

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

WRIT PETITION NO. 11837 OF 2015

Agriculture Produce Market Committee
Nanded, through its authorized Signatory
Secretary Harishcnadra S/o Govindrao
Deshmukh, Age: 56 years, Occu. Secretary
R/o C/o APMC Nanded, Ta. and Dist.
Nanded.

...PETITIONER

versus

Union of India and others

...RESPONDENTS

.....

Mr. Sahaji B. Ghatol Patil, Advocate for petitioner
Mr. Sanjeev B. Deshpande, ASG for respondent No. 1
Mrs.A.V. Gondhalekar, AGP for respondents No. 2, 4 and 5
Mr. R.K. Ingole, Advocate for respondent No. 6

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

DATED : 18th JULY, 2016.

Order :-

1. The petitioner impugns letter dated 14-02-2014 issued by respondent No. 6 - Nanded Waghala Municipal Corporation, Nanded (for short "Corporation")
2. Mr. Ghatol, learned counsel for petitioner states that petitioner-Agriculture Produce Market Committee, Nanded (for short "APMC") is a local authority and creature of statute. Respondent No. 6 - Municipal Corporation has sold land from Survey Nos. 65, 66, 72, 73, 28 and 44 situated at village Asdullabad and Nanded vide registered sale-deed dated 13-08-1976 for consideration of Rs. 75,000/- (Rupees Seventy

Five thousand). As per clause (6) of the said sale-deed, APMC is authorized to use and dispose of land for the purpose of Market Committee. As per clause (8) of the sale-deed, it is provided that respondent No. 6 - Corporation will not interfere with ownership and possession of the APMC. After purchase of land, APMC has submitted lay-out. Said lay-out has been sanctioned by respondent No. 6 - Corporation and the same has been subsequently revised. Eventually, revised lay-out is sanctioned on 12-09-2013.

3. Learned counsel for petitioner further submits that along with said revised lay-out, a letter was issued by respondent No. 6 - Corporation asking the petitioner to execute affidavit regarding handing over of open space and parking for taking care. Learned counsel further submits that the same is not inconsonance with policy of the State Government. The rights of open space and roads vests with the petitioner - APMC. According to learned counsel, said open space and internal roads would remain with petitioner as trustee. To support his submission learned counsel for the petitioner relies on the judgment of Apex Court in the case of *Pt Chet Ram Vashit Vs. Municipal Corporation of Delhi* reported in 1995(1) SCC 47.

4. Mr. Ingole, learned counsel for respondent No. 6 - Corporation submits that possession of open space is sought for its proper management. As per provisions of Maharashtra Regional Town Planning Act, 1966 (for short "MRTP Act") and Circular dated 30-06-2010 issued by State authority, the open space and internal roads are to be given in possession of the Corporation. In view of that, letter has been rightly

issued.

5. We have heard the learned counsel for the respective parties. Facutal matrix as has been narrated above is not disputed. It is not disputed that petitioner has purchased writ land as contended vide registered sale deed. Thereafter, revised lay-out was sanctioned by the respondent No. 6 - Corporation. Open space of the lay-out is meant for the use and enjoyment of the plot holders. The open space and parking etc. in the lay-out plan is meant for the public purpose and it is used by the public in general. Effect of reserving open space is that owners ceased to be legal owner of the open space in question, he holds the land for the benefit of public at large, the owner is not entitled to transfer said open space or internal roads. Interest left in the owner is residuary one. However, the same does not entitle the Corporation to claim possession of said land/open space, nor it can ask the petitioner to transfer the land to it. It has a right to manage it and nothing further, as has been held by learned Apex Court in the case referred to supra.

6. One of the arguments advanced by the learned counsel for the respondent is that petitioner is using open space for other purpose i.e. commercial, certainly, the same is not permissible. Open space can be kept open for use and enjoyment of plot owners and for the use of public at large and it cannot be used for commercial purpose, that would defeat the purpose of open space. In case, some structures are erected on the open space or same is being used for the purpose which is prohibited, Corporation has every right to take action in that regard.

7. With aforesaid observations, impugned order/communication is quashed and set aside. It is also made clear that the petitioner cannot use that open space for any purpose for erecting structures. Even otherwise, it will have to be kept open for lay-out holders. If for temporary period such as for exhibitions etc. same is required to be used then the petitioner shall take permission of the respondent – Municipal Corporation.

8. With aforesaid directions, writ petition stands disposed of. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

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