



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

WRIT PETITION NO.7346 OF 2020

Khawajamiya Garib Nawaz Bahu
Uddeshiya Sanstha, Erandol,
Tal. Erandol, Dist. Jalgaon.
Through Vice President
Shaikh Latif Shaikh Abdul,
Age : 50 years, Occ : Agriculture,
R/o Sitarambhai Birlanagar,
Erandol, Tal. Erandol,
Distt. Jalgaon.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through its Secretary,
Urban Development Department,
Maharashtra State, Mantralaya,
Mumbai-32.
2. Hon'ble Minister of State,
Urban Development Department,
Maharashtra State, Mantralaya,
Mumbai-32.
3. The District Collector,
Jalgaon, Distt. Jalgaon.
4. President,
Erandol Municipal Council,
Erandol, Taluka Erandol,
Distt. Jalgaon.
5. Chief Officer,
Erandol Municipal Council,
Erandol, Taluka Erandol,

Distt. Jalgaon.

6. President of
Gramin Unnati Mandal,
Erandol, R/o Shanti Nagar,
Mhasavad Road, Erandol,
Tal. Erandol, Distt. Jalgaon.
7. Shaikh Shafi Shaikh Bhikan,
President of Khwaja Garib Nawaz
Bahu-Uddeshiya Sanstha, Erandol,
Tal. Erandol, Dist. Jalgaon.

...RESPONDENTS

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Shri N.R. Shaikh, Advocate for the Petitioner.
Ms. V.N. Patil Jadhav, AGP for Respondent Nos.1 to 3/State.
Shri Vikram R. Dhorde, Advocate for Respondent Nos.4 and 5.
Shri U.S. Malte, Advocate for Respondent No.6.

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CORAM : PRAFULLA S. KHUBALKAR, J.

Reserved on : 04th April, 2025

Pronounced on : 09th May, 2025

JUDGMENT :-

1. Heard.
2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
3. This petition raises challenge to the order dated

22.08.2019 passed by the Honourable Minister of State, Urban Development Department, Maharashtra State and the order dated 19.01.2018 passed by the District Collector, Jalgaon, thereby, affirming the resolutions of the Municipal Council, Erandol by which the land in Gat No.988 admeasuring 1233.37 square meters is allocated to respondent No.6 Society.

4. The petitioner Trust has filed the instant petition through its Vice President Mr. Shaikh Latif Shaikh Abdul claiming that the petitioner Trust was entitled for allocation of open space in Gat No.988 and ignoring their claim, respondent No.5 Municipal Council has allocated the land in favour of respondent No.6. The petitioner's basic contention is that the Government Resolutions issued from time to time provide for reservation of 10% of land for the purpose of entertainment and public purpose and the residents of locality only have the right to claim allotment. The petitioner asserts that failure of respondent No.6 to comply with the terms and conditions necessitated cancellation of the decision and the allotment of land in favour of the petitioner.

5. The relevant background facts need to be seen. The

resolutions passed by respondent No.5 Municipal Council of allotment of land in favour of respondent No.6 were challenged by the application under Section 308 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, (for short, hereinafter referred to as 'the 1965 Act') by Mr. Shaikh Latif Shaikh Abdul. By order dated 19.01.2018, the application of Mr. Shaikh Latif Shaikh Abdul came to be rejected by respondent No.3 District Collector by assigning elaborate reasons. Feeling aggrieved, Mr. Shaikh Latif Shaikh Abdul filed an appeal before the Honourable Minister of State, Urban Development Department, Maharashtra State, under Section 318 of the 1965 Act, which came to be rejected by order dated 22.08.2019 confirming the order dated 19.01.2018 passed by the District Collector. As such, the controversy revolves around the challenge by one Mr. Shaikh Latif Shaikh Abdul to the resolutions of the Municipal Council regarding allotment of the land in favour of respondent No.6.

6. Learned advocate Shri N.R. Shaikh for the petitioner made vehement submissions assailing the impugned orders. His primary contention is that the impugned order passed by the

Honourable Minister of State is without affording him any opportunity of hearing and thus, it is violative of principles of natural justice. While challenging the resolutions of the Municipal Council, his contention is that the allotment of land in favour of respondent No.6 is finalized on a meager amount of Rs.19,675/- although initial amount of deposit was decided as Rs.3,93,468/-. His further contention is that despite allotment, possession of the land is not handed over to respondent No.6 and, therefore, on all these counts, the allotment in favour of respondent No.6 was required to be cancelled.

7. *Per contra*, Advocate Ms. V.N. Patil Jadhav, learned AGP for respondent Nos.1 to 3/State, learned Advocate Shri Vikram R. Dhorde for respondent Nos.4 and 5 and learned Advocate Shri U.S. Malte for respondent No.6 strongly oppose the petition by attacking bonafides of the petitioner and demonstrating baseless contentions.

8. While arguing for the respondents, learned advocate Shri Vikram Dhorde raised preliminary issue about maintainability of the petition at the instance of the petitioner Trust. He vehemently submitted that the petition is filed by

‘Khwajamiya Garib Nawaz Bahu Uddeshiya Sanstha, through its Vice President Mr. Shaikh Latif Shaikh Abdul’, whereas, the application under Section 308 and the appeal under Section 318 of the 1965 Act were filed by Mr. Shaikh Latif Shaikh Abdul in his personal capacity. He invites the attention of the Court to the fact that the president of the petitioner Trust Mr. Shaikh Shafi Shaikh Bhikan is arrayed as respondent No.7 in the petition. He, therefore, submits that the petitioner Trust has no locus to challenge the impugned orders, which are passed in the proceedings initiated by Mr. Shaikh Latif Shaikh Abdul in his individual capacity.

9. As regards the allegation of violation of principles of natural justice, the respondents submit that the impugned order passed by the Honourable Minister of State itself demonstrates that the appellant Mr. Shaikh Latif Shaikh Abdul remained absent despite affording opportunity of hearing and, therefore, no grievance can be raised on that count. It is submitted that after allotment of the land in favour of respondent No.6, physical possession of the land was also handed over to respondent No.6 Society. It is specific submission of the

respondents that all resolutions passed by the Municipal Council in this regard are by following due procedure of law and the petitioner Trust is not entitled to raise any kind of objection. It is also specifically submitted by the respondents that the petitioner's real intention is for allotment of land in its favour for the purpose of its independent use, which cannot be permitted in view of the requirement of use of the land for public purpose.

10. Having heard the arguments, the rival submissions fall for my consideration.

11. It is important to note that the petition is filed by 'Khwajamiya Garib Nawaz Bahu Uddeshiya Sanstha, through its Vice President Mr. Shaikh Latif Shaikh Abdul' claiming itself to be the Trust, challenging the orders passed by the Collector and the Honourable Minister of State in the proceedings which were initiated by Mr. Shaikh Latif Shaikh Abdul in his personal capacity. The petition does not demonstrate any justification about the locus of the petitioner Trust to file the petition through the Vice President by impleading the President of the Trust as respondent No.7 in the petition. This aspect goes to the root of the issue of locus of the petitioner which is raising objections to

the resolutions of the Municipal Council, which were passed during the years 2000 to 2003. On specific queries in this regard, learned counsel for the petitioner only submitted that the petitioner is the Trust consisting of members who are residents of the locality and in that capacity, they have got the right to raise challenge to the resolutions of the Municipal Council and the impugned orders. I do not find this to be convincing explanation to justify the locus of the petitioner Trust, which has filed this petition challenging orders which are passed in the matters of Mr. Shaikh Latif Shaikh Abdul in his individual capacity. The petition is thus, not maintainable on this count.

12. As regards challenge to the resolutions of the Municipal Council of the years 2000 to 2003, the grievance raised by the petitioner Trust for the first time in the year 2020 directly through this petition, demonstrates inordinate delay and laches on the part of the petitioner Trust, which has tried to take advantage of the proceedings initiated by Mr. Shaikh Latif Shaikh Abdul that too in the year 2018.

13. It has to be noted that the reply affidavit dated 13.09.2022 filed by respondent No.3 and the reply affidavit dated

13.12.2021 filed by respondent No.6 also raise the pertinent issue about maintainability of the instant petition on other count. It is pointed out that the President of the petitioner Trust Mr. Shaikh Shafi Shaikh Bhikan, who is arrayed as respondent No.7 in the instant petition, had earlier filed an application before the Collector seeking same relief about cancellation of allotment of land in favour of respondent No.6. However, the petitioner Trust had withdrawn that application without any liberty to agitate the grievance and as such, subsequent proceedings initiated through the instant petition by the Vice President of the same Trust are not maintainable. In this regard, on a specific query, there is no justification from the petitioner about entitlement to file a fresh proceeding for the same relief through the Vice President. This also demonstrates the conduct of the petitioner Trust who has again approached the Court through the instant petition.

14. Pertinently, the respondents have categorically submitted through their affidavits that the land bearing Gat No.988 admeasuring 1233.37 square meters was allotted by the Municipal Council in favour of respondent No.6 on the basis of the resolution No.82 dated 28.04.2000, resolution No.17 dated

20.02.2002, resolution No.134 dated 01.07.2002 and resolution No.72 dated 08.08.2003, which were passed by the Municipal Council by following due procedure. It is also demonstrated that the adjacent land owners had given their no objection at the relevant time. Pursuant to the allotment in favour of respondent No.6, rental amount was deposited and physical possession of the land was handed over to respondent No.6, which has put the land for use for public purpose. It is also stated that respondent No.6 has not made any construction on the said land and it is made available for use as public purpose. The petitioner has failed to demonstrate any illegality in the resolutions passed by the Municipal Council either as regards procedural irregularity or any other violation of mandatory provisions of law.

15. The petitioner's contention that an opportunity of hearing was not given by the Honourable Minister of State, stands falsified in view of the pertinent observation in paragraph No.7 in the impugned order dated 22.08.2019 that the petitioner himself remained absent despite affording opportunity of hearing and thus, the contention about violation of principles of natural justice, is unsustainable. The grievance about the amount of

deposit being reduced for allotment in favour of respondent No.6 cannot be entertained at the instance of the petitioner and further that it is in the domain of the Municipal Council to decide the amount as per the applicable rules.

16. Perusal of the impugned orders show that in response to the challenge raised under Sections 308 and 318 of the 1965 Act, the authorities have given due consideration to all the issues raised and by reasoned orders, the proceedings are decided. The impugned orders clearly show due consideration of the contentions and adequate reasoning.

17. In the light of the above factual and legal aspects, no interference is called for in the impugned orders. The Writ Petition is dismissed. No order as to costs.

18. Rule is discharged.