

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

WRIT PETITION NO. 6904 OF 2013

Sanghpal Narayan Bharaskhle
and another

...PETITIONERS

versus

The State of Maharashtra and others.

...RESPONDENTS

.....

Mr. A.G. Godhamgaonkar, Advocate for petitioners
Mr. B.V. Virdhe, AGP for respondents No. 1 and 2
Mr. A.S. Bajaj, Advocate for respondents No. 3 and 4
Mr. Y.B. Bolkar, Advocate for respondent No. 5

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

DATED : 28th JULY, 2016.

Order :-

1. Petitioners and some other persons forming group purchased one plot each i.e. 114 plots, out of 620 plots of the layout sanctioned by respondent No. 3-City and Industrial Development Corporation (for short "CIDCO") at Waluj Mahanagar-3 situated at village Tisgaon. Petitioners have approached this court on account of permission granted by CIDCO to the revised lay-out thereby de-reserving area and sites shown as reserved for Balwadi - play field etc. So also, seek injunction restraining respondent No. 3 from recovering amount, inclusive of an amount towards service charges from the petitioners and other plots holders sold by Unitech.
2. Mr. Godhamgaonkar, learned counsel for petitioners submits that pursuant to the sanctioned lay-out in the year 2001 the petitioners had purchased their plots. There were four blocks in the said layout. In

Blocks "A and "C" area is reserved as open space for Balwadi - play field, however, subsequently in the year 2002, open space meant for Balwadi - play field in block "A" has been deleted. Said deletion is against law, without consent of the plot holders and without taking into consideration difficulties and hardship that would be faced by the plot holders. Learned counsel submits that the same has been done without adhering to procedure as laid down by law. Respondents do not have any authority to delete the reservation meant for open space- Balwadi - play field. The development plan which is modified in the year 2002 also does not state any reason for de-reservation of said site. Learned counsel submits that distance between block "A" and Block "C" is more than one and half k.m. As now reservation for Balwadi has been removed from block "A" children that are residents of block "A" will have to travel for one and half k.m., for the purpose of taking education in Balwadi.

3. Learned counsel submits that same is unjust and improper. There is estoppel against respondents from changing reservation which was in force at the time when the petitioners had purchased the plots. Learned counsel submits that maintenance of open space and plots for educational amenities is need of the plot holders and same cannot be allowed to be deleted. Learned counsel for petitioners rely on the judgment of the Apex Court in the case of *Manohar Joshi Vs. State of Maharashtra and others and connected matters*, reported in (2012)3 Supreme Court cases, 619.

4. Learned counsel for petitioners further submits that CIDCO is also recovering service charges without providing any amenities. The internal roads and other facilities are at the behest of Unitech. Without providing any facilities, the respondent - CIDCO cannot charge service charges. Gram Panchayat is also recovering the taxes from the petitioners and they cannot be subjected to dual taxes.

5. Mr. Bolkar, learned counsel for respondent No. 5 submits that as per sanctioned revised lay-out respondent No. 5 would maintain open space, Balwadi - play field and would not deal with said open space in any manner.

6. Mr. Bajaj, learned counsel submits that development plan was sanctioned, thereafter, as per procedure laid down under section 37 of the Maharashtra Regional Town Planning Act, 1966 (for short "MRTP Act") the same is modified. Learned counsel submits that in original development plan sites meant for Balwadi - play field were reserved and the same were excluded. Subsequently, vide notification objections were called in the year 2001, none of the petitioners or plot holders of the lay-out in question had raised any objection. Thereafter, the same was sanctioned in the year 2002 vide notification in the official gazette. According to learned counsel, revised lay-out sanction is in conformity with development plan and also with the provisions of MRTP Act. Learned counsel submits that charges are levied for the peripheral infrastructures and the same is also the part of development plan.

7. We have considered the submissions canvassed by learned

counsel for the respective parties. There cannot be a dispute with proposition that space meant for Balwadi- play field will have to be maintained in conformity with provisions of MRTP Act and any deviation therefrom is not permissible. The question would be whether sanction of the lay-out is in conformity with provisions of MRTP Act. We had called upon respondent No. 3-CIDCO to file an affidavit clarifying that as to whether sanction of revised lay-out filed by respondent No. 5 is in conformity with development plan and or rules. Respondent No. 3 Planning Authority has filed affidavit stating that sanction of revised plan is inconformity with development plan and the rules. This Court would not sit in appeal, over the decision taken by the planning authority, which is an expert. This court can only consider whether the decision making process had been followed and same is in conformity with Statue. We do not find anything on record to even remotely suggest that space meant for Balwadi - play field or reserved for other purposes is not in conformity with section 22 of the MRTP Act or any of the provisions. Draft notification was issued on 14-08-2001 by the Government for modification of the Development Plan. One of the entry was with regard to site reserved for Balwadi - play field in development plan, the land is to be included for residential zone. After about a year, vide notification in the official gazette dated 23-07-2002, after inviting the objections same was sanctioned. Said development plan sanctioned in the year 2002 is not assailed for long slumber for almost 12 years.

8. The judgment of Apex Court in the case of *Manohar Joshi* referred to supra is on different premises. In the present case, development

plan has been sanctioned in the year 2002 itself and even planning authority has stated on affidavit that requirement of keeping minimum area as open space, play field or for Balwadi is maintained even in the revised layout and same is in consonance with development plan.

9. Be that as it may, it does not appear that the petitioners have raised objection when same were called vide notification in the year 2001. In revised lay-out, space is kept for Balwadi - play field in block No. "C" and "D", however, the space in block "A" meant for Balwadi - play field has been deleted. Nothing is on record to show that by deletion of the same, area which is necessary to be kept as open space/play field as required under the provisions of MRTTP Act is reduced below minimum required to be maintained. Said revised layout has been sanctioned by planning authority after having satisfied that it is in conformity with provisions of MRTTP Act and bye-laws.

10. So far as service charges are concerned, development plan itself lays down provision of service charges, which is for the purpose of maintenance of infrastructure. The rates are fixed for non residential, residential-cum-commercial so also commercial places.

11. Considering the aforesaid, prayers made in the petition cannot be considered. As such, writ petition stands dismissed of. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]