

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9918 OF 2011

1. Satish S/o Soma Bhole,
Age : 57 Years, Occu. : Business
and Agriculture,
R/o. : 'Tailor House', Shivramnagar,
Opp. Collector Bunglow, Jalgaon,
Tq. and Dist. : Jalgaon
2. Omprakash S/o Sitaram Agrawal,
Age : 62 Years, Occu. : Business and
Agriculture,
R/o. 122, Navi Peth, Jalgaon,
Tq. and Dist. : Jalgaon
3. Indravadan S/o Shivilal Shah,
Died through his L. Rs.
- 3-A) Mrs. Hansa W/o Indravadan Shah,
Age : 53 Years, Occu. : Business,
R/o. : Tijori Galli, Polan Peth,
Jalgaon, Tq. and Dist. : Jalgaon
- 3-B) Nishant S/o Indravadan Shah,
Age : 26 Years, Occu. : Service,
R/o. : Tijori Galli, Polan Peth,
Jalgaon, Tq. and Dist. : Jalgaon,
Through his General Power of
Attorney Holder :
Mrs. Hansa W/o Indravadan Shah,
Age : 53 Years, Occu. : Business,
R/o. : as above
- 3-C) Mrs. Mayuri Hemang Shah,
Age : 26 Years, Occu. : Housewife,
R/o. : 202, Athithi Flats, 4,
Jain Society, Near Preetamnagar Akhada,
Paldi, Ahmedabad (Gujrat State) .. Petitioners

Versus

1. The State of Maharashtra,
Through : Urban Development Department,
Mantralaya, Mumbai - 32
2. The Director of Town Planning,
Maharashtra State, Pune,
Tq. and Dist. : Pune
3. The Deputy Director of Town Planning,
Nashik Division, Nashik,
Tq. and Dist. : Nashik
4. Assistant Director of Town Planning,
B. J. Market, Jalgaon, Tq. and Dist. : Jalgaon
5. The Commissioner,
Jalgaon Municipal Corporation,
Jalgaon, Tq. and Dist. : Jalgaon .. Respondents

Shri Ajeet B. Kale, Advocate for Petitioners.
Shri S. N. Morampalle, A. G. P. for Respondent Nos. 1 to 4.
Shri P. R. Patil, Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.**

CLOSED FOR JUDGMENT ON : 14.01.2016
JUDGMENT PRONOUNCED ON : 23.03.2016

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

1. The petitioners assails the order dated 13.11.2009 passed by the Respondent No. 1 thereby rejecting the application / representation of the petitioner for dereservation of 0.40 H. land which was reserved for play ground.

2. Mr. Kale, the learned counsel for the petitioners submits that, the petitioners are owners and possessors of land bearing Gut No. 415/1A/3/2 and 415/1A/3/3 admeasuring 40 R. situated at Mehrun, Tq. and Dist. - Jalgaon. It is submitted by the learned counsel that, on 31.10.1995 draft development plan was published under Section 26 of the Maharashtra Regional Town Planning Act, 1966 wherein the lands of petitioners alongwith the owners of the other part of the said Survey No. 415 were again shown reserved for play ground and High School. The said draft development plan was published on 31.10.1995. The petitioners filed objection with the Municipal Corporation under Section 28(1). The learned counsel submits that, the Respondent / Municipal Corporation submitted plan to the Government under Section 30 thereby deleted the reservation proposed under Section 26 i.e. High School, Site No. 143 and Play ground, Site No. 144. The Government partly sanctioned the draft development plan on 11.02.2002 and decision about the proposal of the Corporation to delete the reservation was kept pending. The Government published the plan under Section 31(1) of the Maharashtra Regional Town Planning Act, 1966 by showing modification to the above reservation and proposed to delete substantial portion of reservation. According to the learned counsel, the original area under reservation was 3 hector, by modification Government deleted near about 72 % of land from reservation. The petitioner filed an application on 22.04.2005 to delete the remaining reservation as proposed by the Government. The Director of Town Planning submitted report to the Government thereby suggested to delete the reservation of play ground (Site No. 144) and include the same in residential. In the said

report it was suggested to provide combined reservation for school and play ground in Site No. 143. Thereafter, the Government took a decision to reinstate the reservation of school and play ground as proposed under Section 26. Modification in reservation for High School was made by adding play ground. The reservation for play ground Site No. 144 as published under Section 26 was kept intact. Thereafter, the Government issued corrigendum on 03.03.2006 deleting "T" shape of land i.e. nearly after 20 months of sanction of development plan. While doing so the Government deleted some area from reservation of school as well as of the play ground. The petitioner on 25.09.2006 made an application to the Government for modification under Section 37. The Director of Town Planning gave report in response to the Government letter dated 31.10.2006 stating that he has already suggested to delete reservation in respect of Site No. 144 in the year, 2003.

3. The learned counsel submits that, this Court in Writ Petition No. 4109 of 2009 passed the order on 31.08.2009, thereby, directing the Government to decide the representations made by the petitioners to modify the plan under Section 37 within 3 months. In 2009 the Commissioner of Jalgaon Municipal Corporation passed the order modifying the sanctioned development plan deleting the school reservation without any notice to the public and even reservation of play ground is reduced thereby only 41 R. land is shown to be reserved for play ground. On 18.09.2009 the petitioner filed an application to the Government asking to decide the representations as per the order of this Court and

requested to give hearing and opportunity to submit the say. The said application of the petitioner is thereafter rejected. The learned counsel submits that, while rejecting the said objection / application the petitioner was not given any hearing. The Government has contrary to the proposal submitted by the Municipal Corporation under Section 30 reinstated part of the reservation which was proposed to be deleted by the Municipal Corporation. The learned counsel submits that, as per the Government letter dated 26.09.1995 the Government has prescribed time limit for correction if any for sanctioned development plan. If, any clerical correction is to be made after one year in the development plan the same has to be by following the prescribed procedure given in the Act. According to the learned counsel, in the instant case substantial changes in the plan are made by issuance of corrigendum that to after lapse of one year. The Jalgaon Municipal Corporation has also deleted entire reservation of school without prior permission of the Government on 15.07.2009 i.e .after lapse of 5 years. The learned counsel submits that, the act of the State Government rejecting the proposal submitted by Respondent Nos. 2 and 3 without giving opportunity to the citizens of lodging objections and suggestions in respect of the proposed modification in the final development plan including the petitioners suffers from illegality and deserves to be set aside. The State Government is required to resort to the procedure under Section 37 of the Maharashtra Regional Town Planning Act, 1966 and thereafter take the final decision in this respect. The learned counsel relies on the following judgments -

“I] Bhahma Siddeshwar Co-operative Housing Society Ltd. V/s. State of Maharashtra reported in 2009 (4) Mh. L. J. 62.

II] Smt. Urmilabhen Jayantilal Parikh V/s. State of Maharashtra reported in 1998 (4) Bom. C. R. 343

III] Santu Kisan Khandwe V/s. Special Land Acquisition Officer reported in 1995 (1) Mh. L. J. 363

IV] Hari Ram and another V/s. State of Haryana reported in 2010 (2) All M. R. 1012 (S. C.)

V] Shivram S/o Sonbaji Girhipunje and others reported in 2010 (3) All M. R. 389

VI] Dr. Devkisan R. Sarda and others V/s. Director of Town Planning, Maharashtra reported in 2005 (1) All M. R. 16.”

4. The learned counsel further submits that, the petitioner has made representation on 22.04.2005 and further on 18.09.2009, however, no opportunity was given to the petitioner to put forth his case and to bring on record all the facts and lacunae while deleting the major portion of the land from reservation. The entire process of reservation and dereservation shows malafide intention on the part of the respondents. The purpose sought to be achieved while preparing the plan is defeated. Majority of the land owners whose lands were put under reservation, their lands are

released from reservation and only small piece of land out of total area of reservation is maintained under reservation and that too only of petitioners i.e. from reservation of 3 hector of land only 41 R. land is now reserved.

5. Mr. Patil, the learned counsel for the respondent / Corporation submits that, on 10.04.1998 the Planning Committee of the Corporation recommended deletion of Site No. 143 and 144 from reservation and to include in the residential zone. Accordingly the modified plan was published under Section 29 of the Maharashtra Regional Town Planning Act, 1966. The said recommendation of the Planning Committee was not accepted by the State Government. On 11.02.2002 notification under Section 31 (1) of the Maharashtra Regional Town Planning Act, 1966 was published and Site No. 143 and 144 both were partly reinstated in reservation. Thereafter on 10.08.2004 final notification under Section 31 of the Maharashtra Regional Town Planning Act, 1966 was published. According to the learned counsel in the said final notification instead of referring to fresh notification under Section 31 (1), in respect of Site Nos. 143 and 144, due to inadvertence, it was mentioned that sites are approved as per Section 26 of the Maharashtra Regional Town Planning Act, 1966 which was larger area. On 03.03.2006, a corrigendum was published stating that in respect of Site No. 143 and 144 it was corrected "Sanctioned as proposed" meaning thereby that the lesser area as per Section 31 (1) was now reserved for play ground. It was a technical error. The objection of the petitioner that notification under Section 37 of the Maharashtra Regional Town Planning Act, 1966 was necessary is incorrect. According

to the learned counsel the ground that the petitioner was not heard before passing the order is not tenable in law. Once the final development plan is published there is no provision under law to hear the parties again. In any case, the Deputy Director of Town Planning had heard the petitioner and the same is stated on affidavit by the Assistant Director of Town Planning. The petition filed by the petitioner is misconceived.

6. We have also heard the learned A. G. P.

7. We have considered the submissions.

8. The petitioners seeks deletion of reservation from Survey No. 415 i.e. EP No. 35 from development plan of Jalgaon city, so also, assails the order dated 13th November, 2009, thereby, rejecting the application of the petitioner dated 26.08.2002 and 25.09.2006. It is observed in the said order that the officer appointed by the State Government i.e. Assistant Director, Town Planning has heard the petitioner and had given the report on the representation of the petitioner. Thereafter, the development plan has been sanctioned on 10.08.2004 and if the petitioners land admeasuring 40 R. is released from reservation then only 45 R. land would remain for play ground.

9. This Court vide order dated 31st August, 2009 in Writ Petition No. 4109 of 2009 had directed the State Government to decide the representations of the petitioners dated 26.08.2002 and other subsequent representations. The said applications are decided admittedly without hearing the petitioner. The said applications are decided vide order dated

13.11.2009. If, the petitioner would have been given hearing, the petitioner would have been in a position to point out to the Authorities his case more particularly with regard to the contention of the petitioner about deletion of further area of land from reservation by the Commissioner of Jalgaon Municipal Corporation in the year, 2009, as contended by the petitioner. The said order seems to be dated 15.07.2009. As per the said order which is placed on record at **“Exh. M, Page – 63”** about 3500 Sq. Mtr. Land which was reserved as Site No. 143 is released from reservation and the same would be used as residential area. If, the petitioner would have been given hearing the petitioner could have brought this fact to the notice of the Authorities. More particularly as the order impugned in the present petition is passed subsequent to the order of the Commissioner dated 15.07.2009 dereserving the substantial area from Site No. 143 which was reserved for Primary School. After dereserving the land the land that would remain under reservation would be about 40 R. approximately i.e. Site No. 144.

10. It would have been appropriate if the petitioner would have been given hearing so that this fact could have been brought to the notice of the Government and the Government could have applied its mind while passing the order. The application of 2002 was prior to the sanction of the final development plan.

11. Considering the aforesaid conspectus of the matter, we are inclined to relegate the petitioner before the State Government for decision afresh on the representation of the

petitioner.

12. As we are relegating the petitioner before the State Government we are not entering into the other merits of the matter i.e. about the corrigendum etc.

13. In the result, the impugned communication / order dated 13th November, 2009, **(Exh O)** is quashed and set aside. The Respondent No. 1 shall decide the said representation afresh after giving opportunity of hearing to the petitioner. The petitioner may put forth the subsequent events as contended, such as, release from reservation some part of the property in the year, 2009 by the Commissioner etc. which would be considered by the Authorities on their own merits. The decision shall be taken by the State Government on the application of the petitioner expeditiously.

14. The writ petition is accordingly disposed of, however, with no orders as to costs.

[A. M. BADAR, J.]

[S. V. GANGAPURWALA, J.]

sam/Mar.16