

SHIRDI NAGAR PANCHAYAT

v.

KISHOR SHARAD BORAWAKE AND OTHERS

(Civil Appeal No. 6087 of 2023)

SEPTEMBER 22, 2023

[B. R. GAVAI* AND S. V. N. BHATTI, JJ.]

Issue for consideration: The High Court by order dated 04.07.2019 partly allowed the petition filed by the respondents/landowners challenging the notification dated 18.08.2004, whereby respondents'/landowners' land was converted to 'residential/commercial zone' from 'no development/green zone', subject to appellant's receiving 10% as 'amenity space' and 10% as 'open space' of the total land area.

Land Use Conversion – Land owners and plot holders contended that the ownership of the 'open space' and the 'amenity space' vest in the landowners/plot holders and as such, order of the High Court needs no interference:

Held: The High Court was right in holding that insofar as 'open space' is concerned, it was required to be kept as 'open space' for use by the plot holders – However, insofar as the 'amenity space' is concerned, the High Court mixed it with the 'open space' – It was to be handed over to the Municipal Council as one of the pre-conditions for converting the land from a 'No Development Zone' to a 'Residential Zone' – Not only that, but acting on the said Notification, the landowners entered into more than one agreement with the Municipal Council, thereby agreeing to hand over the 'open space' as well as the 'amenity space' to the Municipal Council – In the instant case, insofar as the compulsory reserved land is concerned, it pertains to 'open space' and there is no need to interfere with the finding of the High Court in that regard – However, as far as the 'amenity space' is concerned, it was on the basis of the conditions imposed by the State of Maharashtra while converting the land, which was reserved for a 'non-residential' purpose, to a 'residential' purpose – The landowners not only accepted the said condition

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but also acting on the basis of the same entered into more than one agreement with the Municipal Council transferring the 'amenity space' in favour of the Municipal Council – If a Government gives the benefit of development of land concerned with permission to sub-divide the same and uses it for commercial purpose and it, in turn, requires the landowner to handover part of land free of cost for public utility purpose, such a clause cannot be held to be illegal – As such, the High Court has grossly erred in allowing the writ petitions – Judgment and order dated 04.07.2019 passed by the High Court set aside. [Paras 20, 21, 22 and 23]

Pt. Chet Ram Vashist (Dead) by LRs. V. Municipal Corporation of Delhi (1995) 1 SCC 47: [1994] 5 Suppl. SCR 180; A.P. State Financial Corporation v. GAR Re-rolling Mills and another (1994) 2 SCC 647: [1994] 1 SCR 857; R.N. Gosain v. Yashpal Dhir (1992) 4 SCC 683: [1992] 2 Suppl. SCR 257; National Insurance Co. Ltd. v. Mastan and another (2006) 2 SCC 641: [2005] 5 Suppl. SCR 704; State of Punjab and others v. Dhanjit Singh Sandhu (2014) 15 SCC 144: [2014] 3 SCR 1121; Union of India and others v. N. Murugesan and others (2022) 2 SCC 25; Narayanrao Jagobaji Gowande Public Trust v. State of Maharashtra and others (2016) 4 SCC 443 – referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No.6087 of 2023.

From the Judgment and Order dated 04.07.2019 of the High Court of Judicature at Bombay at Aurangabad in WP No.2486 of 2018.

With

Civil Appeal No.6088 of 2023.

Sanjay Kharde, Satyajeet Kharde, Sunil Kumar Verma, Advs. for the Appellant.

Amol Gavali for M/s S-legal Associates, Hitendra Nath Rath, Ms. Pradnya Talekar, Shashibhushan P. Adgaonkar, Omkar Jayant Deshpande, Mrs. Pradnya S Adgaonkar, Rana Sandeep Bussa, Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Bharat Bagla, Sourav Singh, Aditya Krishna, Advs. for the Respondents.

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The Judgment of the Court was delivered by

B. R. GAVAI, J.

1. Leave granted.
2. The present set of appeals challenge the common judgment and order passed by the Division Bench of the High Court of Bombay at Aurangabad, dated 4th July 2019, thereby partly allowing the petition filed by the respondents/landowners challenging the notification dated 18th August 2004, whereby respondents'/landowners' land was converted to 'residential/commercial zone' from 'no development/green zone', subject to appellant's receiving 10% as 'amenity space' and 10% as 'open space' of the total land area.
3. The appellant in both appeals is Shirdi Nagar Panchayat (hereinafter referred to as "the Municipal Council"). Respondent Nos. 1 and 2 in the appeal arising out of SLP (C) No. 19401 of 2019 are the original landowners (hereinafter referred to as "the landowners") and respondents in the appeal arising out of SLP(C) No. 19730 of 2019 are the plot holders/subsequent purchasers (hereinafter referred to as "the plot holders").
4. The facts, shorn of unnecessary details, giving rise to the present appeals are as under:
 - 4.1 On 15th December 1992, a Development Plan for the Municipal Council was approved. Therein the disputed property admeasuring 4 Hectares and 12 R (Survey No.-103) was shown as a "Green Zone"/ "No Development Zone". On 30th September 2000, a proposal regarding the conversion of land from a 'No Development Zone' to a 'Residential Zone' including the disputed property was published and objections were invited.
 - 4.2 On 18th August 2004, the Government issued a notification converting some land from 'No Development Zone' to 'Residential Zone', subject to the Municipal Council receiving 10% compulsory 'open space' and 10% as 'amenity space' free of charge. Apart from this, the area for the road was also to be transferred.
 - 4.3 Thereafter, the landowners sought permission from the Town Planning Authority for the development of the plot, and the same

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was granted. On 27th March 2006, the landowners executed an agreement with the Municipal Council, thereby assigning and giving possession of 4133.25 sq. mtrs. as 'open space', 4126.50 sq. mtrs. as 'amenity space', and 7560.09 sq. mtrs. as 'internal road' area to the Municipal Council out of the total land. Further, the landowners gave 'No Objection' if the same was recorded with the revenue department.

- 4.4 On 12th January 2007, final sanction was granted to the layout by the Municipal Council. After the final sanction was granted, another agreement was entered into between the parties dated 18th September 2007. On the same day, the Municipal Council sanctioned the layout submitted by the landowners subject to the terms and conditions mentioned therein.
- 4.5 After execution of the said agreement, the name of the Municipal Council was entered in the revenue records insofar as amenity space is concerned. Thereafter, the landowners divided/converted the sanctioned layout into 65 plots and sold the same to various plot holders.
- 4.6 In 2012, when the Municipal Council sought possession of the property, the landowners filed a civil suit seeking perpetual injunction along with an application seeking a temporary injunction against the Municipal Council. The application seeking temporary injunction was rejected by the trial court. The same was appealed before the District Court which was also dismissed vide order dated 14th January 2015. Aggrieved thereby, the landowners approached the High Court by filing a writ petition. Vide order dated 17th January 2018, the High Court granted permission to withdraw the writ petition.
- 4.7 During the pendency of the said civil suit, the landowners approached the Sub-Divisional Officer (for short, 'SDO') challenging the mutation entry whereby the Municipal Council was inducted as owner of the 'open space' and 'amenity space' in the revenue record. Vide order dated 12th August 2015, the SDO rejected the appeal filed by the landowners. The said order was challenged before the Additional Collector, Ahmednagar, and thereafter before the Divisional Commissioner, Nashik. Both the authorities rejected the challenge.

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4.8 After withdrawal of the writ petition before the High Court, the landowners amended the suit before the Trial Court thereby challenging the Government Notification dated 18th August 2004.

4.9 On 23rd January 2018, the Municipal Council passed a resolution to develop the plot surrendered by the landowners for the purpose of a swimming pool and indoor game hall.

4.10 The landowners filed a petition being Writ Petition No. 2486 of 2018 challenging the Government Notification dated 18th August 2004. The plot holders also filed a petition being Writ Petition No. 3805 of 2018 before the High Court after the passing of the resolution by the Municipal Council.

4.11 Vide the impugned common judgment and order dated 4th July 2019, the High Court held that the writ petition filed by the landowners, i.e., Writ Petition No. 2486 of 2018 was not maintainable. However, it partly allowed the writ petition filed by the plot holders. It quashed and set aside condition No.2 in the Government Notification dated 18th August 2004 and condition No.14 in the sanctioned order of layout with respect to 'open space' and 'amenity space'. It further restricted the Municipal Council from changing the user of the land of 'open space' and 'amenity space' except for the beneficial enjoyment of residential plot holders. It further quashed and set aside the resolution dated 23rd January 2018 of the Municipal Council to the extent it resolved to construct an indoor game hall, multi-purpose meeting hall, and swimming pool on open space/amenity space.

4.12 Being aggrieved thereby, the present appeals are filed.

5. We have heard Shri Sanjay Kharde, learned counsel for the Municipal Council, Shri Amol Gavali, learned counsel for the landowners, Ms. Pradnya Talekar, learned counsel for the plot holders, and Shri Aaditya Aniruddha Pande, learned counsel for the State.

6. Shri Sanjay Kharde, learned counsel submitted that the Division Bench of the High Court had grossly erred in allowing the writ petition filed by the plot holders. He submitted that the plot holders had also belatedly challenged the Government Notification dated 18th August 2004 by filing a writ petition in the year 2018. It is, therefore, submitted that the petition of the plot holders was also liable to be dismissed.

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7. Shri Kharde further submitted that the landowners having taken the advantage of the Government Notification dated 18th August 2004, vide which their land was converted from 'No Development Zone (Green Zone)' to 'Residential Zone (Yellow Zone)' could not have made a volte-face and challenged the very same notification. He further submitted that even the claim of the plot holders was liable to be rejected. The plot holders purchased the plots on the basis of the sanctioned layout, which clearly showed that 10% of the land was reserved for 'amenity space', which was to belong to the Municipal Council. He, therefore, submitted that the High Court had grossly erred in allowing the writ petition filed by the plot holders.
8. Shri Amol Gavali and Ms. Pradnya Talekar, learned counsel appearing on behalf of the landowners and plot holders respectively, on the contrary, submitted that the High Court after considering the provisions of Sections 22, 33, and 37 of the Maharashtra Regional and Town Planning Act, 1966 and the Development Control Regulations (for short "the DCR") has come to a considered finding that the ownership of the 'open space' and the 'amenity space' vest in the landowners/plot holders and as such, needs no interference. They further submitted that the High Court has rightly relied on the judgment of this Court in the case of *Pt. Chet Ram Vashist (Dead) by LRs. V. Municipal Corporation of Delhi*¹ wherein this Court, while considering the pari materia provisions, has held that the Municipal Council cannot impose the condition to surrender a part of the land and transfer it in its favour free of cost as a condition precedent for sanctioning layout. They, therefore, submit that the present appeals are liable to be dismissed.
9. We find that the present appeals deserve to be allowed on more than one grounds. Insofar as the writ petition filed by the landowners is concerned, apart from there being a delay of about 14 years in approaching the High Court, the said writ petition was also liable to be dismissed in view of the doctrine of election.

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10. It has been consistently held by this court in a catena of judgments that if a party has more than one remedy and if he chooses one of them, he is estopped from taking recourse to the other remedy. Reference in this respect could be made to the judgments of this Court in the cases of ***A.P. State Financial Corporation v. GAR Re-rolling Mills and another***², ***R.N. Gosain v. Yashpal Dhir***³, ***National Insurance Co. Ltd. v. Mastan and another***⁴, ***State of Punjab and others v. Dhanjit Singh Sandhu***⁵ and recently in the case of ***Union of India and others v. N. Murugesan and others***⁶.
11. The writ petition filed by the landowners was also liable to be dismissed invoking the principle of probate and reprobate, which has been succinctly considered by this Court in the case of ***N. Murugesan*** (supra) after considering the earlier case laws.
12. In the present case, in the Development Plan published on 15th December 1992, the properties of the landowners were reserved as “Green Zone”/ “No Development Zone”. Vide Notification dated 18th August 2004, the same was converted from “No Development Zone” to “Residential Zone”. The said Notification specifically provided that in addition to reserving 10% space as “open space”, which was required to be compulsorily reserved in accordance with the DCR, additional space of 10% was to be reserved for amenities to be transferred to the Municipal Council free of cost.
13. On the basis of the same, the landowners sought permission from the Town Planning Authority for the development of the land, and the same was granted.
14. On the basis of these orders, the landowners executed an agreement on 27th March 2006, thereby assigning to the Municipal Council an area of 4133.25 sq. mtrs. as ‘open space’, whereas an area of 4126.50 sq. mtrs. was assigned as an ‘amenity space’. The said agreement

2 (1994) 2 SCC 647

3 (1992) 4 SCC 683

4 (2006) 2 SCC 641

5 (2014) 15 SCC 144

6 (2022) 2 SCC 25

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also provided for an area of 7560.09 sq. mtrs. as an 'internal road' area to the Municipal Council out of the total land.

15. On 12th January 2007, a final sanction was granted to the layout by the Municipal Council. On 18th September 2007, another agreement was entered into between the parties. On the same date, the Municipal Council also sanctioned a layout showing the lands reserved for 'internal road', 'open space', and 'amenity space'. The landowners acting on the basis of the said sanction plan converted the layout into 65 plots and sold the same to various plot holders.
16. It is to be noted that though the landowners had executed documents giving possession to the Municipal Council, when the Municipal Council sought physical possession in 2012, the landowners filed Civil Suit seeking perpetual injunction along with an application seeking a temporary injunction against the Municipal Council. The said application for temporary injunction was rejected by the Trial Court. The appeal thereagainst was rejected vide order dated 14th January 2015. The same was challenged before the High Court by filing the writ petition. The writ petition was withdrawn vide order dated 17th January 2018.
17. Parallelly, the proceedings with regard to the mutation of the Municipal Council in the revenue records were also in progress. In the said proceedings, the landowners lost up to the Divisional Commissioner. In the meantime, the Municipal Council vide order dated 23rd January 2018, passed a resolution to develop the plot, reserved for 'amenity space', for the purpose of a swimming pool and indoor game hall.
18. Only thereafter, the landowners and the plot holders filed writ petitions before the High Court.
19. It could thus be seen that the landowners had taken advantage of the Government Notification dated 18th August 2004, vide which the land, which was reserved for 'Green Zone (No Development Zone)', was converted into 'Yellow Zone (Development Zone)'/ 'Residential Zone'. It is thus clear that having taken advantage of the sanctioned plan and on the basis of the same laying down the layout and only after failing to get the relief in the Civil Suit and the Revenue proceedings, the landowners approached the

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High Court. The High Court, therefore, rightly found no merit in the petition of the landowners.

20. Insofar as the plot holders are concerned, they also did not stand on a better footing. They had purchased the plot knowing very well that in the sanctioned layout, 10% of space was to be reserved as 'open space' and 10% of the land was to be handed over to the Municipal Council as 'amenity space'. They were very well aware that 10% of the land would be transferred to the Municipal Council by the landowners free of cost and that the land would vest in the Municipal Council. Knowing this fully well, they entered into transactions with the landowners. As such, the writ petition at their behest also challenging the Notification after a period of almost 14 years ought to have been dismissed on the grounds of delay and laches. No doubt that the High Court was justified in holding that the ownership of the 'open space' would vest in the owners of the plot in view of the relevant DCR. The High Court was also right in holding that insofar as 'open space' is concerned, it was required to be kept as 'open space' for use by the plot holders.
21. However, insofar as the 'amenity space' is concerned, the High Court mixed it with the 'open space'. It was to be handed over to the Municipal Council as one of the pre-conditions for converting the land from a 'No Development Zone' to a 'Residential Zone'. Not only that, but acting on the said Notification, the landowners entered into more than one agreement with the Municipal Council, thereby agreeing to hand over the 'open space' as well as the 'amenity space' to the Municipal Council. The sanctioned layout also earmarked the area admeasuring 4143.24 sq. mtrs. as 'amenity space'.
22. Insofar the reliance by the High Court on the judgment of this Court in the case of **Pt. Chet Ram Vashist (Dead) By LRs** (supra) is concerned, in the said case, this Court was dealing with the issue of compulsorily reserved land and held that while sanctioning a plan, a Corporation cannot insist on a condition that the same should be transferred to it. However, in the present

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case, insofar as the compulsory reserved land is concerned, it pertains to 'open space' and we do not propose to interfere with the finding of the High Court in that regard. However, insofar as the 'amenity space' is concerned, it was on the basis of the conditions imposed by the State of Maharashtra while converting the land, which was reserved for a 'non-residential' purpose, to a 'residential' purpose. The landowners not only accepted the said condition but also acting on the basis of the same entered into more than one agreement with the Municipal Council transferring the 'amenity space' in favour of the Municipal Council.

23. It can be noticed that this Court in the case of ***Narayanrao Jagobaji Gowande Public Trust v. State of Maharashtra and others***⁷ has held that if a Government gives the benefit of development of land concerned with permission to sub-divide the same and uses it for commercial purpose and it, in turn, requires the landowner to handover part of land free of cost for public utility purpose, such a clause cannot be held to be illegal. As such, we find that the High Court has grossly erred in allowing the writ petitions.
24. We, therefore, allow the appeals and quash and set aside the impugned common judgment and order dated 4th July 2019 passed by the High Court. The writ petition filed by the plot holders also shall stand dismissed.
25. Learned counsel for the landowners/plot holders had submitted that in the event this Court was inclined to allow the present appeals, which we hereby do, they had an alternate prayer. It was submitted that the land which is reserved for 'amenity space' consists of trees which are aged about 100 years or more. They, therefore, made an offer that if the landowners are permitted to retain the said land, they are willing to transfer another piece of land of the same or near about the same area. We find the said request to be reasonable. We, therefore, permit the landowners/plot holders to make a representation to the Municipal Council for providing/transferring another piece of land on the same

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road having the same or near about the same area. On such an application being made, the Municipal Council would consider the same in accordance with law.

26. We pass the above directions under Article 142 of the Constitution of India in order to protect the trees that are aged 100 years or older.

Headnotes prepared by: Ankit Gyan

Result of the case : Appeals allowed.