

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO.165 OF 2007

Yogacharya Shri Anandji	)	
Age: 49 yrs. Occ : Self Employed	)	
Prop: Yoga Training Centre,	)	
Ground Floor, 51, Jaihind Society,	)	
11 th N-S Road, JVPD Scheme,	)	
Mumbai – 400 049.	)	..Petitioner

Versus

- | | | |
|---|---|--|
| 1. Commissioner of Police |) | |
| Greater Mumbai Police HD.Qtrs. |) | |
| Near Crawford Market |) | |
| Mumbai – 400 001. |) | |
| 2. The Urban Development Ministry |) | |
| Maharashtra State, Mantralaya, |) | |
| Mumbai – 400 032. |) | |
| 3. The Home Ministry, |) | |
| Maharashtra State, Mantralaya, |) | |
| Mumbai – 400 032. |) | |
| 4. The Secretary/Chairman |) | |
| (Society registered under Co-op. |) | |
| Societies Act) |) | |
| Vasundhara Co-op.Hsg.Society Ltd. |) | |
| East-West Road No.3, JVPD Scheme, |) | |
| Amough Bldg, Mumbai – 400 049. |) | |
| 5. The Secretary/Chairman |) | |
| JVPD Association, |) | |
| 2 nd Floor, Plot No.51, Jaihind CHS Ltd. |) | |
| 11 th N-S RD. JVPD Scheme, |) | |
| Mumbai – 400 049. |) | |
| 6. Shri Hemant M. Shah |) | |
| Chairman : M/s. Akruti Nirman Ltd. |) | |
| Akruti Trade Centre. RD. No.7, |) | |
| Marol MIDC, Andheri (E), |) | |
| Mumbai – 400 093. |) | |

7.The Dy.Chief Engineer (WS))
Municipal Corporation of Mumbai,)
Palika Marg, Mumbai – 400 001.) ..Respondents

Yogacharya Shri Anandji, petitioner in-person.

Mr. A.B. Vagyani, Government Pleader with Mr. V. N. Sagare, AGP for respondent Nos. 1 to 3- State.

Mr. P. K. Dhakephalkar, senior counsel with Mr. Chetan Kapadia, Mr. P. K. Shroff, Mr. D. V. Deokar and Mr. Dhruvesh Parikh i/b. M/s. P. K. Shroff and Co, advocates for respondent No.4.

Mr. Prateek Seksaria i/b. M/s. Dastur Kalambi and Associates, advocates for respondent No.5.

Ms. Trupti Puranik, advocate for respondent No.7-BMC.

**CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.**

DATE OF RESERVING JUDGMENT : 2nd FEBRUARY, 2016.

DATE OF PRONOUNCEMENT : 31st MARCH, 2016.

ORAL JUDGMENT. : (Per Ranjit More, J.)

The Hon'ble the Chief Justice, by order dated 5th December, 2014, assigned the above PIL along with criminal writ petition No.1315 of 2010 to this Court for hearing. Accordingly, we have heard the arguments of the petitioner-in-person and learned counsel appearing for the respective respondents and closed the matter for orders. The parties were, however, directed to file short synopsis along with their written submissions within two weeks. Except respondent No.4, none of the parties have filed the written submissions within the

stipulated time and, therefore, we are disposing this PIL on the basis of record and arguments advanced on 2nd February, 2016.

2. By this PIL, which came to be filed on 25th October, 2007, the petitioner seeks judicial inquiry to investigate the illegal transaction of CST Plot No.320 and 194A-2, the circumstances of its de-reservation, various favours and irregularities practiced at the instance of respondent No.5, stay of occupation certificate to be granted by the Municipal Corporation of Greater Mumbai to respondent No.4 and a restraint order from giving possession of the flats to the members of respondent No.4-Society. The petitioner is also seeking an order restraining respondent No.5 from creating third party interest in CST Plot No. 320 located at V. K. Mehta Road, adjoining Juhu Police Station.

3. Though the petitioner claims irregularities in transaction of CST Plot No.320 and 194A-2, the Division Bench of this Court (Coram : Swatanter Kumar, C.J. and V. M. Kanade, J.) after hearing the petitioner-in-person and learned counsel appearing for the respondents passed the following order :

"1. Dispute in the present Petition relates to der-eservation of Plot which was reserved for building police quarters.

2. It is stated on behalf of the respondents that the

Police Station on the part of the property in question has been fully constructed and is in operation. The post office for the benefit of public at large is being constructed on the plot which is under construction and is built up by respondent No.5 in terms of the agreement with the Society. We do not wish to entertain any contention in regard to these two buildings. This fact is made clear to the Petitioner. However, the basic contention of the Petitioner, now, is that the major part of the plot which is being used for building flats of the Police Officers was reserved for public purpose viz. providing police quarters and de-reservation of the said plot is a colorable exercise of power in an arbitrary manner.

3. List this case for final disposal limited to the contention of the Petitioner in relation to the Police Quarters which is stated to have been constructed and occupied. This, of course, is without prejudice to the rights and contentions of the parties.

4. Stand over to 19/06/2008."

The Division Bench noted that the main grievance of the petitioner was that the major part of the plot which is being used for building flats for the police officers was reserved for public purpose (namely providing police quarters) and the de-reservation of the said plot is colorable exercise of power in an arbitrary manner and, directions were given to list the matter for final disposal limited to the contention of the petitioner in relation to the police quarters.

4. The petitioner-in-person submitted that respondent No.2 has handed over a large piece of prime residential land bearing CST

No.194A-2 on East-West Road No.3, JVPD Scheme, Mumbai – 400 049 to private society of IPS Officers. This land was originally reserved for police quarters. He submitted that several irregularities have been committed in this entire transaction. The petitioner also alleged that respondent No.2 under suspicious circumstances de-reserved the said plot in/or about April, 2003, when at the relevant time, the police department had a pending requirement of over 150 premises for their various categories of personnel. Thus, the petitioner has taken exception to the de-reservation of the said plot and handing over of possession of the same to respondent No.4-private society. It is the contention of the petitioner that de-reservation and handing over of the said plot to respondent No.4- private society is a colorable exercise of power by respondent No.2 and this was done for the benefit of the IPS Officers who are the members of respondent No.4-private society. The petitioner submitted that the de-reservation of the plot and handing over of the same to respondent No.4 was contrary to the procedure contemplated under the Maharashtra Regional and Town Planning Act, 1966 (for short "*the MRTP Act*") and that the Government largesse are given to private persons. The petitioner lastly submitted that the State Government could have easily auctioned the plot for a hefty price being at a prime location and it could have easily fetched a great premium which could have been effectively used for the benefit of police

department.

5. Mr. Dhakephalkar, learned senior counsel appearing for respondent No.4-private society contested the petition vehemently. At the outset, he submitted that the petition deserves to be dismissed on the ground of delay and laches. He submitted that the petitioner has approached this Court in the month of October-2007 whereas the complete Occupation Certificate in respect of the building constructed on the said plot of land was received by respondent No.4 in the month of April, 2007 itself. He submitted that the petition is not in public interest but the petitioner has private interest in the litigation. In this regard, he submitted that the petitioner has a dispute with respondent No.5 with regard to premises at one Jai Hind Society, a member of respondent No.5-Association and, therefore, this petition should not be entertained by this Court. Mr. Dhakephalkar lastly submitted that the petition is filed as if the said plot is belonging to the Government, however the same is not correct and the said plot belongs to respondent No.5 and it was purchased by respondent No.4 for valuable consideration, and thereafter, encroachment on it was removed by incurring heavy expenses. He submitted that the said plot was reserved for police quarters and this reservation was deleted by the competent authority after following the procedure under Section 50 of the MRTP Act

inasmuch as respondent No.3 – appropriate authority no more required the said plot for public purpose. He submitted that the petition is devoid of any merits and ought to be dismissed. Learned counsel appearing for rest of the respondents adopted the arguments advanced by Senior Advocate Mr. Dhakephalkar.

6. In **R & M Trust Vs. Koramangala Residents Vigilance Group and ors.(2005) 3 SCC 91**, the Supreme Court had held that the sacrosanct jurisdiction of public interest litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends. The Court held that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. In the facts of that case, the construction was started in 1987 and stopped after the building had come upto three floors in 1988. In March, 1991, it was resumed after permission was granted and the writ petition was filed in November, 1991. In the meanwhile, construction was almost complete. The Supreme Court held that the delay was fatal. Similarly, in **Chairman & MD, BPL Ltd. vs. S. P. Gururaja and ors. (2003) 8 SCC 567**, the allotment made in the year 1995 was challenged in the writ petition filed after one year. By that time, the appellant company had not only taken possession of the land

but also made sufficient investment. The Supreme Court held that the delay in that case had defeated equity and the delay of the nature should be considered to be of vital importance.

7. In the light of the above decisions of the Apex Court, let us consider the facts of the present case. Since 1974, the plot in question, viz. CTS. No. 194A-2, was reserved for the police quarters in the Development Plan. On 21st April, 2001, Respondent No.1- Commissioner of Police, Brihan Mumbai, communicated that the land is no longer required for the purpose for which it was reserved in the Development Plan. On 26th March, 2003, respondent No.3-Home Department communicated to respondent No.2 -Urban Development Department that the said land is no longer required for the purpose for which it was reserved in the Development Plan. On 25th April, 2003, Respondent No.2-Urban Development Department, in exercise of powers vested in it under Section 50 of the MRTP Act, deleted reservation of police quarters on the said plot. Respondent No.5, being the owner, thereafter conveyed the said land to respondent No.4 on 14th May, 2003. On 4th June, 2004, respondent No.4 submitted building plans which were duly sanctioned. On 7th August, 2004, IOD dated 14th June, 2004 was issued and Works Commencement Certificate was received by respondent No.4. On 12th April, 2007, Full Occupation Certificate in

respect of the constructed building on the said plot was received by respondent No.4 and the present PIL is thereafter filed on 25th October, 2007. Thus, the building on the said plot was constructed long before to the filing of this PIL. In our considered view, the ground of delay and laches would be sufficient to dismiss this petition, but since the petitioner is alleging irregularities in de-reservation of the plot, we are dealing with the petition on merits as well.

8. The subject matter of the petition are lands bearing C.T.S. Nos.194A-2, plot No.A/7/3 and plot Nos. 319 and 320 of the JVPD Scheme. These three plots of land were reserved for the purposes of police quarters being reservation No.610, Police Station bearing reservation No.604 and Post Office bearing reservation No.593 respectively in final Development Plan which was sanctioned in the year 1993. This is evident from the notification dated 19th March, 1993 annexed at "Exhibit – R1" of the affidavit filed by one Sanjay R. Kurve. The affidavit also discloses that the plot Nos. 319 and 320 continued to be reserved for the purposes of Police Station and Post Office respectively and the reservation over plot No.A/7/3(CTS No. 194A-2) was deleted taking recourse to the provisions of Section 50(2) of the MRTP Act. Otherwise also, by the interim order dated 24th April, 2008, the Division Bench restricted this petition to de-reservation of plot bearing

CTS No.194A-2 which was reserved for police quarters. The reservation was deleted by taking recourse to the provisions of Section 50(2) of the MRTTP Act. It is the stand of respondent Nos.1 and 3 viz. Commissioner of Police and Home Department that this plot was not required and, therefore, deletion of reservation was recommended. Mr. Manohar Bhoir, Deputy Commissioner of Police (HQ-II), Brihan Mumbai has filed affidavits dated 11th January, 2008 and 21st January, 2008 on behalf of respondent No.1. On behalf of respondent No.3, Mr. Sunil Rawade, Section Officer, Home Department, Government of Maharashtra, has filed an affidavit dated 16th January, 2008. In the above affidavit, Respondent No.1 has stated that, in pursuance of reservation, the police station is already constructed on the plot bearing CST No.319 of JVPD Scheme. It is further stated that, apart from the land bearing CST No.194A-2, 9 other pieces of land were also reserved for the said purpose viz. for police quarters and some of these plot of lands are constructed upon and the police quarters once constructed on those plots would be substantially sufficient to house the present police force. Respondent No.1 also averred that sufficient accommodation would be created for the purpose of police quarters, if these lands are utilised and constructed upon. In additions to these 9 pieces of land, respondent No.1 has also given list of 56 other pieces of land which are available to the Home Department for construction thereupon.

On behalf of respondent No.3-Home Department, an affidavit is filed by Mr. Sunil B. Rawade, Section Officer, Home Department on 16th January, 2008. The affidavit shows that the Home Department vide its communication dated 26th March, 2003, had requested the Government to delete the reservation of the land bearing CST No.194A-2 in accordance with the provisions of Section 50 of the MRTTP Act. The de-reservation was sought considering that the available land would be sufficient to take care of the needs of police quarters. It was also stated that it was not possible to acquire land in question as no budgetary allocation in that regard was made by the Department. It was averred that the reservation had been imposed for more than 20 years before the said request was made as the reservation would have lapsed in case steps were not taken to acquire the same.

On behalf of respondent No.2, affidavits are filed by Mr. Sanjay R. Kurve, Deputy Director of Town Planning on 15th January, 2008 and 28th January, 2008. The stand of respondent no.2 is that the plot was reserved for police quarters for the period exceeding 23 years. If the original owner had given a purchase notice, the Government would have faced with an option of acquiring the land at market value. It is the specific case of respondent No.2 that taking into consideration the period for which the said land was reserved for public purpose and other aspects viz. requirement of the Department coupled with the fact

that the Department was facing financial crunch and no allocation of funds were made for the purpose of acquiring new lands, the reservation on the said plot was deleted after following the procedure under Section 50 of the MRTTP Act.

9. The dereservation of the plot in question was made taking recourse to section 50 of the MRTTP Act, which reads thus :

“50. Deletion of reservation of designated land for interim draft of final Development Plan:-

(1) The Appropriate Authority [(other than the Planning Authority)], if it is satisfied that the land is not or no longer required for the public purpose for which it is designated or reserved or allocated in the interim or the draft, Development plan or plan for the area of Comprehensive development or the final Development plan, may request-

- (a) the Planning Authority to sanction the deletion of such designation or reservation or allocation from the interim or the draft Development plan or plan for the area of Comprehensive development, or*
- (b) the State Government to sanction the deletion of such designation or reservation or allocation from the final Development plan.*

(2) On receipt of such request from the Appropriate Authority, the Planning Authority, or as the case may be, the State Government may make an order sanctioning the deletion of such designation or reservation or allocation from the relevant plan:

Provided that, *the Planning Authority, or as the case may be, the State Government may, before making any order, make such enquiry as it may consider necessary and satisfy itself that such reservation or designation or allocation is no longer necessary in the public interest.*

(3) Upon an order under sub-section (2) being made, the land shall be deemed to be released from such designation, reservation, or as the case may be, allocation and shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land, under the relevant plan."

10. The "Appropriate Authority" has been defined in Section 2(3) of the MRTP Act to mean any Public Authority on whose behalf the land is designated for a public purpose in any plan or scheme and which is authorized to acquire. Since the plot in question was reserved for the police quarters, respondent No.3- Home Department is the appropriate authority, on whose request the Planning Authority or the State Government is authorised to sanction deletion of the reservation after making enquiry and satisfying itself that such reservation is not necessary.

11. The affidavits filed on behalf of respondent Nos. 1, 2 and 3 make it clear that request was made by the appropriate authority to the Government for deletion of the said reservation meant for police quarters on the said plot on the ground that the said land is no longer necessary in the public interest. The Government on making appropriate enquiry, satisfied itself that the reservation is no longer necessary in the public interest and thereafter passed the order under

Section 50(2) of the MRTP Act by issuing notification dated 25th April, 2003, a copy of which is annexed to the affidavit dated 11th January, 2008 filed on behalf of respondent No.1. This notification also reveals that the appropriate authority has informed that the said land is no longer required for the purpose for which it was reserved in the Development Plan and after making enquiry the Government found it expedient to delete the said reservation. The Petitioner has not controverted or disputed these affidavits by filing rejoinder.

12. Thus, we find that while deleting the reservation for police quarters on the land bearing CST No.194A-2, the Government followed the procedure contemplated under Section 50 of the MRTP Act and, therefore, no fault can be found in this regard. The said plot thereafter stood released from such reservation and became available to the owner viz. respondent No.5 for the purpose of development. As stated above, respondent No.5 thereafter agreed to transfer the said plot and entered into conveyance dated 14th May, 2003 with respondent No.4. Respondent No.4 thereafter, having obtained requisite permissions, constructed the building and obtained occupation certificate in April -2007. We, therefore, do not find any merit in the petitioner's contention that de-reservation of the said plot is done in a colorable exercise of power and in an arbitrary manner.

13. Be that as it may, admittedly, the petitioner has a long standing dispute with respondent No.5 in respect of the premises in one Jai Hind Society, a member of respondent No.5 Association. The petitioner had also filed a declaratory suit in the Small Causes Court at Bandra against Jai Hind Society in respect of ground floor premises of the building belonging to Jai Hind Society situated at JVPD Scheme. The suit was dismissed on 19th January, 2004. The petitioner thereafter on 24th March, 2006, and 29th July, 2006 respectively, filed an application for stay of the impugned order dismissing the suit and an application for claiming ownership of the articles and things lying in the premises. Both the applications were dismissed. The petitioner thereafter filed criminal contempt petition against Jai Hind Society. The said petition was also dismissed on 20th April, 2006. The petitioner thereafter alleged theft and house-breaking and approached the police. On failure of the complaint filed before the police, the petitioner filed the present public interest litigation in order to exert pressure on the police and respondent No.5. Thus, we find that the petitioner has private interest in the litigation and on this point also, the petition deserves to be dismissed.

14. In short, we find that plot bearing CST No.194A-2 reserved for police quarters was deleted from the reservation by the Government

after following due process of law. That apart, the petition suffers from gross delay and laches and the petitioner has private interest in the litigation. The petition is devoid of any merits and the same is accordingly dismissed.

15. In view of the disposal of main petition-PIL, all civil applications taken out in this PIL do not survive and same are accordingly disposed of.

[ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]