

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.8626 OF 2013

- 1) Mahesh s/o Jagannath Mendu,
Age-50 years, Occu:Service,
- 2) Sopan Maruti Lad,
Age-48 years, Occu:Labour,
- 3) Dilip Namdeo Wani,
Age-46 years, Occu:Service,
- 4) Uttam Karhri Katkar,
Age-48 years, Occu:Driver,
- 5) Sunita Kachru Jagtap,
Age-40 years, Occu:Labour,
- 6) Alka Natha Kote,
Age-50 years, Occu:Labour,
- 7) Nitin Eknath Mahale,
Age-40 years, Occu:Service,
- 8) Vimal Sudhakar Dahale,
Age-50 years, Occu:Service,
- 9) Pravin Balaji Pawar,
Age-35 years, Occu:Service,
- 10) Sumitilal Pannalal Pipada,
Age-35 years, Occu:Labour,
- 11) Anil Janardhan Batmule,
Age-45 years, Occu:Agril.,

- 12) Madhukar Sakharam Chavan
Age-42 years, Occu:Agril.,
- 13) Abhumanyu Khandu Dubal
Age-45 years, Occu:Service,
- 14) Usmanbahi Balambhai Sayyed,
Age-55 years, Occu:Service,
- 15) Jahitul Dilawarbhai Bagwan,
Age-48 years, Occu:Labour,
- 16) Samandarkhan Khadarkhan Pathan,
Age-65 years, Occu:Pensioner,
- 17) Meena Giridhar Ingale,
Age-48 years, Occu:Labour,
- 18) Suryabhan Bikaji Bade,
Age-75 years, Occu:Labour,
- 19) Kamalabai Aasaram Bimbalkar,
Age-49 years, Occu:Labour,
- 20) Bhanudas Nathu Bharate,
Age-57 years, Occu:Agril.,
- 21) Prakash Baburao Adangale,
Age-37 years, Occu:Service,
- 22) Vikas Baburao Adangale,
Age-35 years, Occu:Service,
- 23) Vijendrakumar Ramvihar Mishra,
Age-38 years, Occu:Labour,
- 24) Vasanti Fakirchand Rahane,
Age-54 years, Occu:Labour,
- 25) Rajendra Vishwanath Sonawane,
Age-49 years, Occu: Labour,

- 26) Suresh Bansilal Joshi,
Age-50 years, Occu: Service,
- 27) Kumud Sonba Kale,
Age-46 years, Occu: HH.,
- 28) Shankar Vishwanath Bidkar
Age-48 years, Occu: Labour,
- 29) Mangesh Vishwanath Bidkar,
Age-40 years, Occu: Labour,
- 30) Mandabai Suryabhan Bade,
Age-70 years, Occu:HH.,

All above named persons
R/o-Shirdi, Tq-Rahata,
Dist-Ahmednagar.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Relief & Rehabilitation Department,
Mantralaya, Mumbai-400032,
- 2) The Secretary, Revenue & Forest
Department, (Relief & Rehabilitation),
Mantralaya, Mumbai-32,
- 3) Shree Saibaba Sansthan Trust,
Shirdi, Through its Chief Executive
Officer, Shirdi, Dist-Ahmednagar,
- 4) The Collector, Ahmednagar,
- 5) Sub Divisional Officer & Deputy
Collector, (Land Acquisition),
Shrirampur, Dist-Ahmednagar.

...RESPONDENTS

...

Mr. S.B. Talekar Advocate for Petitioners.
Mr. S.G. Sangale, A.G.P. for Respondent
Nos.1, 2 and 4.
Mr. S.R. Choukidar Advocate for Respondent
No.3.

...

**CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.**

DATE : 29TH APRIL, 2015

ORAL ORDER :

1. Mr. Talekar, the learned counsel for the Petitioners strenuously contends that the Petitioners are owners and possessors of houses constructed over their land in Survey No.126, Santnagar, Shirdi. The learned counsel submits that the Petitioners have assailed the declaration under Section 6 of the Land Acquisition Act read with Section 126 of the Maharashtra Regional and Town Planning Act ("M.R.T.P. Act" for short) published in the Government Gazette dated 8th October 2009, so also the acquisition proceedings. The same is ultra vires to Section 11-A of the

Land Acquisition Act. The learned counsel submits that the declaration under Section 6 of the Land Acquisition Act read with Section 126 of the M.R.T.P. Act has been issued on 8th October 2009, whereas the award has been shown to have been passed on 30th December 2013. The same is not in consonance with Section 11-A of the Land Acquisition Act. The learned counsel submits that the provisions which are beneficial to the Petitioners are to be made applicable. The learned counsel relies on the Judgment of the Apex Court in the case of **Nagpur Improvement Trust and another vs. Vithal Rao and others, reported in 1973(1) S.C.C. 500**. The learned counsel submits that this Judgment delivered by the seven Judges of the Apex Court has not been considered in the subsequent Judgment of the Apex Court in the case of **Girnar Traders vs. the State of Maharashtra, reported in 2011(3) S.C.C. 1**.

2. The learned counsel for the Petitioners

submits that the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 would be applicable. Schedule Part -IV of the Act lays down the area of the plot which a person would be entitled to. The said aspect has not been considered by the Authorities. According to the learned counsel, five times Shirdi Sansthan has passed resolutions and has taken decision to rehabilitate the Petitioners by providing them alternate houses. However, the State Government, on the ground that proposal is incomplete and the same is not in consonance with the policy, rejected the proposal vide order dated 11th September 2012. The learned counsel submits that even after rejection of the proposal by the State Government on 11th September 2012, Sansthan has again passed resolution, however the same is not considered. Learned counsel further submits that the orders passed in earlier Writ Petitions would be of no avail, as the challenge in earlier Writ Petitions was to the decision of the State

Government, and the challenge as is made in the present Writ Petition was not made in the earlier Writ Petitions.

3. The learned counsel for the Petitioners further submits that the Municipal Council, Shirdi has subsequently decided to revise the development plan and has cancelled the Reservation Nos.34 and 39. The said modification in the development plan is proposed in March 2015 itself. The said aspect also requires to be considered.

4. Mr. Choukidar, the learned counsel appearing for Sansthan and Mr. Sangale, the learned A.G.P. for State, submit that the houses of the Petitioners are unauthorized, they are without any construction permission. The challenge made herein, has been rejected twice by this Court in Writ Petition No.611 of 2012 and Writ Petition No.9277 of 2012. The Petitioners cannot re-agitate the said aspect. The learned counsel for

Respondents submits that provisions of Maharashtra Project Affected Persons Rehabilitation Act does not apply to the present proceedings. There is no declaration of benefited or affected zone.

5. We have considered the submissions canvassed by the learned counsel for the respective parties.

6. The Judgment in the case of **Nagpur Improvement Trust and another vs. Vithal Rao and others**, referred supra was referred in the subsequent Judgment of the Apex Court in the case of **Girnar Traders**, referred supra. In the case of **Girnar Traders**, the Apex Court was concerned with the applicability of Section 11-A of the Land Acquisition Act to the acquisition proceeding which has been initiated pursuant to the declaration under Section 6 of the Land Acquisition Act read with Section 126 of the M.R.T.P. Act. The Constitution Bench held that

provisions of Section 11-A of the Land Acquisition Act would not apply for the acquisition proceedings commenced vide declaration under Section 6 of the Land Acquisition Act read with Section 126 of the M.R.T.P. Act.

7. The award is already passed on 30th December 2013. The acquisition proceedings have been initiated vide declaration under Section 6 of the Land Acquisition Act read with Section 126 of the M.R.T.P. Act in October 2009. The Writ Petition was filed in the year 2013 challenging the declaration under Section 6 of the Land Acquisition Act read with Section 126 of the M.R.T.P. Act. The challenge is raised after four years. Prior to that two Writ Petitions have been filed by the Petitioners, wherein the contentions of the Petitioners have been negatived.

8. The award is passed on 30th December 2013, wherein the deserving persons have been held

to be entitled for compensation. There are no grounds for challenging the award.

9. The reliance placed on the provisions of the Maharashtra Project Affected Persons Rehabilitation Act appears to be misplaced. The said Act will apply if the particular area is declared as affected and/or benefited zone, as is required under Section 11 of the said Act, so also will apply to the projects as defined under Section 2(10) of the said Act. There is no declaration of an affected or benefited zone. Hence, the provisions of the said Act would be inapplicable.

10. The contention of the Respondents is that the houses which are constructed are unauthorized, without permission. In the Writ Petition also nowhere it is stated that any construction permission is obtained while constructing the houses. Majority of the houses are without

permission. Be that as it may. It is for the Government to consider the proposal of the Sansthan for providing alternative houses to the Petitioners. The Government has already rejected the said proposal. The order rejecting the said proposal, was subject matter of challenge in Writ Petition No.9277 of 2012. This Court vide Order dated 10th December 2012, passed the following Order:-

"2. The Petitioners seek to quash and set aside the impugned letter dated 11th September, 2012, issued by the State. The Petitioners had, earlier, filed Petition, bearing Writ Petition No.611 of 2012, concerning the subject matter. In the said Writ Petition the learned Government Pleader placed on record a copy of the communication dated 11th September, 2012, informing that the State had, in principle, rejected the proposal submitted by Shree Saibaba Sansthan, Shirdi. While disposing of the said Writ Petition No.611 of 2012, the Division Bench of this Court (**CORAM: NARESH H. PATIL AND A.B. CHAUDHARI, JJ.**), observed in Para 7 as under:

"7. We have considered the submissions advanced. In the light of the decision taken by the State, the Respondent Authorities would take steps in accordance with law. With these observations, the Writ Petition is disposed of."

3. The said communication of the State, dated 11th September, 2012, is impugned in this Petition. The Respondent Shree Saibaba Sansthan, Shirdi, filed affidavit in reply. Rejoinder is also filed on behalf of the Petitioners, in which communication made by the Chief Executive Officer, Shree Saibaba Sansthan, Shirdi, dated 9th November, 2012, is placed on record. We have perused the same. It is submitted that in the year 1992, the subject land was shown reserved in development plan, for extension of site for hospital.

4. Learned counsel for the Petitioners submitted that so far, the acquisition proceedings are not initiated. The Petitioners have no objection for initiation of acquisition proceedings. The Petitioners submits that as they have constructed residential houses in the said premises, the Respondent Shree Saibaba Sansthan, Shirdi, shall construct houses for

them, at the alternate site.

5. In view of the material placed on record, order suffered by the Petitioners in the earlier Writ Petition and the reply filed by Shree Saibaba Sansthan, Shridi, we find that the Petitioners do not have any cause of action, now, for filing fresh Writ Petition. The Petition is misconceived one. The Writ Petition is dismissed. Interim Relief granted earlier, stands vacated."

11. The challenge to the said letter dated 11th September 2012 has already failed. The said Writ Petition was filed by some of the present Petitioners.

12. In light of the above conspectus of the matter, the grievance made by the Petitioners cannot be entertained.

13. At this stage, it is submitted by Mr. Talekar, learned counsel for the Petitioners that the notice is issued for delivery of possession

and the possession of the Petitioners be protected, so that the Petitioners can take such further steps as are permissible in law.

14. Considering the fact that possession of the houses is being taken, in equity, we direct the Respondents not to take possession of the houses of the Petitioners for a period of one month.

15. The Writ Petition, accordingly stands disposed of. No costs.

[A.I.S.CHEEMA, J.]

asb/APR15

[S.V. GANGAPURWALA, J.]