

04  
CM  
2013

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## ORDINARY ORIGINAL CIVIL JURISDICTION

## PUBLIC INTEREST LITIGATION (LODGING) NO. 105 OF 2012

- 1 Oshiwara Lokhandwala Citizens  
Association
- 2 Aysha Imtiaz Patel
- 3 Rakesh Coelho
- 4 Lalu Keswani ... Petitioners

vs:

- 1 Maharashtra Housing and Area  
Development Board,
- 2 Brihan Mumbai Municipal Corporation
- 3 Ward Officer, K West Ward, Municipal  
Corporation of Greater Mumbai
- 4 State of Maharashtra, through the  
Secretary, Urban Development Department
- 5 Janata Education Society, Mumbai ... Respondents

Mr. Mihir Desai for the Petitioners.

Dr. Milind Sathe, Senior Advocate with Ms. Madhubala Kajle for respondent  
No.1.

Mr. A. Y. Sakhare, Senior Advocate with Ms. Sharmila Modle and Yamuna  
Parekh for respondents 2 and 3.

Mr. G.W. Mattos, AGP for respondent No.4.

Mr. Ravi Kadam, Senior Advocate with Sharan Jagtiani and Co. for respondent  
No.5.

**CORAM: MOHIT S. SHAH, C.J.  
AND ANOOP V. MOHTA, J.**

**RESERVED ON : February 15, 2013  
PRONOUNCED ON: March 13, 2013**

**JUDGMENT** (Per Anoop V. Mohta, J.):

1 Heard finally by consent of the parties.

2 The residents of Oshiwara and Lokhandwala area of Mumbai, the Petitioners, have filed this Public Interest Litigation on 13/08/2012 basically against respondent 5, a registered Janata Education Society/Trust ( for short, "the Trust") and prayed as under :-

a) For a Writ of Certiorari or a writ, order or direction in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the Lease Deed in respect of Plot No.A-23 admeasuring 2160 sq. metres in CTS No.1 Part along with an adjacent play ground admeasuring 3850 sq. meters in DP-6 admeasuring 3650 square meters at Oshiwara, Andheri (West), Mumbai dated 28.8.2008, annexed at Exhibit Q, IOD dated 1.2.2012 annexed at Exhibit Y and Commencement Certificate dated 27.4.2012 annexed at Exhibit Z to this Petition;

b) For a writ of Mandamus or a writ, order or direction in the nature of Mandamus directing the Respondent Authorities

(I) to take back possession of the Plot No.A-23 admeasuring 2160 sq.metres in CTS No. 1 Part along with an adjacent play ground admeasuring 3850 sq. meters in DP-6 at Oshiwara, Andheri (West), Mumbai from Respondent No.5;

(II) allow the residents of the area full and complete access at all times to the playground admeasuring 3850 sq. meters in DP-6 at Oshiwara, Andheri (West), Mumbai;

(III) for costs of this Petition;

(IV) for such other and further reliefs as the nature and circumstances of the case may require.

They have also prayed for connected interim reliefs.

3 The basic facts, as per the Petitioners, are as under :

This Petition is concerned with two plots. Plot bearing No. A-23 admeasuring 2160 sq. metres in CTS No. 1 Part, along with an adjacent play ground admeasuring 3850 sq. meters in DP-6. The plot admeasuring 2160 sq. metres is reserved in the Development Plan for a municipal primary school while the adjacent plot of 3850 sq. meters is reserved for a common play ground.

4 The plots belonged to Maharashtra Housing and Area Development Authority (MHADA). The municipal head office wrote to the Chief Engineer on 6 April, 2000 that the municipal corporation was ready to grant TDR benefits to MHADA in lieu of handing over the plot reserved for play ground and municipal primary school.

5 The residents approached MHADA and objected for private negotiation in respect of these plots, with the Trust/School. However, the residents have subsequently learnt that on or about 1.1.2002 a decision was taken by the State Government directing MHADA to allot both these plots to the Trust for starting an international school. On 21.12.2002 a letter of allotment was issued by MAHADA to the Trust in respect of both these plots.

6 In September, 2008, the land earmarked for play ground and school (i.e. both these plots) came to be covered with tin sheets. The residents addressed a legal notice to the concerned authorities and to the Trust. As alleged, none of these addressees responded.

7 On 09.07.2010, MHADA in reply to a query of a resident stated that both the plots, were leased to the Trust for 30 years in August 2008. No further actions initiated by the objectors. The Trust has been proceeding further to utilize the plots. In the letter dated 15.12.2010 from the Office of the Chief Fire Officer it is stated that part of the ground and first floor will be used for commercial purposes with independent staircase and upper floors will be used for school purposes. Mr. Kadam, learned senior counsel for respondent No.5, under instructions, states that notwithstanding the statement in the permission dated 15 December 2010 issued by the Deputy Chief Fire Officer (W.S.), no part of the building will be used for commercial purpose. Mr. Kadam adds that on the plot in question, respondent No.5 will put up construction only for a Municipal school with independent access and the school to be run by respondent No.5.

8 On 12.04.2012 some of the residents submitted an application mentioning about "the arbitrary and unjustified action" of MHADA of allotting the plot to the Trust with a request to cancel the allotment. In the meantime, on 1.2.2012 the IOD and on 27.4.2012 the CC were issued. On 27 April, 2012 and 22 May, 2012, the petitioners protested and objected to the restrictions put on use of the play ground by the children. On 7.7.2012 the petitioners raised their objection again. On 22.10.2012 BMC addressed a letter to the Trust intimating that no permission was granted for construction on playground.

9 Respondent No.1 has filed affidavit dated 1 January 2013 and resisted the averments and prayer so made by the petitioners. Respondents 2 and 3 by reply dated 31 October 2012 have also opposed the petition. The Trust has filed detailed affidavit dated 20 October 2012 with compilation of documents to demonstrate that the allotment/lease of the school plot was legal and valid and so also of the play ground. Various other contentions raised to dismiss the petition including on the ground of delay and laches and suppression of facts.

10 The Trust having an object to promote education is registered under the Societies Registration Act, 1860 and also under the Bombay Public Trusts Act, 1950. A school established by them in the year 1972 now has more than 500 students in Bandra (East), Mumbai. Respondent No.1-MHADA by letter dated 8 April 1975 leased out to respondent No.5 3000 sq. yards at Khernagar, Bandra (Bandra plot) for the purposes of secondary school subject to terms and conditions as per then Government policy. An Indenture of Lease dated 7 November 1979 was registered accordingly. The adjacent land, though it was initially offered to the Trust (4400 sq. meters) but could not be taken as need was limited in the year 1972, was allotted to one Bombay Suburban Arts and Crafts Society by respondent No.4. A writ petition was filed therefore by this respondent and challenged the said allotment as they were in need of the adjacent plot to expand their school and as there was no play ground for the children and as their application for the same was pending for long. The dispute went on for long. The Trust therefore, made various representations to the various authorities. The request all the time was also for the adjacent plot in question. Ultimately, respondent No.1 vide its letter dated 20 March 2002 allotted the land to the Trust on terms and conditions as per Regulation 16 of the MHADA (disposal of land) Regulation, 1982. By another letter dated 21

December 2002 more details were asked for and the same were provided as the play ground/plot attached to the school. The special terms and conditions have been added. The Trust has obtained NOC from other concerned respondents-authorities as the plot is reserved for primary school. It was specifically mentioned and agreed that the play ground should be used only for the purposes of playing by the students of the school; the play ground shall be made available to the local residents during certain times in the morning and evening. The respondents accordingly agreed and provided all the necessary details and permissions.

11 The Trust in view of the allotment, expressed their willingness to make the payment for the land by letter dated 6 September, 2007 and accordingly deposited more than Rs.4 crores and odd towards the same. The Indenture of Lease dated 4 August, 2008 was accordingly registered after execution of the same between respondent No. 1 and the Trust, subject to lease rent and terms and conditions mentioned therein. The concerned respondents have handed over the possession of the said land on 21 August 2008. All the respondents are bound by the terms and conditions and specially the Trust.

12 Some time in September 2008, the residents of the neighbouring societies started raising various issues and even obstructed the construction of the work on the land. Various correspondences/ representations/grievances were made/ raised. Respondent No.2 re-iterated again by letter dated 30 January 2009 referring to the land that it is reserved for municipal primary school and play ground.

13 A permission was sought by the Trust by letter dated 3 February 2009 for the development of the municipal primary school and play ground as

reserved. However, the same was not granted immediately. The representation was made to the Commissioner on 1 April 2010 by agreeing that they would hand over built up area to the tune of 15% of the plot for school aggregating to 324 sq. meters. Ultimately respondent No.2 on 1 September 2010 granted development permission for constructing a primary school on terms and conditions. The important condition was as under:-

“..... The construction of the Municipal Primary School was to be completed and handed over to Respondent No.2 free of cost and within a period of two years from the date of issuance of this letter and further that this Respondent was required to hand over a built up area of 324 sq.mtrs (15% of 2160 sq. mtrs) reserved for class rooms of a Municipal Primary School only (excluding staircase, lift lobby, passage, access area etc appurtenant open spaces within compound wall) free of cost to Respondent No.2.”

14 Some time in June 2011 the neighbouring societies have again raised certain objections. The complaints and counter complaints were made. An IOD was issued with reference to development of the land on 1 February 2012. The respondents, therefore, executed and submitted its undertaking, applied to various authorities for grant of various permissions. The Trust has received various necessary permissions/sanctions from the concerned Departments during this period upto 20 April 2012. Respondent No.2 after verifying the same issued the commencement certificate on 27 April 2012. Necessary permission was sought by the Trust on 16 June 2012 to erect temporary structure/temporary site/office/godown for further development of the land, ultimately after due discussion and to facilitate the smooth functioning of the development of the land and to avoid further dispute with the residents a sort of settlement was arrived at and it was also stated that family identity card will be issued to the neighbouring residents to ensure bonafide use of the

playground. The letter dated 28 June 2012 recorded the same but could not be materialised. Respondent No.5-the Trust has also exchanged exchanged, without prejudice proposal for respondents to have access to the plot dated 31 January 2013. The playground must be used as per Govt./ MHADA rules and an access point to the playground would be provided from both sides for convenience to the neighbouring residents.

15 Respondent No.1 on 7 August 2012 on complaints of the resident, issued a stop work notice. The respondent contested the same and provided current status of the plot for play ground. The temporary structures were demolished. The Trust filed a Suit in the City Civil Court at Dindoshi for an injunction restraining respondent No. 3 from taking further action on the basis of notice. The status quo order was ordered. The discussion of the neighbours and the management was on. Even the FIR was also lodged some time on 14 October, 2012. The Trust addressed another letter dated 18 October 2012 to respondent No.1 and again pointed out that they have kept the plot for play ground as per the terms and conditions.

16 From the affidavit filed by respondent Nos. 1, 2 and 3, it is clear that the allotment of the plot No.A-23 and the play ground have been allotted in favour of the Trust in accordance with Regulation No.16 of the MHADA (Disposal of Land) Regulation, 1982 which is as under :

“16 Disposal of certain plots under directive from Government: Notwithstanding anything contained in these regulations, the plots reserved for amenities or for purely commercial purposes in any layout prepared by the Authority in a land situate in any of the nine Urban Agglomerations namely Greater Bombay, Thane, Ulhasnagar, Pune, Kolhapur, Sangli-Miraj, Solapur, Nashik and Nagpur shall be disposed off in



accordance with the direction of the State Government. Similarly the disposal of not more than two percent of the plots reserved for residential use, and to be allotted to individuals, (or to the co-operative housing societies, whether proposed or registered) located in such layouts as aforesaid shall be done in accordance with the directions of the State Government.

[ Provided that, from out of the plots (other than 2 percent plots as aforesaid) reserved for residential use and have not been disposed of, the Authority shall allot or dispose of any of the plots in accordance with the directions of the State Government.”

The constitutional validity of the said Rule has been upheld by this Court already by order dated 15 December 2004 passed in Writ Petition No.75 of 2004-Ninad Gás Service & anr. v. State of Maharashtra & ors. Therefore, it is clear that the decision to grant/allot the plots was taken after following the due procedure of law. The same was also recorded in its meeting dated 1 January, 2002. There is no irregularity or illegality and/or any question of undue favour. All those permissions and lease have been subsisting and binds all. The affidavits filed by respondent No.1 and 2 also confirm that there is no violation of provisions of MRTP Act and/or Development Control Rules and the Development. It is averred by respondent No.1 in this regard as follows:-

“ii. I say that this Respondent has authority to dispose of lands in accordance with MHADA (Disposal of Land) Rules, 1981 read with MHADA (Disposal of Land) Regulations, 1982. The Maharashtra Housing and Area Development (Disposal of Land) Rules, 1981 and in particular Rule 5 provides for disposal of land by lease. I say that all rules have been complied with.

iii. The lease of the said plots has been granted under Regulation 16 of MHADA (Disposal of Land) Regulations, 1982 which provides that notwithstanding anything contained in these regulations, the plots reserved for amenities in any layout prepared by the Authority in a land situated in any of the

urban agglomerations as mentioned therein, shall be disposed of in accordance with the directions of the State Government. Accordingly by a letter dated 20<sup>th</sup> March 2002 issued by the Housing Department, Mantralaya read with the letter dated 21<sup>st</sup> December 2002 issued by this Respondent the said plots were allotted to Respondent No.5 subject to the terms and conditions stated therein. Further Rule 4 of MHADA (Disposal of Land) Rules, 1981 is to be followed where this Respondent has acquired vacant land for the purpose of development of existing urban areas to ensure an orderly urban development. Hence Rule 4 of MHADA (Disposal of Land) Rules, 1981 has not been flouted.

iv. It is also pertinent to note that under the Lease Deed dated 4 August 2008, Respondent No.5 has to make the plot for playground available to the local citizens as per the terms and conditions put forth thereon. I say that therefore there is nothing illegal whatsoever in the allotment of MHADA land to Respondent No.5. Even in the past lands have been allotted to third parties in such manner.”

17 It is relevant to note that there is nothing averred and/or pointed out in view of undisputed position on record that the sanction and/or lease so granted including NOC, on certain terms and conditions would defeat the reservation. The fact remained that DCR Rule (Table 4, pv, Sr. No.23) specifically permit a plot reserved for municipal school to be developed either by the Corporation or registered institution or Trust or private party in accordance with conditions as may be imposed by the municipal Commissioner. As noted already, the present development is in accordance with DCR Rules and permission issued by respondent Nos. 2 and 3. It is also within the purview of policies of respondents as published through Circular dated 18 September 2010. There is no challenge to any such policy and/or rules and regulations. Therefore, the challenge so raised only to the grant and/or permission, in our view is unsustainable.

18 There is also no material placed on record to show that the permission so granted to use the play ground to the Trust would defeat the reservation of play ground under DCR 1991, Rule 9, Table 4, serial No.4. The permission is expressly granted. Taking note of all above factors, it cannot be stated to be contrary to law and/or is in breach of any declared rules and regulations. There are number of schools in Mumbai whereby such permissions have been granted for such adjacent play ground which is to be used during school hours. The availability/facility of play ground near the school is in the interest of all specially the students. In view of the above provisions/rules and regulations and as the land/plots have been leased out subject to terms and conditions, the submission that it was allotted not by public auction is also unacceptable.

19 Respondent Nos. 2 and 3 have also endorsed that the plot in question has been reserved for municipal primary school in the DP and the plot is adjacent to the plot DP No.6 which is reserved for play ground in the Development Plan. The lease so granted, therefore, to respondent No.1 of combined plots on terms and conditions for utilisation of the play ground for the sports and related activities of the students including for local citizens residing in the vicinity by the specific period in the morning and evening, subject to terms and conditions that the play ground/plot should not be utilised for any other purpose in no way can be stated to be illegal and/or contrary to any provisions of law. The Trust is under obligation to develop the plot/school as per the NOC and the permissions and subject to conditions so put in the lease deed. They approved the plans accordingly in the year 2010 itself. It is specifically averred by respondent Nos. 2 and 3 which just cannot be overlooked and/or specially when no contra material placed by the petitioners at

relevant time to accept that the actions of respondents are illegal and/or contrary to law.

20 It is also averred that Executive Engineer (D.P.) H & K granted No Objection dated 01.09.2010 to allow development on the said land GTS no. 1 (pt), Plot no. A-23, S. No. 41 (pt) of village Oshiwara, Andheri in K/West Ward reserved for Municipal Primary school as per provision of regulation, table-4 sub clause V(2)(b) & (c) of DCR and as per Municipal Commissioner approval to policy under No. MGC/V/336 dated 16.08.2010 subject to the terms and conditions mentioned therein. Further, as per the one of the terms and condition, the owner/Developer shall be permitted to develop the school only after agreeing to handover built up area of Municipal Primary school which is aggregating 324 sq.mt (i.e. 15% of 2160 sq.mt) for class room only excluding staircase, lift lobby, access area and appurtenant open space with compound wall free of cost to the Trust/Respondent as per design, plan and specifications as may be prescribed by Dy Municipal Arch (D.P) / Education Officer of these Respondents.

21 As the permission, allotment and sanction so granted are within the framework of law, the submission with regard to the traffic congestion is also unacceptable and specifically when the residence/petitioners have been permitted to have access through and from both side roads. It is also relevant to note that in view of composite buildings of school along with the adjacent play ground plot, the conditions stipulated by the Government of Maharashtra, in UDD notification dated 8 September 2008 issued under Section 154 of the Maharashtra Regional Town Planning Act, that 40% of the area of any plot for school must be kept open for recreational space is also not applicable in present facts and circumstances of the case. Such condition, in fact, dispensed with

while granting permission by MCGM dated 1 September 2010.

22 An IOD was also issued on 1 February 2012 and also CC on 27 April 2012 as per the approved plans. For additional two FSI, the same will be subject to Government sanction if any. There remain no doubt that the Trust is under obligation to develop the plot and/or use the same as per the terms and conditions. The other respondents-authorities are bound to take action if there is any breach on the complaints of residents and/or even otherwise. It is noted that now the play ground/plot is available for local residents in the vicinity subject to terms and conditions and restricted period. The petitioners, therefore, taking overall view of the matter, failed to place on record contrary material in support of their prayer clause and for declaration that the lease as well as allotment of plot so granted to the Trust is illegal and/or void. There is no illegality specifically when the petitioners themselves are not in a position to oppose the establishment of primary school in the area and also the play ground for the students of the school. Their grievance, therefore, if any, need to be considered only from the point of view of access to the play ground and not more than that..

23 The learned Senior Counsel for the Trust after instructions, without prejudice offer in writing and after taking note of the contentions of the parties, volunteered for permitting the residents of the neighbouring societies to have access to the plot for play ground during non-school hours. The same is taken on record by order dated 06.02.2013. To solve the debate how the access to the play ground to be provided, this Court directed to prepare map indicating the location of gates from where the residents of the neighbouring societies and others may have access to the play ground. The matter was accordingly adjourned to arrive at possible consensus. The Trust was also directed to level the play ground plot.

24 On 15.02.2013, the learned Senior Counsel appearing for the Trust placed on record letter dated 11.02.2013 which contains explanation notes along with maps at Annexures "A", "B" and "C" and the same was also taken on record collectively. There was no consensus for the size of access gate and its exact location. On 09.02.2013, the advocate for the Petitioners along with their representative, the Officer from the BMC Ward Office of Respondent No.3, Deputy Engineer, MHADA- Respondent No.1, Junior Engineer, MHADA and advocate for Respondent No.5 along with the representatives and the architect visited the plot and based upon the discussion prepared the proposed plan to demarcate the access gates.

25 The Petitioners handed over a plan with 3 access gates for plot for play ground which are as under:-

**Gate No. 1 and 2:-** Access gate No.1 and 2 (pedestrian gate of 1.2 meters each) are from the access road, one towards the boundary of post office and the second towards the boundary wall of the Respondents 5 school plot.

**Gate No.3:-** Access gate No.3 (pedestrian gate of 1.2 meter) through the compound of the Tarapore Towers CHS.

26 The Trust, considering the facts and circumstances and exact situation/location of the school and the play ground made the following suggestions-

- i) **For Gate No.1:-** It is a fact that the pedestrian gate proposed by the petitioners is touching the boundary wall of post

office and there is also a papaya tree towards the same. Thus, it is proposed that instead of making a gate of 1.2 meter width from the boundary of the plot of post office, the access gate no.1 shall be made after leaving 9.18 meters space from the corner of the plot for post office and shall be a 1.2 meters wide pedestrian gate.

ii) **For Gate No.2:-** It is a fact that the pedestrian gate no.2 suggested by the petitioners is 1.2 meter wide and is touching the boundary wall of the plot for school. It is suggested that the access gate no.2 shall be made after leaving 5 meters space from the corner boundary of the plot for school which shall be of 3 meters width instead of 1.2 meters to enable easy access for vehicles such as rollers, fire brigade etc. on the plot for playground.

iii) **For Gate No.3:-** The Respondent No.5 does not have an objection to the position of the access gate no.3 as proposed by the Petitioners, however it shall be subject to an undertaking to be given by the Petitioners to the Hon'ble Court that the said Gate No.3 shall be accessible to the general public and not meant exclusively for any party.

27 The Trust has placed on record the suggested plan for the access gates marked as Annexure "B". We have noted that there is no serious dispute with regard to the access gates except the location. The suggestions, therefore, so made by the Trust, in our view, also are workable and sufficient to cover the interest of all.'

28 The petitioners have strongly relied on the recent Opinion dated 27.09.2012 of Hon'ble Supreme Court in Special Reference No.1 of 2012.

“105 From a scrutiny of the trend of decisions it is clearly perceivable that the action of the State, whether it relates to distribution of largesse, grant of contracts or allotment of land, is to be tested on the touchstone of Article 14 of the Constitution. A law may not be struck down for being arbitrary without the pointing out of a constitutional infirmity as *Mc. Dowell's case* (supra) has said. Therefore, a State action has to be tested for constitutional infirmities qua Article 14 of the Constitution. The action has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment. It should conform to the norms which are rational, informed with reasons and guided by public interest, etc. All these principles are inherent in the fundamental conception of Article 14. This is the mandate of Article 14 of the Constitution of India.”

The proposition of law and the opinion in no way is in dispute. We have to seek and check the facts and circumstances of each and every case before testing it on the anvil of Article 14 as referred above. It is apt to quote the following observations:

“119 ..... Where revenue maximization is not the object of a policy of distribution, the question of auction would not arise. Revenue considerations may assume secondary consideration to developmental considerations.

120 Therefore, in conclusion, the submission that the mandate of Article 14 is that any disposal of a natural resource for commercial use must be for revenue maximization, and thus by auction, is based neither on law nor on logic. There is no constitutional imperative in the matter of economic politics – Article 14 does not pre-define any economic policy as a constitutional mandate. Even the mandate of 39(b) imposes no restrictions on the means adopted to subserve the public good and uses the broad term



'distribution', suggesting that the methodology of distribution is not fixed. Economic logic establishes that alienation/allocation of natural resources to the highest bidder may not necessarily be the only way to subserve the common good, and at times, may run counter to public good. Hence, it needs little emphasis that disposal of all natural resources through auctions is clearly not a constitutional mandate."

29 In the present case, admittedly, the petitioners have no objection to establishment of municipal primary school. The play ground therefore so provided/allotted is bound to be for the students of municipal schools along with other students and residents of the area subject to terms and conditions. The petitioners in no way can object to this arrangement as they are not the competitors, one who entitled and/or would be affected by the establishment of such school and the play ground for the students. It is to be noted that the Government has also based upon their policy decisions permitted to establish such municipal schools and the adjacent play ground/area. Having once granted the permission in accordance with law to the Trust and the play ground is made available for the students and also to the people at large, just cannot be objected by the residents. Such establishment of the municipal school itself is in the interest of public at large including the neighbours of the premises. Playground is permitted even for the residents to use the same though by restricted timing; to say that such allotment of land and the permission to start such school and the permission to use the land subject to terms and conditions are illegal is unacceptable.

30 Therefore, taking overall view of the matter, we are of the view that the conditions of the lease and the development permission so granted has taken care of the interest of the neighbouring residents. The reasonable restriction so put including the construction of temporary fencing and/or wire

fencing in no way takes away the rights specifically when the entry-gates are to be provided at three places. It is in the interest of all that some fencing is provided to control the access and to protect the playground.

The free access to the residents subject to fixed timing read with restricted boundaries for the play ground, in our view is the only workable solution which would serve the purpose of all.

31 The aspects of delay, latches and vague allegations, even though strongly contended and which are clear from the admitted position on record; and as there is no sufficient justification for such delay and latches, still considering the interest of public at large, we are inclined to pass the following order :

- a) The petition is dismissed with regard to prayer clauses (a) and (b) (i), (iii) and (iv).
- b) So far as the prayer clause (b) (ii) is concerned, it is directed that the residents of the area shall be permitted to access the play ground from the gates as described in the map (Annexure B) to letter dated 11 February 2013 at the following timings:
  - (i) 5.30 am to 7.30 am and 6.00 pm to 9.00 pm during school working days, since school hours will be from 8.00 am to 5.30 pm (including school's sporting activities).
  - (ii) 5.30 am to 9.00 pm during school holidays including Saturday and Sunday.

However, in the event the schools hold any events

such as sports day, field day, etc then the plot for playground will remain open only for the school on such days and a prior intimation will be given to the neighbouring societies by placing a notice on the entrance of the plot for playground.

- c) The notice board may be fixed accordingly for the visiting hours. The time and restrictions should be strictly complied with by all.
- d) So far as gate No.1 is concerned, the access to the gate No.1 is after leaving 9.18 meters space from the corner of the plot for post office and shall be a 1.2 meters wide pedestrian gate.
- e) So far as gate No.2 is concerned, there shall be gate of 3 meters to enable, in case of any exigency access for vehicles such as rollers, fire brigade on the play ground.

However, there shall be an additional small gate of one meter which will be open for residents and/or visitors to have access on the play ground. The gate of 3 meters need not be kept open unless necessary.

- f) Gate No.3, is as proposed by the Petitioners.

- g) All these gates shall be accessible to the general public and not meant exclusively for any party.

**CHIEF JUSTICE**

**(ANOOP V. MOHTA, J.)**

Bombay High Court