



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

**WRIT PETITION NO. 1042 OF 2024
WITH
CIVIL APPLICATION NO. 1589 OF 2024**

**KISHOR SHARAD BORAVAKE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH URBAN
DEVELOPMENT DEPARTMENT AND OTHERS**

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Mr. A. K. Gawali, Advocate for Petitioners
Mr. A. B. Girase, Government Pleader for Respondent – State
Mr. V. D. Hon, Senior Advocate i/b Mr. A. V. Hon, Advocate for
Respondent No.6

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 08.02.2024

PER COURT :-

1. After series of hearings in this matter on 29.01.2024, 06.02.2024 and today, the Petitioners have agreed to hand over the physical possession of plot Nos. 2 to 12, 19 and 54 from the approved layout plan at page 30 in the Petition paper-book.

2. Since the Petitioners were intending to hand over the above plots in exchange of the amenity open space which was subject matter of adjudication before the Hon'ble Supreme Court, we had passed an order on 06.02.2024, as under:-

“1. This matter was heard for quite some time yesterday and posted today in the light of the order of the Hon’ble Supreme Court dated 22.09.2023 passed in SLP (C) Nos.19401 and 19730 of 2019.

2. There is a consensus between the Petitioners and the Municipal Council. For reference, the approved layout plan at page no.30 in the petition paper book is referred to and the Petitioners agree to hand over the plot nos.2 to 12, 19 and 54 as amenity space to the Nagar Panchayat in exchange of the Writ property that was before the Hon’ble Supreme Court in the two SLPs. In short, this would purely be an exchange between the earlier amenity space occupied by the Petitioners, with plot nos.2 to 12, 19 and 54. As such, the description of plot nos.2 to 12, 19 and 54 would be shown as amenity open space in the revised plan and in exchange, the Writ space which was utilized by the Petitioners, would be converted from amenity to open plots.

3. The Petitioners before us instruct the learned advocate to say that all the trees standing in the Writ property would be nurtured. They would not be chopped down. That space would never be cleared of the green foliage and would never be used for commercial or residential purpose or there shall be no encumbrances or third party rights / interest created on that space. The area could be utilized for commercial purpose without erecting any structure, even temporary, much less concrete. We direct the Petitioners to tender their individuals affidavit by 08.02.2024, recording the above statements.

4. The learned GP desires to take instructions from the revenue authorities as regards the procedure to be adopted for exchanging the existing open space area with the plot nos.2 to 12, 19 and 54 and vice versa.

5. At his request, this matter will be listed in the urgent orders category on 08.02.2024.”

3. The Petitioners have tendered an affidavit dated 08.02.2024 through Shri Kishor Sharad Borawake (3 pages). The same is taken on record and marked as “X-1” for identification. With reference to the affidavit “X-1”, the learned Advocate for the Petitioners points out a typographical mistake. Petitioner No.2 is typed as Respondent No.2. As such, by consent of the parties, we treat it to be Petitioner No.2.

4. The Petitioners have agreed to hand over the physical possession of the plot Nos. 2 to 12, 19 and 54 to the Shirdi Nagar Panchayat in exchange of the amenity space, which was subject matter of litigation upto the Hon’ble Supreme Court and which culminated in the order dated 22.09.2023. The Petitioners have disclosed that there is an encumbrance on plot No.4, which would be removed and the Petitioners would be before the Registrar’s office on 28.02.2024 to clear the property of all encumbrances. The possession of the remaining plots would be handed over to the Shirdi Nagar Panchayat on 28.02.2024, along with plot No.4.

5. It is understood between the Petitioners and the Shirdi Nagar Panchayat that after the physical possession of the plots is

handed over to the Nagar Panchayat, both the parties would initiate steps to change the description of the earlier amenity space which was the writ property and plot Nos.2 to 12, 19 and 54, which would be described as amenity space. Besides this change, there would be no change or revision in the layout plan. Both the parties have agreed to this arrangement and vouch that they would stand by the same.

6. The Petitioners have set out in paragraph 3 of their affidavit "X-1", that the trees presently standing in the amenity space admeasuring 4143.24 square meters as demarcated in the layout plan dated 20.06.2007, will not be cut down during the lifetime of the Petitioners. Petitioner No.1 is 63 years of age and Petitioner No.2 is 60 years of age. While recording the said statement, we deem it appropriate to add, keeping in view that the trees standing are more than 100 years old as stated by the Petitioners, that any time in future, if the Petitioners or their assignees or their next generation inheriting the property or any person dealing with the said property intends to chop down the trees or clear the foliage even to a minute extent, they would have to seek the written permission of or any such authority or the National Green Tribunal, as the case may be, which is

empowered to deal with the said issue. In the event of any death of a tree in the near future, a fresh tree of the same botanical description would be planted in place of the tree which has suffered a natural death. However, any such instance of natural death of a tree, the Petitioners shall immediately inform the Shirdi Nagar Panchayat within 48 hours of the death of a tree, so as to enable the Nagar Panchayat to carry out an inquiry and make appropriate report on the said incident.

7. Needless to state, our observations in paragraph 4 of our order dated 06.02.2024, would continue to bind the parties.

8. In view of the above, **this Writ Petition is disposed off.**

9. The pending Civil Application would not survive and stands disposed off.

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

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