

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 352 OF 2012

1. Prabhat Bahuudeshiya Sanstha,
Bhikamchand Jain Nagar,
Jalgaon, Tq. & Dist. Jalgaon
Through its Chairman
Jagannath s/o. Ramdas Khambayat.
2. Sandesh s/o. Jaisingrao Bhoite,
Age 36 years, Occu. Social Work,
R/o. 7, B.J. Nagar, Jalgaon,
Tq. & Dist. Jalgaon.
3. Jagannath s/o. Ramdas Khambayat,
Age 62 years, Occu. Pensioner,
R/o. 93, B.J. Nagar, Jalgaon,
Tq. & Dist. Jalgaon.
4. Prakash s/o. Babulal Shah,
Age 63 years, Occu. Business,
R/o. 56, Jalgaon District Central
Co-operative Bank Director
Bungalow, B.J. Nagar, Jalgaon,
Tq. & Dist. Jalgaon.
5. Girish s/o. Laxmichand Poldia,
Age 45 years, Occu. Service,
R/o. 88/11, B.J. Nagar,
Jalgaon, Tq. & Dist. Jalgaon.
6. Vinod s/o. Rambhau Taral,
Age 37 years, Occu. Business,
R/o. Plot No. 33, B.J. Nagar,
Jalgaon, Tq. & Dist. Jalgaon. ...**Petitioners.**

Versus

1. The State of Maharashtra
Through its Principal Secretary,

Urban Development Department,
Mantralaya, Mumbai.

2. Jalgaon Municipal Corporation,
Jalgaon, Tq. & Dist. Jalgaon,
Through its Commissioner.
3. Kai. Sheth Nathu Supadu Wani,
Chandsarkar Trust,
"Pithruchhaya Building,
Neharu Chauk, Jalgaon
Through its President/
Secretary

...Respondents.

Mr.P.S. Dighe h/f. Mr. V.R. Dhorde, Advocate for
petitioners.

Mr.S.B. Joshi, A.G.P. for respondent No. 1.

Mr.P.R. Patil, Advocate for respondent No. 2.

Mr.G.V. Wani, Advocate for respondent No. 3.

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**
DATED : February 08, 2017.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. By
consent, heard both the sides for final disposal.

2) The petition is filed to challenge the
order of allotment made by respondent No. 2, Local
Body of open space to respondent No. 3. In respect

of the properties bearing Survey Nos. 288, 289/A, 289/B, the first development plan was approved prior to 1995 and the modified development plan was approved in the year 1998. It appears that in the past, one attempt was made by Local Body, respondent No. 2 to allot the open space shown in the approved lay out plan to one institution like Shri. Sant Muktabai Sansthan, but the said institution did not utilize the said open space and so, the allotment was cancelled in the year 2000. It appears that by resolution No. 493 dated 28.2.2000, respondent No. 2, Local Body now allotted the open space to respondent No. 3. Relevant record is produced to show that even construction is likely to start on the open space of Multi Purpose Hall and the remaining open space will be used for recreation, plantation of trees etc. The area of open space is having size of around 4400 Sq. Mtrs.

3) The petitioners are residents of the

plots prepared in the approved lay out plan and they are feeling aggrieved as open space will be utilized and construction will be made on the open space. The learned counsel for petitioners placed reliance on the case reported as **2003 (3) Mh.L.J. 215 [Vrajlal Jinabhai Patel and Anr. Vs. State of Maharashtra and Ors.]**. In similar circumstances, this Court held that there was misconception with the Local Body that the open space, which was kept under lay out plan, was vested in the Local Body. The observations show that the Local Body cannot presume that the open space stand vested and transferred and space can be utilized for other purpose. The observations with regard to the power can be found in para No. 7 and they are as under :-

"7. Rule 14 appears to have been framed in furtherance of section 183 of the Act which relates to laying out or making of a new streets. It nowhere provides for the open spaces. Therefore, the power, if any, of acquiring the land under the streets is

only contemplated under section 183. Acquisition of open spaces is not contemplated under section 183. Rule 14.3 which is a delegated legislation cannot, confer a power of acquisition of the open space under the lay out. Under Article 300-A of the Constitution of India, no person shall be deprived of his property save by authority of law. The authority of law means by or under any law made by a competent legislature. No law made by the legislature was shown to us under which the ownership in the open space could be vested or transferred to the Municipal Council whether by payment of compensation of Re.1/- or otherwise. In the circumstances, we reject the alternative contention of Shri. Joshi that the open space under the layout would be vested in the Municipality on payment of compensation of Re.1/-."

4) In view of aforesaid observations made by this Court in the case cited *supra* that on the open space construction cannot be allowed and such resolution could not have been passed by the Local

Body, this Court holds that decision taken by the Local Body needs to be set aside.

5) In the result, the petition is allowed. The decision taken by respondent No. 2, Local Body under resolution No. 493 dated 28.2.2000 and subsequent allotment made in favour of respondent No. 3 is set aside.

Rule is made absolute in aforesaid terms.

[SANGITRAO S. PATIL, J.] [T.V. NALAWADE, J.]

ssc/