

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11910 OF 2021

- 1] Syed Zawar Husain S/o Mahmood Husain
Age 64 years, Occupation : Pensioner,
Resident of Plot No. 53, Dilras Co-operative
Housing Society, S. No. 1 and 2 Asif Baug,
Aurangabad Taluka and Dist. Aurangabad
- 2] Mohd. Sarfarazuddin S/o. Hasnuddin
Age 65 years, Occu. Private Service,
Resident of Plot No. 32, Dilras Co-operative
Housing Society, S. No. 1 and 2 Asif Baug,
Aurangabad Taluka and Dist. Aurangabad
- 3] Rizwan S/o Bubakar Dawood
Age 38 years, Occ. Business,
Resident of Plot No. 57, Dilras Co-operative
Housing Society, S. No. 1 and 2 Asif Baug,
Aurangabad Taluka and Dist. Aurangabad
- 4] Rahim Baig S/o Mirza Baig,
Age 63 years, Occ. Pensioner,
Resident of Plot No. 15, Dilras Co-operative
Housing Society, S. No. 1 and 2 Asif Baug,
Aurangabad Taluka and Dist. Aurangabad
- 5] Mohd Hafizullah Khan,
Age 38 years, Occ. Business,
Resident of Plot No. 27, Dilras Co-operative
Housing Society, S. No. 1 and 2 Asif Baug,
Aurangabad Taulka and Dist. Aurangabad

.. Petitioners

Versus

- 1] The State of Maharashtra,
Through the Principal Secretary,
Urban Development Department,
Maharashtra State,
Mantralaya, Mumbai 400 032
- 2] The Collector, Aurangabad
- 3] Director of Town Planning
Maharashtra State, Central Building,
Pune
- 4] Aurangabad Municipal Corporation,
Aurangabad, through its Administrator

- 5] The Deputy Director, Town Planning,
Municipal Corporation,
Aurangabad

.. Respondents

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Advocate for petitioner : Mr. Suresh P. Pandav
AGP for the respondents no. 1 to 3 : Mrs. R.P. Gour
Advocate for the respondents no. 4 and 5 : Mr. A.P. Bhandari
...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 29 JULY 2022

ORDER (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule made returnable forthwith.
3. Learned AGP waives service for respondents no. 1 to 3.
Mr. Bhandari waives service for respondents no. 4 and 5.
4. On the joint request of the parties, the matter is heard finally at the stage of admission.
5. The petitioner is seeking writ of mandamus and prohibition in following words of prayer clauses (B) and (C) :-

“B) Issue a Writ of Mandamus or any other appropriate Writ, Order or directions in the like nature directing the respondents to take immediate necessary steps to acquire the land under reservation No.20 for play ground having area 1692 Sq. Meters and Reservation No. 21 for Library admeasuring 1008 Sq. Meters and develop the said reservations within stipulated time frame and for that purpose issue necessary orders;

- C) Issue a Writ of Prohibition or any other appropriate Writ, or directions in the like nature, prohibiting the respondents Nos. 1 to 5 from taking any steps for deletion and/or deleting the reservation No.20 for play ground having area 1692 Sq. Meters and Reservation No.21 for Library admeasuring 1008 Sq. Meters and for that purpose issue necessary orders”

6. The petitioners in a way, are seeking the respondent no. 4 - municipal corporation to acquire the land under reservation no. 20 which is for a playground over 1692 Square Meters and reservation no. 21 for a library over 1008 Square Meters and further seeking to injunct the respondents from deleting the reservation.

7. Learned advocate Mr. Pandav for the petitioners would vehemently submit that the petitioners are the owners of some of the plots from survey no. 1/1/A and survey no. 2/1 of Aurangabad. In fact, total area of 109 Acres (4 Hectare and 5 Are) was purchased by a co-operative housing society under couple of sale deeds dated 30-01-1976 and 05-04-1977 for its 76 members. The petitioners are the allottees of 5 plots carved out in the lay-out. They have constructed their houses. The promoter, however, has issued a notice to the respondent no. 4 - corporation under section 127 of the Maharashtra Regional and Town Planning Act, 1966 ('MRTP Act') seeking to de-reserve those two plots which have been reserved for a playground and a library. He had no authority and still has given willingness to accept the TDR for some portion of area and has also expressed

willingness to receive monetary compensation in respect of the remaining area.

Mr. Pandav would submit that the Government of Maharashtra through the Urban Development Department has even issued Government resolution for effective implementation of the development scheme with a view that the reservation would not lapse. The matter was thereafter even referred to the Special Land Acquisition Officer for taking steps for acquisition. Thus, the steps are being taken for acquiring the land reserved for a playground and a library and in order to preserve their utility for public purposes, the *mandamus* may be issued for acquiring the writ plots and prohibiting its de-reservation.

Mr. Pandav then relies on the following decisions :-

- i) *Pt. Chet Ram Vashist Vs Municipal Corporation of Delhi; 1995 SCC (1) 47*
- ii) Judgment of the Supreme Court in Civil Appeal No. 6216-6217 of 2019 in the matter of *Anjuman E. Shiate Ali and another Vs. Gulmohar Area Societies Welfare Group & Ors.*

8. He would, lastly, submit that the agreement has been entered into on 10-12-1986 between the chief promoter of the petitioners' society and the respondent no. 4 regarding the manner in which the writ plots are to be utilised by the respondent no. 4 - corporation and it cannot be now allowed to resile from its commitment.

9. Per contra, the learned advocate for respondents no. 4 and 5 Mr. Bhandari referring to the affidavit-in-reply would submit that indeed the writ plots were reserved for the purpose mentioned in the petition. He also submits that there is no dispute regarding the execution of the agreement dated 10-12-1986. Even the notice under section 127 of the MRTP Act was received from the chief promoter. He also states that the TDR was demanded for some portion earmarked for 12 Meter development plan road and monetary compensation for the remaining portion when the respondent no. 5 was insisting for TDR in lieu of entire compensation in respect of the entire property. He submits that the petitioners did object to the notice issued by person claiming to be the chief promoter under section 127 of the MRTP Act. He submits that the respondent no. 5 has been intending to acquire the writ plots but because of the dispute, it is not being able to take the effective steps. The fact of acquisition involves several factors and no relief, in exercise of writ jurisdiction in the manner in which it has been claimed, can be granted.

10. Having considered the rival submissions, one need not delve deep to emphasize that the reservations are meant for public purposes as has been laid down in the matter of *Pt. Chet Ram Vashist* (supra). It is also trite, as laid down in the matter of *Anjuman E Shiate Ali and another* (supra) that the open spaces which are left in the lay-out must continue to exist in the same manner and no construction can be permitted over such open spaces. But then, as has been

submitted by Mr. Bhandari, the process of acquisition involves or depends upon number of variables including need, money, relinquishment as contemplated in the agreement dated 10-12-1986 etc. Admittedly, the development plan was approved way back and *prima facie*, steps to acquire the writ plots have never been taken for last more than 25 years as is required by section 126 of the MRTP Act.

11. In this regard, it is also necessary to note that even the State Government by its order in the Urban Development Department dated 12-02-2014 has issued guidelines for effective implementation of development plan and precisely for avoiding lapsing of the reservation. There is no material to demonstrate that any steps were taken even pursuant to such an order. In view of these circumstances, we are afraid, no writ as claimed could be issued.

12. If such is the state-of-affairs, we are of the considered view that in exercise of writ jurisdiction, this Court has limitation in conceding to the request of the petitioners for issuing the writs as prayed for.

13. We make it clear that this decision neither shall preclude acquisition and development of the writ plots nor shall prevent lapsing of reservation.

14. The writ petition is dismissed.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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