

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5875 OF 2013

Majrewadi Shikshan Prasarak Mandal ... Petitioner

Vs

Special Executive Officer and Ors. ... Respondents

Mr.S.G.Kudle for the Petitioner.

Mr.Atul Damale, Senior Counsel i/b
Mr.A.B.Tajane a/w Yogesh G. Thorat for
Respondent Nos.9 and 10.

**CORAM :- S. C. DHARMADHIKARI &
G.S.PATEL, JJ.**

DATE :- JUNE 21, 2019

P.C. :-

1. Having heard Mr.Kudle at great length and perusing the writ petition with its annexures, affidavits in reply and rejoinder, we are of the firm view that the petition involves serious disputed questions of fact.

2. The prayer in the writ petition is to call for the record and proceedings in relation to building permission granted on 30th January, 2013 and to quash it because it violates the Maharashtra Gunthewari Developments (Regulation, Upgradation and Control) Act, 2001.

3. The writ of mandamus is sought to direct respondent No.8 to grant permission for initiation of criminal prosecution against respondent Nos.1 to 4 as also direct them to demolish the existing structure standing on a open space which is known as playground of the petitioner's management at Survey No.263/1+2+3/3 now known as New Survey No.83/1+2+3/3 at Vivekananda Nagar, Hatturewasti, Majrewadi, Solapur.

4. For the petitioner to succeed, it will have to establish that there is a school and that is being run, managed or administered by the Management before us. Secondly, there are open spaces surrounding or nearby which have been used by children for playing or sports activities by the school. Thirdly, the petitioner will have to establish that the private respondents before this Court, namely, respondent Nos.9 and 10 have, in the garb of obtaining a sanction to their layout conveniently omitted these open spaces and have taken them over for such activity as are impermissible in law. On such open spaces, there could have been no construction at all. For the petitioner to succeed it will have to be proved that such open space is kept open in private layout or such open area or open space has a specific nomenclature attached to it and is being designated/reserved as playground and

there should be a document styled as a sanctioned plan. Even in a layout plan, it must be demonstrated that in such a layout, these areas are left open to sky and no construction activities are permitted thereon. Thus, these spaces and their user and designation have to be identified and with the assistance of the public record. By mere issuance of the stop-work notice by the Municipal Corporation, the petitioner cannot derive any benefit. That may, at best, be a supporting fact. The primary requirement is to identify the area, its designation on a plan and thereafter it being elevated to such designation and reservation. If it is a development plan, then, the details, namely, it is of which year and in force for how many years and whether continued to remain in force till stop-work notice was issued or on the date of filing of the petition, are essential facts. We cannot, in absence of these details, assume that the playground has been taken over by respondent Nos.9 and 10 wrongfully and illegally. We, therefore, dispose of this petition. The petitioner will have to file a suit in the competent Civil Court. That suit, if filed, be decided uninfluenced by the order passed in this writ petition.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)