

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.23 OF 2011
ALONG WITH
WRIT PETITION NO.1861 OF 2012
ALONG WITH
WRIT PETITION NO.2523 OF 2012

PIL NO.23 OF 2011

Nagesh Madavi S/o Ashok Madavi. .. Petitioner

Vs

State of Maharashtra,
Ministry for Revenue, Mantralaya and Others. .. Respondents

—

Shri Sanjiv Punalkar i/by Ms. Jyoti Ghorpade for the Petitioner.

Ms. Uma Palsule-Desai, AGP for the Respondent Nos.1 and 2.

Shri Pravin Samdhani, Senior Counsel along with Ms. Chinmayee Ghag
and Shri Prakash Shinde i/by MDP & Partners for the Respondent
No.3.

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WP NO.1861 OF 2012

Sandeep Madhusudan Patil. .. Petitioner

Vs

State of Maharashtra and Others. .. Respondents

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Shri Pradeep J. Thorat for the Petitioner.

Shri A.A. Kumbhakoni, Special Counsel for the Respondent Nos.1 to 3
and 5.

Shri Pravin Samdhani, Senior Counsel along with Ms. Chinmayee Ghag
and Shri Prakash Shinde i/by MDP & Partners for the Respondent
No.4.

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WP NO.2523 OF 2012

The Cultural Cricket Academy,
A Public Charitable Trust and Another.

.. Petitioners

Vs

The Hon'ble Minister,
Revenue and Khar Lands,
Mantralaya, Mumbai and Others.

.. Respondents

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Shri Pravin Samdhani, Senior Counsel along with Ms. Chinmayee Ghag
and Shri Prakash Shinde i/by MDP & Partners for the Petitioners.
Shri A.A. Kumbhakoni, Special Counsel for the Respondent Nos.1, 2, 4
and 5.

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CORAM : A.S. OKA & REVATI MOHITE DERE, JJ

DATE ON WHICH SUBMISSIONS WERE HEARD : 7TH JULY 2015

DATE ON WHICH JUDGMENT IS PRONOUNCED: 14TH AUGUST 2015

JUDGMENT (PER A.S. OKA, J)

1. In view of the administrative order dated 30th June 2015, these Petitions were taken up for hearing. These Petitions relate to the plot of land admeasuring 20,045 sq. meters bearing Survey No.341 CTS No.629 (Pt), F-Block, Plot No.5 at Bandra, Taluka – Andheri, District – Mumbai. The plot of land admeasuring 20,045 sq. meters (for short “the said plot”) is shown reserved for “ open space and stadium” in the sanctioned Development Plan under the Maharashtra Regional and Town Planning Act,1966(for short MRTP Act). The said plot has been allotted to the Culture Cricket Academy. The First Petitioner in Writ Petitioner No.2523 of 2012, the Culture Cricket Academy (for short”the

Cricket Academy) claims that it is the allottee of the said plot. Even according to the case of the Cricket Academy, on 14th January 2004, Shri Sandeep Patil and Ms. Diana Edulji, two eminent retired cricketers submitted an Application to the State Government for allotment of a land admeasuring about 10 acres reserved for stadium in the Development Plan. They claimed to be the Chief Promoters of the Culture Cricket Academy. One of the issues involved is whether the First Petitioner Cricket Academy in Writ Petition No.2523 of 2012 is the same Cricket Academy which applied on 14th January 2004.

FACTS IN WRIT PETITION No.2523 of 2012

2. It is the case of the First Petitioner (Cricket Academy) in Writ Petition No.2523 of 2012 that it was not registered at the time when the Application was made on 14th January 2004 for allotment of a land in the name of Cultural Cricket Academy. On 24th August 2004, a letter was issued by the Revenue and Forest Department of the State Government to the Chief Promoter of the Cricket Academy informing that the State Government intends to grant the said plot on lease to the Cultural Cricket Academy subject to condition of obtaining consent of the Mumbai Municipal Corporation. It was stated therein that no construction is permissible on the said plot. Various other conditions were incorporated therein. On 27th November 2006, an order was

issued by the State Government of granting the said plot on lease for a period of 30 years on various terms and conditions mentioned therein. The Collector of Mumbai Suburban District passed an order on 30th November 2006 of allotment of the said plot to the Cricket Academy on lease. The said letter itself records that out of the total area of the said plot, an area of 14,418 square meters was covered by CRZ-II. According to the case of the Cricket Academy, various compliances were made by the said Academy. A primary Agreement of Lease dated 9th February 2007 was executed by the Collector.

3. It is the case of the Cricket Academy that out of the said plot, the Mumbai Metropolitan Regional Development Authority (MMRDA) took over an area of 1,640 sq. meters for widening of Vakola Nalla and an area of 3,158 sq. meters for construction of a service road and hence, the area of the said plot in possession of the First Petitioner-Cricket Academy was reduced to 15,247 sq. meters. It is the contention of the Cricket Academy that it was not possible to construct a stadium for Cricket Academy due to the reduced size of the said Plot and, therefore, a request was made to permit a construction of a multi-purpose sport centre in private partnership with the corporate sector. It is stated that on 24th September 2008, a permission was granted by the State Government by passing an order for permitting the use of the said Plot for establishment of a multi-purpose sports

centre, coffee shop and allied purposes. A part of the said plot was allowed to be used for the commercial purpose.

4. In the meanwhile a complaint was filed by Shri Sandeep Patil informing the Hon'ble Chief Minister that his name was not included in the Trust Deed of the Cricket Academy. Thereafter, the PIL No.23 of 2011 was filed in this Court. On 6th April 2011, the Collector of Mumbai Suburban District issued a show cause notice to the Cricket Academy calling upon the Cricket Academy to explain the reasons for non-completion of construction of the structure within a period of three years from the date on which the possession of the said plot was granted. On 11th April 2011, another show cause notice was issued by the Collector to the Cricket Academy calling upon the Cricket Academy to explain as to why the names of Shri Sandeep Patil and Ms. Diana Edulji were not shown as the Trustees. The Cricket Academy submitted a reply. Thereafter, on 18th June 2011, the Cricket Academy appointed Shri Sandeep Patil as a Trustee. On 19th October 2011, a notice was issued by the State Government calling upon the First Petitioner in Writ Petition No.2523 of 2012 and Shri Sandeep Patil (the Petitioner in Writ Petition No.1861 of 2012) to remain present on 1st November 2011 in the office of the Divisional Commissioner of Konkan Division for hearing on the issue of the alleged breach of the terms and conditions of the allotment of the said plot. On 1st November 2011, the Cricket

Academy appeared through its Advocate before the Divisional Commissioner when adjournment was granted. On 3rd March 2012, the Collector issued notices to the Cricket Academy and Shri Sandeep Patil calling upon them to remain present in the office of the Divisional Commissioner of Konkan Division on 6th March 2012 at 10.15 a.m. The case of the Cricket Academy is that on 6th March 2012, for giving hearing to the First Respondent, the Hon'ble Minister for Revenue and Khar Lands of the State Government was present when the Advocate for the Cricket Academy sought time for making oral arguments and to file written submissions. However, no order was passed on the said request. No order was passed on that day directing that the hearing was closed. On 22nd May 2012, the Cricket Academy received an order dated 3rd May 2012 by which the First Respondent the Hon'ble Minister held that the Cricket Academy has committed breaches of the terms and conditions on which the said plot was allotted and therefore, the said plot of land was ordered to be resumed and place the MMRDA in possession for safeguarding the said plot. In the Writ Petition No.2523 of 2012, the challenge is to this order which is also impugned in Writ Petition No.1861 of 2012.

FACTS OF PIL NO. 23 OF 2011

5. The Public Interest Litigation No.23 of 2011 [PIL (L) No.76 of 2010] was filed for issuing a writ of mandamus directing the

State Government to conduct an inquiry and investigation into the allotment of the said plot at Bandra to the Cricket Academy. The contention raised in the PIL is that the said plot has been grabbed by the Trust registered by the persons associated with the influential Akruti group of Builders and the said plot has been grabbed by the said Builders.

THE FACTS OF WRIT PETITION NO. 1861 OF 2012

6. The Writ Petition No.1861 of 2012 has been filed by Shri Sandeep Patil on 16th July 2012 for challenging the same order dated 3rd May 2012 which is challenged in the Writ Petition No.2523 of 2012. The order is challenged on the ground of the breach of the principles of natural justice. It is contended in the Petition that the notice of the date fixed for hearing on 6th March 2012 was served upon him on 7th March 2012.

SUBMISSIONS

7. In support of the Writ Petition No.2523 of 2012, the learned senior counsel appearing for the Cricket Academy urged that the Cricket Academy's lawyer was not permitted to make oral as well as written submissions before the First Respondent the Hon'ble Minister. He urged that though the hearing was fixed before the Divisional

Commissioner, the First Respondent who was the Hon'ble Minister all the way came to the office of the Divisional Commissioner at New Bombay for the purposes of giving hearing. He urged that the Hon'ble Minister completely ignored that Shri Sandeep Patil has no subsisting grievance as he was already appointed as a Trustee. He pointed out that there is nothing on record to show that a decision was taken by the State Government to allot the said plot to a Cricket Academy of Shri Sandeep Patil and Ms. Diana Edulji. He submitted that that was never the stand of the State Government. After taking the Court through the impugned order, he urged that there was non-application of mind by the Hon'ble Minister. He submitted that the order is vitiated.

8. The learned senior counsel appointed as the Special Counsel for the State Government urged that the said plot was allotted to a Cricket Academy of Shri Sandeep Patil and Ms.Diana Edulji on their Application. He urged that Ms.Diana Edulji was never a Trustee of the Cricket Academy and belatedly Shri Sandeep Patil was added as a Trustee of the Cricket Academy. He urged that though the said plot was to be allotted to Cricket Academy of the said two cricketers, it is grabbed by the first Petitioner in Writ Petition No.2523 of 2012. He urged that there are gross breaches committed by the Petitioners in the Writ Petition No.2523 of 2012 of the terms and conditions of the allotment. He submitted that the said plot could not have been allotted

to a Cricket Academy of which neither Shri Sandeep Patil nor Ms. Diana Edulji were Trustees. He urged that the Writ Court should not interfere at the instance of the Cricket Academy which was never entitled to the allotment. He urged that the place of the hearing was notified as the office of the Divisional Commissioner, Konkan Division at Navi Mumbai and there is nothing wrong if the Hon'ble Minister gives hearing. He urged that the representative of the Cricket Academy and its Advocate were present at the time of hearing, but no submissions were made. He urged that no interference is called for.

9. The learned counsel appearing for the Petitioner in PIL No.23 of 2011 urged that the purpose of filing the PIL No.23 of 2011 has been accomplished as the only prayer made in the PIL was for holding an inquiry into the allotment made to the Cricket Academy and after making inquiry, now the land has been forfeited.

10. The learned counsel representing the Petitioner Shri Sandeep Patil in Writ Petition No.1861 of 2012 invited our attention to the averments made in the Petition. He pointed out that the Petitioner therein was served with the notice dated 3rd March 2012 of the date fixed for hearing on 7th March 2012. He pointed out that there was no question of the Petitioner remaining present on 6th March 2012.

CONSIDERATION OF SUBMISSIONS

11. We have given careful consideration to the submissions. There is no dispute that the said plot is a very valuable plot at Bandra, a very prominent suburb in Mumbai. We find that before making an allotment of the said plot, there was no public notice issued and there were no Applications invited for its allotment. A fair and transparent procedure for disposal of the valuable public property was not followed. This aspect will have to be borne in mind while dealing with the challenge made by the Cricket Academy.

12. We have perused the affidavit-in-reply of Shri Vajjnath Bhujangrao Latke, the Under Secretary of the Revenue and Forests Department of the State Government in Writ Petition No.2523 of 2012. A copy of the letter dated 11th April 2007 addressed by Shri Sandeep Patil as the Chief Promoter of the Culture Cricket Academy has been annexed to the said affidavit which was addressed to the Hon'ble Chief Minister. The said letter refers to the letter of Intent dated 24th August 2004 issued by the Government which is relied upon by the Petitioners in Writ Petition No.2523 of 2012. It refers to a letter dated 14th January 2004 addressed to the State Government for seeking an allotment of a plot to "the Culture Cricket Academy". We must note here that even in the Writ Petition No.2523 of 2012, the specific pleading made in the

Paragraph 5 is that Shri Sandeep Patil and Ms. Diana Edulji submitted an Application dated 14th January 2004 for the allotment of a plot reserved for stadium. It is not even the case made out in the said Petition that the First Petitioner Cricket Academy made an Application for allotment of a plot. The case made out in the Paragraph 7 of the Petition is that even in the Trust Deed of the Cricket Academy, both the cricketers were not shown as the Trustees. It is their contention that in the project report dated 7th February 2004 submitted by the Cricket Academy to the Collector, it was stated that both the cricketers will be appointed as Coaches and Trainers once the Cricket Academy and Stadium was constructed. A copy of the said letter dated 14th January 2004 is annexed to PIL No.23 of 2011 as Exhibit A-1. The said letter is addressed to the Collector of Mumbai for allotment of a plot of land admeasuring about 10 Acres out of the land bearing CTS No.629 at Bandra for a Cricket Academy /Stadium. The said letter is addressed by Shri Sandeep Patil and Ms.Diana Edulji as the Chief Promoters of “the Culture Cricket Academy”. The project profile was submitted by Shri Sandeep Patil on 7th February 2004 which is annexed to the PIL as Exhibit-A2. The first page of the project profile shows the names of both the cricketers as the Chief Promoters. In paragraph 5 of the Writ Petition No. 2523 of 2012 the letter dated 14th January 2004 and the project profile dated 7th February 2004 have been specifically relied upon. Thus even according to the Petitioners therein, the allotment of

the said plot was made on the basis of the said letter of Shri Sandeep Patil and Ms.Diana Edulji. Therefore, the letter of intent dated 24th August 2004 has been addressed to the Chief Promoter of the Cultural Cricket Academy. It is an admitted position that when the Cricket Academy (first Petitioner in Writ Petition No.2523 of 2012) was registered in the year 2005, Shri Sandeep Patil and Ms. Diana Edulji were not even shown as its Trustees. It is not the case of first Petitioner in Writ Petition No.2523 of 2012 that at the time of its registration, both of them were associated with it in any manner whatsoever. Thus, the allotment was intended to be made to the Cultural Cricket Academy of which the two cricketers were the Chief Promoters as the allotment is admittedly made on the basis of the letter dated 14th January 2004 addressed by the said two cricketers and the project report dated 7th February 2004 submitted by Shri Sandeep Patil. It appears that long after the lease was granted, after the show cause notices were served to the Cricket Academy, on 18th June 2011 Shri Sandeep Patil was made a Trustee. However, Ms. Diana Edulji was never made a Trustee. Thus, it is claimed that the allotment was made to the First Petitioner- in Writ Petition No.2523 of 2012 though the said Petitioners had not applied for allotment. It is precisely for this reason that the Public Interest Litigation No.23 of 2011 has been filed calling for an inquiry though there is no specific prayer in the said Petition for cancellation of the allotment.

13. In the impugned order, the Hon'ble Minister (Revenue) has recorded that no reasons have been assigned by the First Petitioner in Writ Petition No.2523 of 2012 as to why both the cricketers were not included as the trustees at the time of registration of the First Petitioner and only by way of an afterthought that Shri Sandeep Patil was belatedly made a Trustee. The second reason recorded by the Hon'ble Minister in the impugned order is that due to the reservation and due to the fact that a substantial portion of the said plot is covered by the CRZ-II, the use of the said plot for administrative office, cafeteria, restaurant, business center etc cannot be made. We must also note here that in the first communication dated 24th August 2004 issued by the State Government recording the intention of the State Government to allot the said plot to the Cricket Academy, it is stated that the substantial area of the said plot has been affected by the CRZ-II

14. The findings recorded by the Hon'ble Minister in the impugned order can be summarized as under:-

- (i) The idea of the State Government was to grant the land to a Cricket Academy formed at the instance of Shri Sandeep Patil and Ms. Diana Edulji. However, the said two eminent cricketers were not even the

part of the Cricket Academy which is the First Petitioner in Writ Petition No.2523 of 2012;

- (ii) There is no explanation as to why at the time of registration of the Cricket Academy, Shri Sandeep Patil and Ms. Diana Edulji were not included as the Trustees;
- (iii) For carrying out construction work within the stipulated period of three years from the date of the delivery of the possession of the said plot, no steps have been taken by the Cricket Academy;
- (iv) After delivery of the possession, a substantial part of the said plot out of the remaining area of 15,247 sq. meters has been affected by the CRZ-II and, therefore, though the State Government permitted change of user by the Cricket Academy, even for the changed user which is permitted, the said plot cannot be utilised; and
- (v) The said plot is not capable of being used now for any sports or sports centre.

15. In the notice issued by the District Collector on 11th April 2011, it is stated that the allotment was made of the said plot to the said Cricket Academy on the basis of the Application dated 14th January 2004 made by Shri Sandeep Patil and Ms.Diana Edulji. However, both the cricketers were not associated in any manner with the said Cricket Academy/Association. Thus, the contention of the Collector seems to be that a Cricket Academy or an Association with which Shri Sandeep Patil and Ms. Diana Edulji are not concerned, could not have been the allottee of the said plot inasmuch as a decision was taken by the State Government to allot the said plot to a Cricket Academy of which Shri Sandeep Patil and Ms. Diana Edulji are the Chief Promoters. The Collector therefore called upon the first Petitioner to remain present before him on 21st April 2011 and explain. As none appeared before him on the date fixed, further hearing was fixed on 26th May 2011. On 18th June 2011, Shri Sandeep Patil was made a Trustee. In our view, the subsequent inclusion of Shri Sandeep Patil as a Trustee is not at all relevant inasmuch as the issue is whether the said Cricket Academy (first Petitioner in Writ Petition No.2523 of 2012) could have claimed to be the allottee of the said plot when admittedly both the cricketers were not concerned with the same in any manner on the date of its registration and on the date on which the possession of the said plot was handed over to it. The specific issue that when the allotment was

decided to be made to a Cricket Academy headed by the two eminent cricketers, whether the said Cricket Academy (first Petitioner in Writ Petition No.2523 of 2012) can claim to be an allottee is specifically raised in the notice dated 11th April 2011 issued by the Collector. In our view, the allotment was intended to be made to the Culture Cricket Academy of which the two cricketers were the Chief Promoters. We are not confirming the order of forfeiture only on the ground of the breach of the principles of natural justice.

16. On 19th October 2011, a notice was issued by the State Government calling upon the said Cricket Academy (first Petitioner in Writ Petition No.2523 of 2012) and Shri Sandeep Patil to remain present for hearing on 1st November 2011 in the office of the Divisional Commissioner Konkan Division. Thereafter, a subsequent notice dated 27th February 2012 was issued informing them that the hearing was fixed on 6th March 2012. Both notices do not mention the name of the Authority which will be giving hearing. The notices were issued by the State Government. Therefore, there is nothing wrong if the Hon'ble Minister conducted hearing.

17. In the Writ Petition No.2523 of 2012, in Paragraphs 38 and 39, it is stated thus:-

“38. On 1st November 2011, the Petitioner No.1 through their Advocate Mr. Anil Mishra appeared before Hon'ble divisional commissioner and request for grant of adjournment. The Hon'ble Divisional Commissioner adjourned the matter. In the meanwhile, Petitioner No.1's advocate filed a duly executed vakalatnama with the Respondent No.4.

39. By Letter dated 3rd March 2012, the Respondent No.2 (respondent No.2 was respondent in earlier hearing) has informed the Petitioners No.1 and Mr. Sandeep Patil about fixation of hearing before Divisional Commissioner, Kokan Bhavan on 6th March at 10.15 am.”

18. Again in Paragraph 40, a specific case is made out that on the 6th March 2012 the Advocate for the Cricket Academy (First Petitioner in the said Petition) requested for grant of time for making oral arguments and for filing written submissions. It is stated that the Hon'ble Minister did not issue any directions on the said request. In

the affidavit-in-reply of Shri Vajinath Bhujangrao Latke, the Under Secretary, he has not specifically dealt with the averments made in Paragraphs 38, 39 and 40 of the Petition. Perusal of the impugned order shows that in the last Paragraph, the Hon'ble Minister merely recorded that though an adequate opportunity was granted to Shri Sandeep Patil and the First Petitioner in Writ Petition No.2523 of 2012, neither written nor oral arguments were made. There is nothing placed on record to show that even a reasonable opportunity to do so was granted.

19. A drastic action of forfeiture could not have been taken without giving an adequate opportunity of being heard to the Petitioners in Writ Petition No.2523 of 2012 and to Shri Sandeep Patil. If the First Petitioner in the Writ Petition No.2523 of 2012 was not entitled to an allotment on the basis of the Application made by Shri Sandeep Patil and Ms.Diana Edulji, the State Government had power to recall the order of allotment. The State Government had even jurisdiction to hold that the allotment was not to the first Petitioner. The State Government had power to forfeit the said plot on the ground of breach of the terms and conditions of the allotment. Only in view of the fact that the order of forfeiture is a very drastic order which has been passed by the Hon'ble Minister without giving an adequate opportunity of being heard to the concerned parties that we are passing

an order of remand. The Petitioner in PIL No.23 of 2011 is right when he has demanded an inquiry and investigation into the allotment of the said plot which is a very and valuable prime plot vesting in the State.

20. As the allotment made is under the orders of the State Government in Revenue Department, hearing will have to be given either by the Hon'ble Minister In-charge of the Revenue Department or the Principal Secretary of the said Department. The issue whether the allotment was really made or could have been made to the said Cricket Academy- the First Petitioner in Writ Petition No.2523 of 2012 will have to be gone into by the Hon'ble Minister/Secretary apart from the issue of breach of the terms and conditions. If the Hon'ble Minister/Secretary finds that the allotment was to be made to the Cricket Academy of which Shri Sandeep Patil and Ms. Diana Edulji were the Chief Promoters, the allotment to the First Petitioner in Writ Petition No.2523 of 2012 will have to be revoked. Under the orders of the State Government, the said plot was allotted for starting a Cricket Academy. Thereafter, the State Government permitted change of user. It appears from the record that though change of user is permitted, no construction can be permitted on substantial part of the said plot. Moreover, the reservation of the said Plot continues as "play ground and stadium". Even this aspect needs to be considered by the Hon'ble Minister, apart from the issue of breach of terms and conditions on

which the allotment was made. Thus, the hearing will be on all the aspects specified in this paragraph as well as Paragraph 19 above. Notice of hearing will have to be given to the Petitioner in PIL and Ms.Diana Edulji also.

21. Accordingly, we dispose of the Petitions by passing the following order:-

ORDER :

- (a) The judgment and order dated 3rd May 2012 of the Hon'ble Minister of Revenue and Khar Lands of the Government of Maharashtra is quashed and set aside only on the ground of the breach of principles of natural justice;
- (b) We direct the Petitioners in Writ Petition No.2523 of 2012 as well as the Petitioner in Writ Petition No.1861 of 2012 to appear before the Principal Secretary of the Revenue Department of the Government of Maharashtra on 31st August 2015 at 2.30 pm for the purpose of fixing the schedule of hearing. The hearing shall be fixed either before the Hon'ble Minister or the Principal Secretary of the Revenue Department;

- (c) It will be open for the Petitioner in Public Interest Litigation No.23 of 2011 to remain present at that time. A notice of the date of hearing shall be also served to Ms.Diana Edulji;
- (d) It will be open for all concerned parties to file written submissions as well as to make oral submissions. The hearing will be also on the issues specified in paragraphs 19 and 20 above in the light of what is held by this Court;
- (e) A fresh order shall be passed by the Hon'ble Minister/Secretary of the Revenue Department on or before 31st December 2015;
- (f) Subject to observations made in this judgment and order, all the contentions of the parties are kept open;
- (g) We make it clear that the issue of the validity of the allotment of the said plot is also kept open;

- (h) We restrain the Petitioners in Writ Petition No.2523 of 2012 from making any construction on the said plot till the date of passing a fresh order even if a permission is granted by the Competent Authority to carry on construction. This direction will bind the said Petitioners till the expiry of the period of two months from the date on which a fresh order is passed;
- (i) We direct the Petitioners in Writ Petition No.2523 of 2012 to ensure that the said plot is adequately protected and kept free of any encroachments;
- (j) The Rule issued in these three Petitions is partly allowed with no orders as to costs;
- (k) All concerned to act upon an authenticated copy of this judgment and order.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)