

SQP

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO. 35 OF 2008**

1. Rajaram B. Mohite,
Aged about 53 years,
Occupation business, residing at
C-204, Sahadev Co-op. Housing
Society Ltd., N.L. Complex, Dahisar (E),
Mumbai – 400 068
2. Hariharan T. Iyer,
Aged about 52 years, occupation
Service, residing at B-101,
Panchali Co-op. Housing Society Ltd.,
N.L. Complex, Dahisar (E),
Mumbai – 400 068
3. Sachin G. Vichare, aged about
42 Years, occupation business,
C-604, Bheem Co-op. Housing Society Ltd.,
N.L. Complex, Dahisar (E),
Mumbai – 400 068

...Petitioners

Versus

1. Municipal Corporation of Greater
Mumbai, a Statutory Body formed and
Established under the Municipal
Corporation Act, 1988, having its
Office at Municipal Corporation Building,
Mahapalika Marg, Opposite C.S.T.
Mumbai – 400 001
2. The Superintendent of Gardens
Veermata Jijabai Bhosale Udyan-Zoo,
Dr. Ambedkar Road, Byculla,
Mumbai – 400 027

3. Assistant Commissioner (R/North) Ward,
Municipal Corporation Office, Dahisar (West),
Mumbai – 400 068
4. Rajesh Himmatlal, Managing Director for
M/s. N. L. Pvt., a Private Limited Company,
Having its office at Kantilal House,
14, Mama Parmanand Marg,
Mumbai – 400 004
5. State of Maharashtra,
Through the Ministry of Urban
Development, Mantralaya,
Mumbai – 400 032

...Respondents

**WITH
NOTICE OF MOTION NO. 67 OF 2009
IN
PUBLIC INTEREST LITIGATION NO. 35 OF 2008
AND
CHAMBER SUMMONS NO. 39 OF 2009
AND
CHAMBER SUMMONS NO. 326 OF 2008
IN
PUBLIC INTEREST LITIGATION NO. 35 OF 2008**

None present for the Petitioners

Ms. Trupti Puranik for the Respondent-BMC

Mr. J. S. Saluja, A.G.P for the Respondent No. 5

CORAM : A. S. OKA &
REVATI MOHITE DERE, JJ.
THURSDAY, 30TH JULY, 2015

ORAL JUDGMENT (Per A. S. Oka, J.):

1. This public interest litigation was called out yesterday for final hearing. None appeared for the petitioners. Even today, when the petition is called out, none appears for the petitioners. The learned Counsel appearing for the Mumbai Municipal Corporation as well as the learned A.G.P is present. We have perused the petition, the annexures thereto and the affidavits on record. The Mumbai Municipal Corporation (first respondent) allowed the fourth respondents to adopt a plot reserved for playground at Dahisar by letter dated 26th October, 2007, which is more particularly described in the said letter. The letter provides that the fourth respondent shall have the status of licensee. Essentially, fourth respondent was allowed to adopt the said plot for its maintenance. An agreement of adoption was accordingly executed on 3rd January, 2008 which records that the first respondent has granted permission to the fourth respondent to manage, maintain and beautify the said playground plot on adoption basis for a period of five years from 26th October, 2007 to 25th October, 2012.

2. Broadly, the case made out in the PIL is that the fourth respondent has committed breaches of the terms and conditions on which the fourth respondent was allowed to adopt the plot. It is alleged that in breach of the terms and conditions of the letter of allotment and the agreement, the fourth respondent proposed to carry out construction and the local MLA has agreed to provide money, out of his grant. It is alleged that an attempt is being made to erect a Statue of the Shivaji Maharaj on the said plot having height of 28 feet.

3. The prayers made are for cancellation of the allotment made to the fourth respondent and for directing the fourth respondent to refund the amounts collected from general public by way of donations in respect of the plot in question. The challenge is also to the policy of the Municipal Corporation of allowing such plots to be taken in adoption and for a further direction to the Municipal Corporation to maintain the said playground in proper condition.

4. There is a reply filed by Shri Parag R. Masurkar, Assistant Commissioner, R/North Ward, Municipal Corporation. The reply records

that the Municipal Corporation has given No Objection Certificate to Slum Improvement Board to construct the Gymnasium of the size not exceeding 146.60 sq. mtrs. and toilet block admeasuring 17.00 sq. mtrs. It is stated that the area of the playground plot subject matter of the petition is 18,840.60 sq. mtrs. The affidavit claims that the Statue of Shivaji Maharaj has been erected by the Jana Seva Kendra, Borivali (applicant in Chamber Summons No. 328 of 2015). It is stated that even the Government of Maharashtra has accorded sanction for the said proposal. There is a reply filed by the Director of the fourth respondent opposing the petition. It is contended that No Objection Certificate was granted by the fourth respondent to the said Jana Seva Kendra to enable them to apply to any Authority to install Statue of Shivaji Maharaj.

5. There is a rejoinder filed by the petitioner dealing with the said reply. In Chamber Summons No. 326 of 2008, the said Jana Seva Kendra has filed an affidavit in support. Proposal forwarded by the Collector of the Mumbai Suburban District for grant of erection of a Statue is annexed to the said affidavit. It appears that by letter dated 18th March, 2008, the State Government has accorded sanction for installation of the Statue,

subject to the terms and conditions incorporated therein.

6. On 19th March, 2008, this Court granted ad-interim relief in terms of prayer clause (g) restraining the respondents from installing statue of Chhatrapati Shivaji Maharaj. On the very day, the said order was modified. The Division Bench clarified that injunction in terms of prayer clause (g) will apply when installation of Statue is sought to be made without requisite permission from the Municipal Corporation or the State Government. Though the Municipal Corporation in the affidavit has taken a stand that a Statue has been already erected, there is no such statement in the affidavit of the fourth respondent.

7. We have perused the affidavit in support of the Chamber Summons filed by the Jana Seva Kendra. In the said affidavit also, there is no specific statement that the Statue has already been erected.

8. Going by the letter of allotment and the agreement dated 3rd January, 2008, the fourth respondent was allowed to manage, maintain and beautify the said playground only up to 25th August, 2012. If the term of

the agreement has not been extended, it is obvious that the first respondent-Municipal Corporation will have to immediately take steps for repossessing the said playground plot. If the term of the agreement has been extended and if the extended term is in subsistence as of today, appropriate Officer of the Municipal Corporation will have to look into the grievance regarding breach of the terms and conditions of the agreement entered into by the fourth respondent. If it is found that any breach has been committed, action will have to be taken by the first respondent. As far as the installation of Statue of Chhatrapati Shivaji Maharaj is concerned, from the affidavits on record, it appears to us that the State Government has accorded permission for installation of the Statue. The permission is not subject matter of challenge. Therefore, it will not be appropriate to issue any directions regarding grievance made as regards the installation of the Statue of Chhatrapati Shivaji Maharaj.

9. As far as the challenge to the policy of the Municipal Corporation is concerned, the said issue will have to be kept open.

10. Hence, we dispose of the petition by passing the following order :

ORDER

- (i) If the period of agreement of adoption of the plot reserved as playground, subject matter of this Petition has not been extended after 25th August, 2012, we direct the first respondent to forthwith take steps to re-possess the playground;
- (ii) If the said agreement has been extended and is in force as of today, we direct the first respondent to appoint an Officer not below the rank of Deputy Commissioner. He will visit the subject plot and will ascertain whether any breaches have been made by the fourth respondent. If such Officer finds that breaches have been committed, the first respondent shall immediately proceed to take action in accordance with law of cancellation of the agreement and for repossessing the said plot of land. Exercise of carrying out inspection and taking appropriate action on the basis of what is at the time of the said inspection be undertaken within a period of one month from today;

- (iii) As far as the issue of legality and validity of the policy of the Municipal Corporation is concerned, the same is kept open and no adjudication is made thereon. Even the issue of illegality of the installation of Statue of Chhatrapati Shivaji Maharaj is kept open. It is obvious that if the Statue is not yet installed, the same shall not be installed without express permission of the Municipal Corporation and the State Government.
- (iv) We make it clear that if the Statue has already been installed, the same shall not be disturbed;
- (v) Rule is accordingly disposed of on the above terms.
- (vi) In view of the above order, pending Notices of Motion and Chamber Summons stand disposed of.

(REVATI MOHITE DERE, J.)

(A. S. OKA, J.)