority had no power to dereserve the plots as the plots were kept for use of public in general and the dereservation was not possible in view of the rules which were in existence at the time of passing of the order.
- (iii) That, most of the portion of the plots reserved for garden was within the prohibited area, the area which was within the control line on that side of the State High Way and so the transfer of these portions and

construction on these portions is not permissible.

4. It appears that on the date of the suit many plots were sold by the owner and some plots were sold even before obtaining the permission of the authority. The record and submissions made show that the portion of around 18 Acres 20 Gunthas of Survey No.3/1 was converted for non-agricultural use from agricultural use by the order of authority dated 9th February, 1963. Around 307 plots were prepared and out of those plots, 8 plots were reserved for providing amenities and for keeping the space as open space. These plots were to be used for construction of the school, as play ground and for creation of garden and also for use as a compost field.

5. Admittedly, in the year 1963 the Rules of Development like Maharashtra Land Revenue (Conversion of use of Land and Non-agricultural Land Assessment), 1969 were not applicable and so in law it was not necessary to keep 10% space as open space. In any case, space which could have been 10% of the aforesaid total area was not shown as reserved. It is not the case of the

plaintiffs that in their sale deeds promise was given to them that the aforesaid plots will be kept for use of all of them for creating garden, school, play ground etc. Thus, on one hand there was no requirement of law to keep such space as open space and on other hand there was no promise given by the owner to the purchasers of the plots of such nature.

6. It appears that the owner, defendants had filed a proceeding before Revenue Authority and the Revenue Authority gave permission for use of these plots for other purpose than the purpose shown in the development plan. This order was challenged by some plot holders by filing appropriate proceeding and ultimately they filed writ petitions in this Court. These writ petitions came to be dismissed and this Court held that there is nothing wrong in the orders made by the revenue authority. Order made by this Court was taken up to Supreme Court but no permission was granted in S.L.P. Thus, there is an order of revenue authority. In view of the limited scope of the present matter and decision given in writ petition by this Court, it is not possible to discuss more about the power of

the authority to grant permission to use those plots for other purpose.

7. The learned counsel for the plaintiffs placed reliance on observations made in some reported cases like **(i) AIR 1999 S.C. 1441 (1) Vidhyadhar V/s Mankikrao and another, (ii) 1995 AIR SCW 306 Virender Gaur and others V/s State of Haryana and others, (iii) AIR 2002 Bombay 258 Down Magor Valley, Residents' Weldare Association and another V/s Mormugao Municipal Council, Goa and others and (iv) Civil Appeal Nos.7254-7256 of 2002 And Contempt Petition (C) No.28-29 of 2009 Mrs. Saradmani Kandappan V/s Mrs. S. Rajalakshmi and others with Civil Appeal Nos.4641-42/2002 Mrs. S. Rajalakshmi and others V/s Mrs. Saradamani Kandappan and another [Supreme Court]**. The facts and circumstances of these reported cases were totally different and so the observations made by the Apex Court and this Court are of no help to the plaintiffs in the present matter. This decision will not come in the way of High Way Authority if there is breach of provisions made with regard to keeping

space open, i.e. set back line.

8. In the result, the appeal stands dismissed.

9. Civil Applications, if any, pending in the present second appeal do not survive any further and the same stand disposed of accordingly.

[T. V. NALAWADE, J.]

Dated:15/09/2015.
ans/1552