

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

WRIT PETITION NO. 4486 OF 2015

Ashtavinayak Pratishthan, Latur .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri V. J. Dixit, Senior Advocate i/by Shri Swapnil S. Rathi,
Advocate for the Petitioner.

Ms. Rashmi P. Gaur, A.G.P. for Respondent Nos. 1 to 3.

The Respondent No. 4 is served.

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

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

DATE : 13TH DECEMBER, 2016.

PER COURT :

. Mr. Dixit, the learned senior advocate for the petitioner submits that, pursuant to the agreement dated 20th October, 1982 the petitioner institution was handed over possession of the premises of Priyadarshini Udyan situated at Latur Industrial Estate Cooperative Society, Latur. As per the agreement, the petitioner was to utilize the premises of Udyan only for the benefit of public utility service and for any public function of Municipal Council, Latur. As per the said agreement, the petitioner was entitled to raise the funds and obtain the benefits from the funds of M.L.A. and M.P. The learned senior advocate

submits that, an amount of Rs. 10 Lacs was sanctioned from M.P. fund. Said amount was never paid to the petitioner organization. The development was made through P.W.D. by appointing contractor. The amount was never received by the petitioner organization. According to the learned senior advocate, the said premises is developed as a Udyan, swimming pool, gymnastic hall, etc. The same is meant as public utility services and the petitioner is not charging any fees towards the same except maintenance charges. According to the learned senior advocate, a factual error was committed by the petitioner in as much as in the agreement/gift deed executed by the petitioner in favour of the Collector, Latur. It was represented that the petitioner is an owner. In fact, the petitioner is an allottee of the said land and the same was only handed over to the Collector, Latur. No personal interest was created of the petitioner.

2. The learned Assistant Government Pleader submits that, the illegality has been committed by the petitioner. Enquiry committee was formed. It has been found that the petitioner represented as owner of the property and has mis-utilized the funds. The registered gift deed of 12000 square feet area was executed in favour of the Collector, Latur. The said amount was rightly sought to be recovered by the impugned order.

3. The respondent Nos. 1 to 3 have filed an affidavit. The

said affidavit is sworn by the Tahsildar on behalf of respondent Nos. 1 to 3. In the affidavit it has been stated that, the construction of swimming pool and other public work done by the petitioner are not disputed.

4. It is also nowhere disputed that, the amount of Rs. 10 Lacs received from the M. P. funds was paid through the Public Works Department to the contractor. The said amount was never paid to the petitioner at any material point of time.

5. One flaw appears to be on the part of the petitioner that is representing itself as a owner of the said premises while executing gift deed in favour of the Collector, Latur. The petitioner is not owner of the property. The petitioner is only an allottee of the said property which is meant and used for public utility services and said character of the land cannot be changed at any point of time. The petitioner also accepts the said fact.

6. The impugned notice/order is only with regard to the recovery of the amount along with interest. The respondents at no point of time have remotely suggested that the said amount has been misused. The said amount was never paid to the petitioner and the same was paid to the public works department, who in turn has paid it to the contractor. The role of the petitioner appears in utilizing the amount of Rs. 10 Lacs from

the M. P. funds. The said amount is never received by the petitioner and that said amount is already paid through P.W.D. The work has been done. The impugned notice/order as is limited to the extent of recovery of amount, the same cannot be sustained, in view of aforesaid facts.

7. The impugned notice/order as such is quashed and set aside. The writ petition accordingly is disposed of. No costs.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]