

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

CRIMINAL WRIT PETITION NO. 588 OF 2006

1. Chandrakant s/o. Shivajirao Jahagirdar,
Age 49 years, Occu. Service,
R/o. Dharmabad, Tq. Dharmabad,
District Nanded.
 2. Suhas s/o. Uttamrao Kulkarni,
Age 49 years, Occu. Service,
R/o. As above.
 3. Gopal s/o. Zumbarlal Chhapparwal,
Age 55 years, Occu. Service,
R/o. As above.
 4. Purshottam s/o. Radhakishan Mandhane,
Age 48 years, Occu. Service,
R/o. As above.
 5. Subhash s/o. Madhukarrao Joshi,
Age 49 years, Occu. Service,
R/o. karkheli, Tq. Dharmabad,
District Nanded.
-Petitioners.**

Versus

The State of Maharashtra
(through Police Station
Dharmabad, Tq. Dharmabad,
District Nanded.

....Respondents.

Mr. Vijay Sharma, Advocate for petitioners.

Mr. G.O. Wattamwar, APP for State/respondent.

CORAM : T.V. NALAWADE, J.

DATED : 23rd January, 2017.

ORAL JUDGMENT :

- 1) The petition is filed to challenge the order made by the learned Judicial Magistrate, First Class, Dharmabad on Exhs. 38, 42, 52 and 54 in R.C.C. No. 57/2002. Heard both the sides.

2) It is a police case filed against the present petitioners and others for offences punishable under sections 406, 409 r/w. 34 of Indian Penal Code and under sections 52, 53, 54 and 55 of the Maharashtra Regional and Town Planning Act, 1966 (M.R.T.P. Act). The present petitioners are the purchasers of open space, which was to be kept as open as per the conditions laid down for development of Survey No. 631. The area was more than 10000 Sq. Ft. was to be kept open. The submissions made and the record show that after selling the plots to the present petitioners, no such open space is left and open space shown in approved plan itself is sold to the present petitioners.

3) The purchase was made by the present petitioners on 27.7.1988 from original owner Anil Ratnalikar, who had obtained N.A. permission and development permission. The learned counsel for petitioners submitted that by resolution, initially the Development Committee and then Standing Committee granted permission in respect of this open space and then the General Body made resolution for granting such permission, though that was done on 29.8.1988. The learned counsel submitted that after this approval given by General Body construction permission was granted to the petitioners and

after completion of the construction even Completion Certificate was given by the Local Body. The learned counsel submitted that so long as those resolutions are there and they are not set aside by the State Government, the petitioners cannot be prosecuted and tried for aforesaid offences.

4) The aforesaid submission made by the learned counsel for the petitioners is not at all tenable in law. Under the provisions of M.R.T.P. Act, the permission can be granted if the permission is in accordance with the provisions of M.R.T.P. Act and Rules laid down for the development of the property. The Local Body has no power to act contrary to these provisions and Rules. In view of these circumstances, it cannot be said that the resolution made by the Local Body ought to have been set aside. The submissions made show that question was raised in Legislative Assembly with regard to illegalities and then some directions were given. After that, the Chief Officer gave report to police and the things started moving. Thus, it can be said that the persons from Local Body had joined hands with the owner and naturally for making some wrongful gain, such resolution was passed. The resolution which was passed, has no support of law and there is no power with the Local Body to pass such resolution and so, that need not be set aside and so, by ignoring

it, the crime came to be registered. Thus, there is no force in this submission.

5) The learned counsel for petitioners submitted that the property, the open space, was still with the owner and it was not handed over to the Local Body and it was not vested in the Local Body and so, there was no entrustment of the property to Anil, original owner by the Local Body and due to that, it cannot be said that the offences punishable under sections 409 and 406 of I.P.C. are committed. This proposition is not acceptable at this stage. When the law requires that the particular portion of the property needs to be kept as open space for the benefit of all, the person, who has control needs to presume that he is holding the property for all and it is kept for benefit for all. If he with dishonest intention disposes the property and makes wrongful gain, he definitely becomes responsible for the aforesaid offences. The persons like present purchasers, who purchase the said property do it at their risk and further, there is always possibility that they are purchasing the property at the rate which is much below the market rate and so, they are also making wrongful gain in such a way. Further, in such cases, the provision of section 120-B of I.P.C. can always be used. There will be the charge for offence under section 409 of I.P.C. and so, such

use is possible. During trial, it is always open to the Court to find out as to whether any other person is also responsible for such offence and to take action against that person also under section 319 of Cr.P.C. When at present, after investigation police have collected material of aforesaid nature against the present petitioners and original owner, the Court is not expected to ignore this material by going in to the aforesaid technicalities.

6. The learned counsel for petitioner has mentioned two cases in the memo of petition viz. **AIR 1981 SC 1646 [Moola Vs. Financial Commissioner, Revenue, Chandigarh and ors.]** and **AIR 1983 SC 631 [Roshan Lal Raina Vs. State of Jammu and Kashmir]**. The facts and circumstances of each and every case are always different. In the present matter, necessary observations are made with regard to the ingredients of sections 406 and 409 of I.P.C. This Court holds that the Trial Court has not committed any error in rejecting the applications filed for discharge by the present petitioners. The petition stands dismissed. The observations are for the present purpose only.

Rule is discharged.

[T.V. NALAWADE, J.]

SSC/