

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

WRIT PETITION NO. 61 OF 2013

Sangappa Marutiappa Wanjule and others ...PETITIONERS

versus

The State of Maharashtra and others ...RESPONDENTS

.....

Mr. Pradip R. Patil, Advocate for petitioners

Mr. S.M. Ganachari, AGP for respondents No.1 and 2

Mr. S.P. Shah, Advocate for respondent No. 3

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

DATED : 27th JUNE, 2016.

Order :-

1. Mr. Patil, learned counsel for petitioners submits that in the year 1965 lay-out plan was sanctioned. While doing so, numerous conditions were imposed on the petitioners for transfer of open space, area under D.P. Road to erstwhile Municipal Council, subsequently petitioners have been paid compensation of the area under development plan. However, so far as open space is concerned, the Corporation does not have right to keep said open space, transferred without any consideration.

2. Learned counsel for petitioners relies on the judgment of Apex Court in the case of *Pt. Chet Ram Vashist (dead) by L.Rs. Vs. Municipal Corporation of Delhi* reported in *AIR 1995 Supreme Court 430(1)*. The learned counsel submits that it cannot be said there is delay in filing present petition. Mutation entry in the name of respondent - Municipal

Corporation was mutated for the first time in the year 2001 only. According to learned counsel, even respondent - Corporation has not exercised any right of ownership on said open space and said open space vest with the petitioners, who are original owners of the land and they would hold said open space as trustees.

3. Mr. Shah, learned counsel for respondent -Corporation submits that petition suffers from delay and laches. Cause of action which arose in 1965 is sought to be agitated in 2012-2013. According to learned counsel, the petitioners do not own and possess any land or house in nearby vicinity and on that count also they cannot claim to have any interest in the subject writ land.

4. We have considered the submissions canvassed by learned counsel for respective parties. Open spaces of the layout plan certainly do not vest with Municipal Corporation nor it can insist upon the owners for handing over said open space at nominal charges. Apex Court in the case of ***Pt. Chet Ram Vashist (Supra)*** has clearly 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 as a custodian of public interest to manage it in the interest of the society in general. But the 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 ceases 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."

5. Even owner of the land who has prepared layout plan and sold plots do not remain legal owner of that open space and only hold open space as trustee. Said open space meant is for the benefit and enjoyment of layout plot holders. Even user of land cannot be changed and open space will have to be kept open. We had asked Mr. Patil learned counsel for petitioners as to whether the petitioners hold any land or property in the vicinity of said open space. Upon instructions, Mr. Patil learned counsel fairly states that the petitioners are not holding any property in the nearby vicinity of said open space and they have shifted to Jalna.

6. The Apex Court in the case of ***Pt. Chet Ram Vashist (Supra)*** had considered the challenge being raised after a quarter of century so also

taking into consideration the fact that petitioners-therein did not have any land/house in the locality, did not grant relief to the petitioners therein.

7. In light of above, considering totality of facts of the present case, we are not inclined to entertain writ petition, however, it is directed that respondent - Corporation shall not change user of said open space and it shall be kept for the enjoyment of the said land holders of the layout.

8. Writ petition accordingly stands disposed of. No costs.

9. At this stage, learned counsel for respondent - Corporation states that the amount as directed under order dated 10-09-2013 has been deposited by the respondent - Corporation in this Court and same be refunded to it.

10. In view of the above, amount deposited by respondent - Corporation be refunded to it.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

MTK