

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

WRIT PETITION NO.6251 OF 2017

Ekta Sahakari Grahanirman Sanstha Ltd. **...PETITIONER**
Through its Chairman
Shri Prabhakar S/o. Shankarao Mate,
Age-52 years, Occu-Social Service,
R/o.Mayur Park, Harsool Road,
Aurangabad

VERSUS

1. Deepak Bhaskar Patil, **...RESPONDENTS**
 Age-35 years, Occu-Service,
 R/o.Nathnagar, Jalgaon Road,
 Aurangabad
2. M/s. Ajaydeep Associates,
 401, Ajaydeep Plaza, 9 Town Centre,
 CIDCO, Aurangabad
 Through its Partner
 Ajeet Laxmanhai Patel
 Age-47 years, Occu-Business,
 R/o. Cidco, Aurangabad
3. Aurangabad Municipal Corporation,
 Through Municipal Commissioner,
 Aurangabad
4. The Deputy Director of Town Planning,
 Aurangabad Municipal Corporation,
 At and District Aurangabad
5. The Sate of Maharashtra
 Through Collector Aurangabad,
 At and District Aurangabad

Mr.M.D.Godhamgaonkar, Advocate for the petitioner
Mr.D.P.Palodkar, Advocate for respondent No.1
Mr.Deshmukh Chaitanya, Advocate for respondent No.3
Mr.A.P.Bhandari, Advocate for respondent No. 4
Mr.S.W.Munde, AGP for the respondent/State

**CORAM : SUNIL P. DESHMUKH
& S.M.GAVHANE, JJ.
DATED : 20.06.2019**

ORAL JUDGMENT [PER: SUNIL P. DESHMUKH, J.]

. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally by consent.

2. The petitioner is before this court posing challenge to building permission given to respondent No.1 dated 09.03.2017 contending that the permission violates the Development Control Regulations/Rules of Aurangabad Municipal Corporation as were subsisting while application for sanction to layout had been filed around 1988 and seeks writ of certiorari or writ of similar nature quashing building permission to respondent No.1 as well as quashing sale of plot by respondent No.2 to respondent No.1 declaring the same to be fraudulent.

3. Succinct reference to relevant events may facilitate appreciation of the matter. There is no dispute on that respondent No.2 had been owner of land bearing Gut No.191/2, admeasuring 72-Are, situated at Harsool, Aurangabad within limits of Municipal Corporation of Aurangabad City.

4. Respondent No.2, it appears had applied for sanction to layout of said land plan whereunder about 26 plots were shown and 15% of the land had been shown to be open space and play ground. It is not disputed that in response, a communication had been issued to respondent No.2 by respondent No.3-Municipal Corporation, Aurangabad dated 10.03.1989 stipulating certain compliances for sanction to layout shall be made within a period of one month lest the matter would stand closed. Around 1990 it appears plots in said layout were sold out. Quite a few purchasers had entered into subsequent transactions transferring their interest to third persons. In 2002, it appears, a fresh proposal for sanction to layout, showing 27 plots leaving 10% open space from land Gut No.191/2 referred to above, had been submitted. Majority of the subsisting land holders from said land subscribed to the same. With reference to said application, compliances as required by respondent No.3-corporation were made. Open space and roads shown under layout were relinquished in favour of the corporation under registered deeds. The corporation sanctioned said layout in 2005 under its order dated 29.06.2005. Respondent No.1 purchased a plot from said sanctioned layout in 2005. A few plot holders, based on said sanctioned layout had sought building permissions and the corporation had issued permissions. Certain developments had accordingly taken place. In 2013, it appears, chairman of the petitioner society had purchased a plot from erstwhile owner referring to sanctioned layout plan of 2005. Thereafter, petitioner society had been formed by some of the plot holders from the sanctioned layout plan. Object of the society is

stated to be maintenance and up keep of the 26 plots pursuant to the layout of 1988-1989. It appears that certain construction material had been collected by respondent No.1 over his purchased plot from the sanctioned layout. According to petitioner, the same gave rise to present petition being the cause of action.

5. Learned counsel Mr. Godhamgaonkar, vehemently submits that creation of additional plot over and above 26 plots shown in layout as had been submitted in 1988-1989 is clearly in breach of assurance and understanding given to the then plot holders from whom properties are purchased by persons like the chairman of petitioner society, showing 15% open space in the layout. He submits that not only the promise, understanding and assurance are infringed but the same is also in contravention of the then prevailing statutory rules and legal position. He submits that in 1988-1989 leaving 15% open space in layout was a must under the then subsisting Development Control Regulations/Rules. He purports to draw attention to the position that the erstwhile Municipal Council, Aurangabad being a larger urban area had been converted into a Municipal Corporation and as such subsisting standard Development Control Rules were adopted by the newly formed Municipal Corporation in 1982 and as had been necessary and incumbent 15% open space in layout had been shown in the application of 1988-1989. He submits that this being the position and transactions been entered into with such an understanding, subsequent alteration in the layout reducing open area from 15% to 10% is not only highly improper but also is fraudulent. He submits

that such action by the then land owner and its approval by the corporation is obviously a product of collusion. He submits that original plan was submitted for approval showing 15% open space and while resubmitting in 2002 open space has been reduced to 10% affecting residents of the layout and the same surfaced and had been realized only upon the collection of construction material by respondent No.1.

Learned counsel Mr. Godhamgaonkar submits that such an action cannot be approved as would emerge from the decision of this court dated 05.03.2015 in writ petition No.5044 of 1999 and companion writ petitions. He submits that the court had quashed resolution of the corporation dated 19.12.1998 whereunder, reduction of open spaces of the layout prior to 1992 from 15% to 10% and all actions pursuant to said resolution were also set at nought.

He submits with reference to a decision in the case of *K. Ramdas Shenoy Vs The Chief Officer, Town Municipal Council Udipi and others* reported in *AIR 1974 Supreme Court 2177*, that any alteration of user of open space would be incongruous to provisions of the Maharashtra Regional and Town Planning Act, 1966.

Further drawing attention to Section 22 thereunder he contends that not only reduction of open space but user of land for creation of a private plot is not according to scheme of layout as

had been submitted to the corporation in 1988-1989.

He further contends that reduction in open space to 10% and permission granted to respondent No.1 for construction over the land which is part of 15% open land, are the actions not compatible with provisions of MRTP Act. He submits, even a minor modification in the layout would require sanction by proper procedure to be followed. He submits that as observed in *Shirur Municipal Council Vs. State of Maharashtra and others; 1997 (1) Mh.L.J.610* action of granting permission for building to respondent No.1 by respondent No.3, is untenable. He draws attention to head-note of aforesaid citation. For similar purpose he also refers to *C.R. Dalvi and others Vs Municipal Corporation of Greater Bombay and others 1987 Mh.LJ 373* whereunder, it has been observed that a plot reserved as a playground under Development plan cannot be utilized for any purpose other than for play of children and similar recreational activities. He, therefore, submits, while 15% open space has been reserved as open land and playground, residential and commercial user over part of such 15% open land, is a breach of Section 22(c) of the MRTP Act.

6. Learned counsel Mr. Godhamgaonkar submits that the corporation being a public body it is imperative that it shall act in public interest and it has faltered in performance of such function, and such infraction is amenable to be considered in writ jurisdiction. He submits that it is well settled that open space is lung for society of adjoining land holders and that the corporation is the trustee of

open spaces. He submits that while it had been incumbent on the corporation to insist on leaving 15% of the land as open space, as shown in original layout, granting sanction to its reduction is an action hand in glove with respondents No. 2 & 3. He, purports to point out that this court has protected interest of petitioner granting interim relief and, as such, entreats this court to indulge into request made under the writ petition.

7. Learned counsel Mr. Palodkar on behalf of respondent No.1 submits that neither the law nor equity would be ever in favour of the petitioner. He submits that the petitioner misses out on divulging vital factual aspects. He submits that the petitioner does not refer to that there had been final sanction in 2005 to the layout proposal in 2002. There had been no objection whatsoever to sanction to the layout plan. The petitioner keeps away from the court that the chairman and quite a few members of the society are purchasers subsequent to sanction to layout in 2005 referring to such sanctioned layout plan. Majority of society members are signatories to the proposal for sanction to layout in 2002. Based on the sanctioned layout quite a few developments have come up. Learned counsel Mr. Palodkar submits that the petition has been moved with an oblique motive to harass respondent No.1 with a view to mulct and have gotten gains. He further submits that the petitioner would not have any *locus standi* to question the sanction to layout and much less to the permission granted in favour of respondent No.1 by respondent No.3. Petitioner society had not been in existence when sanction had been granted to the layout.

The property had been dealt with by persons with reference to the sanctioned layout. Permissions had been granted based on the layout even before society came into being. He submits that while sanctioned layout has not been questioned, the petition seeking writ of certiorari in respect of permission based on such sanctioned layout is not maintainable and deserves to be thrown out with costs.

8. Learned counsel Mr. Bhandari appearing for respondent No.3 Municipal Corporation submits that its action granting permission to respondent No.1 for construction is not at all liable to be faulted with. He submits that contention on behalf of the petitioner that in 1989 there had been sanction to layout under application around 1988-1989 would be fallacious having regard to communication dated 10.03.1989 referring to that while it appendage has been annexed, this communication is skipped to be annexed. Mr. Bhandari, learned counsel tenders across a copy of said communication of respondent No.3 dated 10.03.1989. He submits that the matter with respect to application to sanction to layout had come to an end with non-compliance and the expiry of period referred to therein.

He submits, the corporation had acted upon the subsequent proposal for layout in 2002 and on compliances of requirements, had sanctioned the layout plan over land Gut No.191/2 in accordance with prevailing rules and regulations. He submits that it is not the case of the petitioner at all that sanction

to layout in 2005 is not proper for any contravention of applicable and prevailing rules. He submits that while it appears to be the case of petitioner some understanding had been given by the land owner in 1988-1989, creation of 27 plots being not in accord with that, is not a concern of corporation nor was at any time such a case of land holders while sanction to layout had been given. He submits that, if there is an infringement of civil, personal rights of the members of the petitioner society, the petitioner may have a proper recourse but for no fault of corporation allegations are being hurled against office bearers of the Municipal Corporation. It is highly improper and is in abuse of authority of the corporation personnel. He, therefore, submits that there is no fault in granting permission to respondent No.1 yet, the corporation and its officials being dragged into the writ petition shall be seriously viewed and costs commensurate with the same be imposed on the petitioner.

9. From aforesaid, situation emerges that the Municipal Corporation in 1992 had got sanction to Development Control Regulation / Rules with provision for keeping 10% open space, replacing 15% under the standard regulations. Claim of the petitioner is based on application in 1988-1989 for sanction to layout and there have been several events taking place thereafter. The application as would be seen from the communication dated 10.03.1989 had met its own fate due to non compliance. It is not the case of the petitioner that the applicant had complied with the requirements referred to therein. There have been certain transactions by respondent No.2 in favour of several persons. A

fresh proposal had been submitted for sanction to layout with majority of plot holders in 2002 showing 10% open space as per the prevailing Development Control Regulation/Rules for Aurangabad municipal area. Majority of said persons and/or their transferees, it appears that in 2002 had approached the corporation for sanction to layout with a fresh proposal showing 27 plots. Compliances as were required by the corporation are stated to have been met with. The layout was sanctioned by the corporation with such proposal. Certain transactions also have taken place in respect of plots based on the sanctioned layout of 2005. Lot of interests based on such sanctioned layout have come up and the plots were developed accordingly. Building permissions appear to have been granted based on such sanctioned layout to many plot holders. Even the chairman of the petitioner society appears to have purchased property from the erstwhile holder in 2013 with reference to sanctioned layout of 2005. Respondent No.1 has purchased property from sanctioned layout plan in 2005. The society had been formed in 2016 for maintenance and up keep of land Gut No.191/2. Respondent No.1 is stated to have not been allowed to be a member of the Society. The decision annexed to the petition dated 05.03.2015 would be of little avail to the petitioner the same being in respect of sanctioned layout plans between 1982 to 1992. It would not be a case that the petitioner can be said to have succeeded in showing that layout plan of 1988-1989 had ever been sanctioned by the competent authority. In the circumstances it is difficult to consider that the action granting permission to respondent No.1 for building construction based on sanctioned

layout plan of 2005 would be liable to be faulted with legally or otherwise.

10. We are, therefore, not inclined to indulge into the request made under the writ petition. Accordingly, the writ petition is dismissed. We refrain from passing order on costs.

11. At this juncture learned counsel Mr. Godhamgaonkar with a view to enable the petitioner to make proper approach in respect of this order seeks indulgence of this court to continue interim relief operating hitherto, for a further period of six weeks. Learned counsel Mr. Palodkar resists, yet it would be expedient to continue interim relief for a period of six weeks from today. After expiry of six weeks, interim relief will automatically stand vacated.

[S.M.GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]