

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 568 OF 2019

Mahatma Education Society } **Petitioner**
versus
Municipal Corporation of Greater }
Mumbai and Ors. } **Respondents**

Mr.R.A.Dada-Senior Advocate with
Mr.C.K.Thomas i/b. M/s.C.K.Thomas and
Associates for the petitioner.

Ms.G.R.Shastrri-Additional Government
Pleader for State.

Mr.Sandeep S. Ladda for respondent nos.3
and 4.

Mr.Yashodeep Deshmukh with Ms.Rupali
Adhate for the Municipal Corporation.

Mr.Sanjay Jadhav-Assistant Engineer
(Development and Planning), L and M
Ward present.

**CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.**

DATED :- JUNE 25, 2019

P.C. :-

- 1.** We have heard both sides.
- 2.** Rule. Respondents waive service.

3. On the previous occasion, we made detailed orders and directions to ensure that neither public interest is totally sacrificed and takes a back seat nor does an educational institution like the petitioner goes without a playground for its children/ students. This order is in continuation of our earlier order.

4. The petitioner says that it is a Trust running several educational institutions, but the present one was started in the year 1974 for economically backward students in Marathi medium at a property bearing CTS No. 491 of village Chembur. The plot is reserved for secondary school. It is at Chembur Naka, V.N.Purav Marg, Chembur, Mumbai 400 071 and near to this plot is the subject land bearing CTS No. 1305 admeasuring 4113.60 square meters consisting one bungalow and vacant land admeasuring 1943 square meters. Now, we do not think that any order or direction, much less of a mandatory nature can be passed in relation to this bungalow described in para 3-(b) of the petition. However, that portion of the plot, which is utilised as a playground by the school, according to the respondents, was only proposed as a playground reservation.

5. *Prima facie* and interestingly, the State Government says that this was merely proposed. Yet,, in the two affidavits filed

before us in reply to the petition, it made a serious endeavor to demonstrate as to how the law has been complied with. Even for a proposed modification to be taken away or deleted, it followed the route prescribed in the Maharashtra Regional and Town Planning Act, 1966 and particularly section 22-A thereof. It says that clause (a) of this section has been complied with and even the proposed reservation is deleted. So far so good. The respondent State went ahead and asserted that the petitioner is raising a avoidable and rather unnecessary hue and cry. It has several playgrounds in the vicinity and which the school and its students can access.

6. In order to satisfy our conscience about availability of several playgrounds, as asserted, in the vicinity, on the previous occasion, we passed a detailed order. The Municipal Corporation was directed to send a representative to personally inspect the site. After such an inspection, an affidavit was expected. Mr.Sanjay Jadhav working as Assistant Engineer in the concerned Ward of the Municipal Corporation has filed an affidavit. This affidavit, in para 5 reads as under:-

“5. There are total 6 plots in close proximity of the petitioner school as indicated in the plan annexed to the Writ Petition and bare perusal of the chart indicates that out of said 6 plots 5 are reserved for play Ground (PG) whereas one plot bearing CTS No.454 is reserved for purpose of Garden. Further, all of said 5 plots reserved for PG are owned by private persons and neither acquired nor

process for acquisition has been initiated by the Corporation in respect of said reservations. 4 out of the 5 plots reserved for PG purpose which are attached to schools; of said school are as under:

Sr. No.	CTS No. of village Chembur	Present status
1	453 (Pt)	Attached to reservation of Primary/ secondary school (RE 1.2), which is not developed on site and partly encroached.
2	386 (Pt), 387 (Pt), 395 (Pt), 396 (Pt), 397 (Pt)	Attached to reservation of Primary/ secondary school (RE 1.2), which is not developed on site and fully encroached.
3	411A/3	Attached to Green Acres Academy (IB) School and in possession of School Authority.
4	1280G, 1284 (Pt)	Attached to Chembur High School and in possession of School Authority.

As regards CTS No.411 B of village Chembur, it is under occupation of Acres Club and Club house is developed on said plot.

Two of the plots Sr. No. 1 & 2 are either fully or partially encroached with slums/ hutments and two plots are developed by Acres Club & Chembur High School for its own use.”

7. This affidavit and particularly its para 5 wholly contradicts the statements in the affidavit of the State Government. The position is that today apart from the subject playground, there is no playground for the school at all. The properties may have been designated as reserved for playground, but they are all private properties. They are not acquired. Mere reservation means they do not vest in the State or the Municipal Corporation.

8. In the circumstances, *prima facie* case is made out. We are of the firm opinion that the balance of convenience is also in favour of the petitioner as the essential averments in the writ petition remain uncontroverted. The petitioner will suffer grave and irreparable loss and injury. The petitioner is, thus, entitled to an interim relief. More so, when no alternatives are either placed before the court nor is the State or the Municipal Corporation ready and willing to make any statement about playground facility being extended to the school. In the circumstances, there would be an interim order in terms of prayer clause (c) except the bracketed portion of the said prayer clause, and prayer clause (d) which read thus:-

“c) pending the hearing and final disposal of the present Writ Petition, this Hon’ble Court be pleased to stay the operation and implementation of the Impugned Notification dated 22nd January, 2019 (being Exhibit ‘H’ hereto) to the extent of deletion of reservation of the play ground as mentioned in the Schedule A to the Impugned Notification being Exhibit H hereto viz. plot CGTS No.1305 of Chembur Village in M/West Ward of Mumbai Municipal Corporation of Greater Mumbai admeasuring 2300 sq. Yards as ROS 1.4 (Play Ground) [*and/ or in the alternative direct the said Respondents to allot alternate plot of land for play ground in the near vicinity whether the original play ground situate for the use of the children in that area.*]

“d) pending the hearing and final disposal of the present Writ Petition, this Hon’ble Court be pleased to direct the Respondent Nos. 1 to 4 and 6 not to grant any permission for any development/ construction on the said plot of land viz. Plot CTS No.1305 of Chembur

Village in M/West Ward of Mumbai Municipal Corporation of Greater Mumbai admeasuring 2300 sq. Yards as ROS 1.4 (Play Ground).”

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)

Atul

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WRIT PETITION (L) NO. 568 OF 2019

Mahatma Education Society ...Petitioners
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr CK Thomas, i/b CK Thomas & Associates, for the Petitioners.
Ms Vandana Mahadik, for the Respondent-MCGM.
Ms GR Shastri, Additional GP, for the Respondent- State.
Mr Rajesh G Singh, for Respondent Nos. 3 and 4.

CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ
DATED: 17th June 2019

PC:-

1. Today an additional affidavit has been filed by the State Government. Annexed at Exhibits 2, 3 and 4 of this additional affidavit, there are copies of parts of development plans over time. These depict more than one playground or recreation ground in close proximity to the petitioner school.

2. We have requested the Advocate for the 1st Respondent to ascertain from the site as to whether what is indicated on these plans as a playground or a recreation ground can be used by members of the public including children of the school and can be shared with other schools, or whether there is no playground other than that claimed by the petitioner.

3. In the event there are one or more playground or recreation grounds within close proximity to the school, and to access which the children/students in the petitioner school do not have to cross either VN Purav Marg or RC Marg, then we have made it clear to Mr Thomas that we are not inclined to interfere in our writ jurisdiction under Article 226 of the Constitution of India.

4. It is because Mr Thomas says that the affidavit is served today and he has expressed an apprehension that though playgrounds or recreation grounds may be depicted on the plan, these may not actually exist at the site, or they may be entirely private and hence inaccessible to the school children that we have requested the Advocate for the Mumbai Municipal Corporation to depute an

official to visit the site and indicate on affidavit the number of playgrounds available in reasonable close proximity to the petitioner school. We have made it clear to Mr Thomas that we have not asked whether there is a playground or recreation ground directly abutting or adjacent to the Petitioner's school.

5. List this matter for passing orders on 25th June 2019.

(S.C. DHARMADHIKARI, J)

(G. S. PATEL, J)