

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

WRIT PETITION NO.2670 OF 2009.

1.Dinesh S/o Bandu Suryawanshi
Age 29 years, Occ.Business,
R/o Plot No.36, Laxmi Narayan
Colony, Shindkheda, Tq.Shindkheda,
Dist.Dhule.

2.Kiran S/o Yeshwant Chaudhari,
Age 28 years, Occ.Service,
R/o Plot No.18-A, Laxmi Narayan
Colony, Tq. Shindkheda,
Dist.Dhule.

3.Gokulsing S/o Pandit Sing Girase,
Age 24 years, Occ.Business,
R/o Plot No.3, Laxmi Narayan
Colony, Shindkheda, Tq.
Shindkheda, Dist.Dhule.

4.Gulab S/o Shyam Badgujar,
Age 41 years, Occ.Business,
R/o Plot No.4, Laxmi Narayan
Colony, Shindkheda, Tq.
Shindkheda, Dist.Dhule. ... Petitioners.

Versus

1.The State of Maharashtra,
through Rural Department and
Revenue Department, Mantralaya,
Mumbai-32.

2. The Collector, Dhule.

3. The Additional Collector,

Dhule, .

4. The Sub-Divisional Officer,
Shirpur Dn. Shirpur,
Dist.Dhule.

5. The Tahsildar, Shindkheda,
Dist.Dhule.

6. The Panchayat Samiti,
Sindkheda, through its
Block Development Officer,

7. Zilla Parishad, Dhule,
through its Chief Executive
Officer.

8. The Gram Panchayat Sindhkhedha,
through Village Development
Officer.

9. Janata Vidyaprasarak Sanstha,
Shindkheda, through its
Secretary, Shri Manohar Gorakh
Patil, Age 36 years, Occ.Service,
R/o Shindkheda, Dist.Dhule. ... Respondents.

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Mr.B.R.Waramaa, advocate for the petitioners.
Mr.D.S.Bagul, advocate for Respondent No.6.
Mr.S.S.Deshmukh, advocate for Respondent No.8.
Mr.P.P.Dhorde, advocate for Respondent No.9.

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**CORAM : S.V.GANGAPURWALA AND
K.K.SONAWANE, JJ.**

Date : 08.06.2016.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. Mr.Waramaa, learned counsel for the
petitioners submits that the petitioners are the

members of the Cooperative Housing Society in Laxmi Narayan Colony. Initially one Mr.Agrawal, was the owner of the land Block No.759 and 760. He got the said land converted into non-agricultural use. In the said lay out 2345 Sq.mt. Of the land was shown as open space. The Respondent No.9 encroached upon the said open space, made constructions and is exclusively using it as playground run by Respondent No.9. According to the learned counsel, even Respondent No.9 got mutation entry effected in the revenue record. The same was assailed. The matter was litigated before the Revenue authorities and ultimately the name of petitioner was directed to be deleted. The said order stands even today. The learned counsel submits that even Panchanama effectuated also fortifies the contention of the petitioner regarding encroachment made by Respondent No.9. The photographs annexed to the petitioner would also substantiate the said fact. Even the authorities have imposed penalty of Rs.44,28,775/- (Rupees forty four lacs twenty eight thousand seven hundred seventy five) upon the Respondent for user of the said open space.

The Respondent No.2 to 8 be directed to remove the said encroachment. The learned counsel relies on the following judgments :

- a) **"Bombay Environmental Action Group and others Vs. State of Maharashtra and others"** reported in **2005 (6) Bom.C.R.574;**
- b) **"Down Mangor Valley, Residents Welfare Association and another Vs. Mormugao Municipal Council through its Chief Officer and others"** reported in **2002 (3) Bom.C.R.29;**
- c) **"Surendra Ramlal Tiwari and another Vs. State of Maharashtra and others"** reported in **2013(1) Bom.C.R.774;**
- d) **"Vasantrao S/o Vinayakrao Deshmukh and another Vs. Aurangabad Municipal Corporation and others"** W.P.No.5044/1999 with connected W.Ps. **(Coram : A.V.Nirgude and V.L.Achliya,JJ.)** decided on 5.3.2015.

2. Mr.Dhorde, learned counsel appearing for Respondent No.9 submits that the open space can be used as a playground. The Cooperative Housing Society i.e. Shri Laxmi Narayan

Cooperative Housing Society has given No Objection to the Respondent No.9 for using the said open space as playground. The Village Panchayat has also given No Objection to the Respondent No.9 to use the said plot as a playground. According to the learned counsel, it is only to harass the present Respondent No.9, the petition is filed. The open space do not vest with the Village Panchayat. The Respondent No.9 is also the purchaser of the plot from the said lay out and is entitled to use the said plot as a playground. The judgments in the revenue proceedings are erroneous. Similar Writ Petition filed by another party has been dismissed bearing W.P.No.3558/2008. The petition be dismissed.

3. We have also heard learned A.G.P.

4. Considering the arguments canvassed by the learned counsel for the parties, so also the pleadings on record, it is manifest that open space as averred by the petitioner does exist in the lay out. No debate is required on the proposition that open space has to be kept open.

No construction is permissible upon the open space, leave aside any encroachment. The open space is meant for the use and enjoyment of the plot holders of the lay out.

5. The judgments relied by Mr.Waramaa, learned counsel also are on the same lines.

6. Considering the fact that open space as contended is not disputed. The Respondent No.9 or any other person would not be entitled to maintain any construction on the said open space and the construction on the open space will be required to be removed.

7. As far as penalty is concerned, the Respondent Nos.2 to 5 are not prevented to take recourse to law for recovering the same.It is for the Respondent Nos.2 to 5 to take effective steps in that regard. In that event, the Respondent No.9 can agitate all legal grounds.

8. In light of that, we pass the following order :

a) The Respondent No.9 shall remove the structures standing in the open space of the lay out of Block No.759 and 760 of Sindhkheda. In case the Respondent No.9 fails to remove the said structures within a period of three (3) months from today, the Respondent authorities shall take steps to remove the same expeditiously and the said open space shall be meant for the use and enjoyment of all the plot holders of the said lay out.

b) Rule accordingly made absolute in above terms. However, with no order as to costs.

Sd/-
(K.K.SONAWANE, J.)

Sd/-
(S.V.GANGAPURWALA, J.)

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