

AGK

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

**PUBLIC INTEREST LITIGATION (L) NO.29467 OF 2022**

Vinayak Yasvant Sanap ...Petitioner

**V/s.**

State of Maharashtra & Ors. ...Respondents

Mr. Mayur Vinod Faria for the petitioner.

Mr. Abhay L. Patki, Additional Government Pleader  
for respondent nos.1 and 2 (State).

Mr. Mukesh M. Vashi, Senior Advocate with Mr. Asif  
Shaikh i/by Mr. Amarendra Mishra for respondent  
no.3.

Ms. K. H. Mastakar for respondent no.4 (MCGM).

**CORAM: DIPANKAR DATTA, CJ. &  
MADHAV J. JAMDAR, J.**

**DATE: SEPTEMBER 23, 2022**

**P.C.:**

**1.** This petition dated 13<sup>th</sup> September 2022 happens to the second round of litigation initiated by the petitioner, allegedly instituted in public interest, availing the liberty granted by a coordinate Bench of this Court by its order dated 25<sup>th</sup> April 2019 in Public Interest Litigation (L) No. 98 of 2018.

**2.** For facility of reference, we consider it appropriate to reproduce the order dated 25<sup>th</sup> April 2019 in its entirety hereinbelow: -

“The grievance of the petitioner appears to be that permission granted as contemplated by Section 37 of the Maharashtra Regional and Town Planning Act, 1966 in respect of playgrounds, should not be of a kind where the organizers generate profits by utilizing the playgrounds.

2. We find that the pleadings are non-focused and this is the reason why the counsel seeks leave to withdraw the petition with right reserved to file fresh petition.

3. Granting liberty as prayed for, petition is dismissed.”

**3.** The grievance raised in this petition is exactly the same that was raised in the earlier round of litigation, i.e., a playground has been permitted to be used by the public authorities with commercial interest in mind, although the law is well settled that a playground cannot be used for any purpose other than games and sports activities. It is the contention of the petitioner that a function is scheduled to be organized between 26<sup>th</sup> September 2022 and 6<sup>th</sup> October 2022 and that members of the public would be allowed entry in such function only upon payment of charges. This, according to the petitioner, is absolutely illegal and contrary to public interest, since a playground has to be kept accessible to the public without any charge and this noble object is sought to be frustrated.

**4.** Preliminary objections to the maintainability of the petition have been raised by the respondents.

**5.** Appearing on behalf of the State, Mr. Patki, learned Addl. Government Pleader has invited our attention to section 37-A of the Maharashtra Regional & Town Planning Act, 1966 (hereafter “the Act”, for short) and has submitted that

allotment of the vacant space in question, which is undoubtedly reserved for a playground, has been made in terms thereof. Since section 37-A is not under challenge, he contends that the action impugned cannot be branded by the petitioner as illegal.

**6.** The statutory mandate in section 37-A, which incurred our frown, is worded in the following terms: -

**“37-A. Power of State Government or Planning Authority to permit temporary change of user**

Notwithstanding anything contained in this Act or any other law for the time being in force, or in any judgement, order or direction of any Court, or any draft or final Development Plan, the State Government or the Planning Authority may in respect of any plot of land reserved, designated or allocated for the purpose of play ground in such draft or final Development Plan, which is in the possession of the State Government or the Planning Authority, by an order issued from time to time, permit any organisation, body of persons or association to use such play ground for functions organised on the occasions of Independence Day, Republic Day, Maharashtra Day and similar National events, and the Jayanties or Punnyatithies of National Leaders, religious functions and public meetings, on terms and conditions specified by the State Government or the Planning Authority, as the case may be in such order, for a period not exceeding 12 days at a time and in any case not exceeding forty-five days in the aggregate, in a calendar year; and such use shall not be deemed to be a change of user:

**Provided that**, temporary use of any plot of land, reserved, designated or allocated for the purpose of play-ground, for management of any disaster or emergency such as Helipad or other essential use, shall also not be deemed to be a change of user.”

**7.** It is submitted by Mr. Patki that as well as by Mr. Vashi,

learned senior advocate appearing for the respondent no.3, i.e., the event organizer, that an allotment of the playground has been made in favour of one Sai Ganesh Welfare Association, Borivli by the respondent no.2; however, neither is such allotment under challenge in the petition nor is the said Sai Ganesh Welfare Association, Borivli a respondent in the petition. Mr. Vashi has joined Mr. Patki in contending that there is no challenge to the *vires* of section 37-A of the Act.

**8.** It has further been shown to us by Mr. Vashi from one of the documents in the compilation tendered across the Bar that the initial announcement with regard to the function was made on 26<sup>th</sup> August 2022. According to him, since then all arrangements have been completed for organizing the function to celebrate Navratri and this belated attempt by the petitioner to stall the function without seeking relief against similar events/functions, which are organized all over Mumbai during Navratri, tends to suggest that the petition has been moved with ill-motives.

**9.** Mr. Vashi also contends that a similar function organized in 2019 at the same playground went unchallenged by the petitioner. It is, therefore, not open to the petitioner to approach the Court now, since the leave obtained by him from the Court earlier cannot be availed at any time of his choice.

**10.** Mr. Faria, learned advocate for the petitioner, however, has sought to contend that section 37-A of the Act is not applicable in the present case nor has the petitioner any ill-motives in mind. According to him, the petitioner is interested to protect the playgrounds and that commercial exploitation of

a playground for purposes other than sports activities ought to be interdicted by the Court in the exercise of its extraordinary writ jurisdiction.

**11.** What has struck us is that there is no challenge to the *vires* of section 37-A, although the *non-obstante* clause therein would override *inter alia* any judgment and order passed by the Court restraining the use of a land for a purpose different from that for which it has been reserved in the development plan. In the absence of any challenge to the *vires* of section 37-A of the Act, we need not examine whether the legislature has the power or competence to enact such a law or, in the alternative, whether such a law falls foul of Article 14 of the Constitution.

**12.** Since it has been contended by Mr. Patki that power under section 37-A was exercised in the present case and there is no material on record to suggest to the contrary, we have to proceed on the premise that section 37-A is a valid piece of legislation which was invoked for the purpose of grant of permission to Sai Ganesh Welfare Association to have the event/function organized.

**13.** We further do not find any reason to accept the contention of Mr. Faria that section 37-A has no application on facts and in the circumstances. It would be evident from section 37-A that permission for temporary change of user could be obtained *inter alia* in respect of religious functions. It does not require elaboration that Navratri is indeed a festival which is dear to the people of this region and is celebrated with passionate religious fervor. Any event or function to

celebrate such religious festival could be comprehended within the term 'religious function', as appearing in section 37-A of the Act. Permission granted cannot be faulted on the ground that section 37-A of the Act is inapplicable.

**14.** Interestingly enough, the petitioner has not arrayed Sai Ganesh Welfare Association as a respondent. Allotment having been made in favour of Sai Ganesh Welfare Association, any order of the nature claimed by the petitioner in this petition would have the effect of prejudicing the interest of Sai Ganesh Welfare Association. Non-rejoinder of party is another substantial ground for which this petition ought to fail.

**15.** Finally, we can take judicial notice of the fact that such events/functions are organized all over Mumbai during Navratri. At the same playground, similar such function (which is scheduled to commence from 26<sup>th</sup> September, 2022) was organized in 2019. For the next two years, no function could be organized due to the pandemic. Mr. Faria does not dispute that a similar event/function was organized in 2019. The leave that was granted by the order dated 25<sup>th</sup> April 2019 of the coordinate Bench cannot be availed of at any time in future. It ought to have been availed of in 2019 itself. The petitioner cannot choose to approach the Court at his sweet will in 2022 when all arrangements have been made or are supposed to have been made. The petitioner seems to have targeted only the present event/function of which the respondent no.3 is the organizer. In our considered opinion, singling out one particular event/function out of many smacks of want of *bona fide* and, therefore, the petition would not deserve any consideration.

**16.** The aforesaid reasons are apart from the fact that the petitioner has approached the Court belatedly. The petitioner claims to be a journalist. In the present case, it is claimed that initial announcement with regard to the event/function was made on 26<sup>th</sup> August 2022 on the media. If indeed such claim is true, we see no reason as to why the petitioner did not approach the Court earlier to 13<sup>th</sup> September, 2022. We also find that despite the Municipal Corporation having been made a respondent in the petition, a complaint is made by Ms. Mastakar, learned advocate for the Corporation that copy of the petition memo has not been served. Be that as it may, it would be iniquitous and harsh if we were to interdict the event/function, if at all, at such a belated stage.

**17.** For the reasons aforesaid, there is no merit in this petition and the same stands dismissed. There shall be no order as to costs.

**(MADHAV J. JAMDAR, J.)**

**(CHIEF JUSTICE)**

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signed by  
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KULKARNI  
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