



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

939 WRIT PETITION NO.12569 OF 2025

PRABHAKAR DAYARAM TONGIRE AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. G.R. Syed, Advocate for petitioners

Mrs. P.V. Diggikar, AGP for respondent No.1

...

CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.

DATE : 10th OCTOBER, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

. Present petition has been filed for following relief -

“(B) By issuing a writ of certiorari or any other appropriate writ, order or directions in like nature this Hon’ble Court may kindly quashed and set aside the Notification No.TPS-3025/CR_06/2025/Part Sanctioned/UD-30 Dated 15.04.2025 issued by respondent No.1 in respect of Development Plan of Chhatrapati Sambhajinagar Municipal Corporation Modification sanctioned by Government under Section 31(1) of the MRTP Act, 1966 and further to direct the respondents to approve the change sought by maintaining the

suit site i.e. CTS No.20495 as open space for garden.”

2 The petitioners have challenged the Notification as above stated and they are contending the facts raising petition that one Dayaram Tongire was the owner of land Sy. Nos.1, 2, 3, 11, 12, 13, 14, 15 and 16 of Maljipura, Tq. & Dist. Aurangabad. It was total admeasuring 54 Acres 09 Gunthas. By way of sanctioned layout the land was converted in residential area and named as Samarth Nagar. There were open as well as amenity spaces in layout apart from the roads. Area 5 Acres and 17 R was left for that purpose. The open space left for the garden was given CTS No.20495. The formality of handing over / relinquishment was completed. Respondent Nos.2 and 3 attempted to convert the space of garden into cremation ground. The petitioners and other residents had lodged objection by filing detailed representation to respondent Nos.2 and 3. One petitioner also filed Regular Civil Suit No.4/2025 before Civil Judge Senior Division (Corporation Court) at Aurangabad praying for perpetual injunction from user of CTS No.20495 i.e. open space of garden as cremation ground. Suit summons was issued and respondent Nos.2 and 3 appeared in the matter, submitted their written statement and it was stated that as per Section 28 of the Maharashtra Regional and Town Planning Act development plan is submitted, wherein the suit site is earmarked as cremation ground. The modification of user of

cremation ground of Sy. No.20495 to open space of sanctioned layout was refused by impugned modification. According to learned Advocate for petitioner, initial Notification under Section 28 of the Maharashtra Regional and Town Planning Act published on 08.08.2024 showed that the suit land as open space/garden was maintained. However, the development plan submitted by respondent Nos.2 and 3 by earmarking the open space of layout for garden to the proposed cremation ground was illegal. Refusing the change of the original purpose which was also in fact for public and then change of the same to different purpose is against the public policy. Since 1982 the Town Planning authority upon sanction to the layout was showing the said open space as garden. The petitioners have no objection if the reservation of the said survey number is kept for garden.

3 The first and the foremost fact to be noted is that when one of the petitioners has already approached the Civil Court and even the written statement has been filed, the same petitioner along with others cannot approach this Court under its constitutional jurisdiction. The matter is then subjudice before Court of Law.

4 Upon the query and contents in the plaint, it can be seen that there is already the user of the said land as cremation ground has been

started. The learned Advocate for petitioners was not able to pinpointing as to which community is then using the said land as cremation ground. Further questions are also involved as to what can be done in respect of the burials those have been made, which are according to the petitioners are unauthorized. Those persons interested i.e. the heirs of those persons who have been buried in the disputed land are not made party to this proceedings. Therefore, for all these reasons we are of the opinion that when an appropriate Court is seized of the matter, this is not a fit case where this Court can interfere in its writ jurisdiction. Writ Petition stands rejected at the threshold.

(HITEN S. VENEGAVKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

agd