

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6211 OF 2015

1. Bhamabai Maruti Shinde,
Age : 84 Years, Occ. : Household,
R/o. : Shirdi, Tq. : Rahata,
Dist. : Ahmednagar
2. Mandakini Subhash Bhalerao,
Age : 52 Years, Occu. : Household,
R/o. : Shirdi, Tq. : Rahata,
Dist. : Ahmednagar

Both Petitioners through their
General Power of Attorney
Subhash Gotiram Bhalerao,
Age : 62 Years, Occu. : Agri./Advocate,
R/o. : Shirdi, Tq. : Rahata, Dist. : Ahmednagar.. **Petitioners**

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai
2. The Collector,
Ahmednagar
3. The Sub-Divisional Officer,
Shirdi, Tq. ; Rahata,
Dist. : Ahmednagar
4. The Tahsildar,
Rahata, Tq. : Rahata,
Dist. : Ahmednagar
5. The Municipal Council,
Shirdi, Tq. ; Rahata, Dist. : Ahmednagar,
Through its Chief Officer

.. **Respondents**

Shri Shri V. R. Dhorde a/w Shri P. S. Dighe, Advocates for Petitioners.

Miss S. S. Raut, A. G. P. for Respondent Nos. 1 to 4.

Shri A. V. Hon, Advocate for Respondent No. 5.

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

DATE : 26TH JULY, 2016.

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

1. Rule.
2. Rule returnable forthwith. With the consent of parties taken up for final hearing.
3. The Petitioners assail the action of the Respondent No. 5 / Municipal Council mutating its name as an owner in respect of the open space admeasuring 177 Sq. meters in Survey No. 150/3 situated at Shirdi, Taluka – Rahata. The said mutation entry has been effected on 28.09.2009.
4. Mr. Dhorde, the learned counsel submits that, Petitioners were the owners and possessors of the land Survey No. 150/3. The Petitioners submitted lay out for sanction to the Respondent Municipal Council. At the time of sanction of the said lay out condition was imposed to transfer the open space of the said lay out in favour of Municipal Council. As the lay out was to be got sanctioned the Petitioners executed an agreement in favour of the Respondent No. 5 Municipal Council. The Petitioners had to start construction of hotel on the plot of the said lay out. The learned counsel submits that, the Respondent Corporation for the first time in the year 2009 exercised its right by mutating its name in the revenue record. According to the learned counsel, the Respondent Corporation does not have any authority to get the

open space transferred in its name. No registered document is executed in favour of Respondent Municipal Council nor they are entitled to retain the open land of the lay out. The open land would vest with the original owner of the lay out. The learned counsel relies on the judgment of the Apex Court in a case of, **Pt. Chet Ram Vashist (Dead) by L. Rs. V/s. Municipal Corporation of Delhi** reported in **AIR 1995 S.C. 430 (1)**. The learned counsel also relies on the Division Bench judgment of this court in a case of, **Vrajlal Jinabhai Patel since deceased through his L. Rs. Smt. Jagrati Vrajlal Patel V/s. State of Maharashtra and others** reported in **2003 (3) Mh. L. J. 215.**

5. Mr. Hon, the learned counsel for the Respondent Municipal Council submits that, at the time of sanction of the lay out the Petitioners on its own volition executed an agreement in favour of the Respondent Municipal Council thereby agreeing to transfer the open space pursuant thereto even possession was handed over to the Respondent Municipal Council. Taba Pavati to that effect has been executed by the Petitioners. The learned counsel submits that, even Collector has passed an order to give the said property to an institution. According to the learned counsel, after lapse of more than 12 years the Petitioners now cannot agitate about the said agreement.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. We had asked the Petitioners as to whether Petitioners owns any plot in the said lay out. It was submitted that the Petitioners have constructed an hotel in the said lay out and is running the same.

8. It is not disputed that the Petitioners are the original owners of the plots under the lay out. The open space of the lay out has to be kept open and cannot be used for any commercial or residential purposes. The ownership of the original owner also is residuary. He keeps the said open space as a trustee and for the benefit of all other lay out plot holders. The open space is meant for the use of a general public and the plot holders of the lay out. The Apex Court in a case of **Pt. Chet Ram Vashist (Dead) by L. Rs. V/s. Municipal Corporation of Delhi** has observed as under -

***“6. Reserving any site for any street, open space, park, school etc. in a lay-out plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned lay-out plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right to manage as a local body is not the same thing as to claim transfer of the property to itself.*”**

The effect of transfer of the property is that the transferor ceased to be owner of it and the ownership stands transferred in the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for parks and school was an order for transfer without there being any sanction for the same in law."

The Municipal Council has got its name mutated in the year, 2009 only. It cannot be said that the claim of the Petitioner is stale.

9. In light of that, the impugned mutation entry is quashed and set aside. It is made clear that Petitioners ownership of the open space would be only residuary and the Petitioners would not be in a position to deal with the open space for any commercial or residuary purpose nor shall carry out any construction. The Respondent Municipal Council can supervise the said open space in that regard.

10. Rule accordingly made absolute in above terms. No costs.

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]

sam/July.16