

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2556 OF 2015

Buldhana Zilla Ekta Laghu Vyapari Kalyankari Association, Buldhana, thr.its Jt. Secretary & ors.

-vs-

State of Maharashtra, thr.its Secretary, Ministry of Urban Development Deptt. and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S.P.Bhandarkar, counsel for the petitioners.
Mr.N.S.Khubalkar, A.G.P.for the respondent Nos.1, 2, 6 & 8.
Mr.Abhay Sambre, counsel for the respondent Nos.3 and 4.
Mrs.Sangita Jachak, counsel for the respondent Nos.5 & 7.

CORAM : SMT. VASANTI A. NAIK &
A.S.CHANDURKAR, JJ.

DATE : 13.02.2016.

By this petition, the petitioners seek a direction to the respondent No.1-State of Maharashtra to take a decision on the proposal for construction of commercial complex/shop blocks so that the members of the petitioner No.1-Association could be rehabilitated.

The petitioner No.1-Association comprises of members/shop keepers that had encroached upon the roads along Jai-Stambh Chowk to Janta Chowk and from Court Line to Jaiswal Chowk in Buldhana City. In view of the encroachment drive initiated by the respondent No.3, the illegal construction/temporary sheds, etc. in which the members of the petitioner No.1-Association were carrying on their business were demolished. It is the case of the petitioners that the members of the petitioner No.1-Association were carrying on their business on the roads from Jai-Stambh Chowk to Janta Chowk and from Court Line to Jaiswal Chowk in Buldhana for more than twenty five years and it is the duty of the respondents to rehabilitate the members of the petitioner No.1-Association by constructing commercial complex/shop blocks. It is stated that in view of the Note prepared while conducting the encroachment drive, dated

06/02/2015, the members of the petitioner No.1-Association were enticed, as they thought that they would be rehabilitated. To substantiate the case of the petitioners, the learned counsel for the petitioners has relied on the judgments of the Hon'ble Supreme Court, reported in *AIR 1997 SC 152 (Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan and others)* and *AIR 1986 SC 180 (State of Maharashtra v. Alka B. Hingde)*.

Shri Khubalkar, the learned Assistant Government Pleader appearing for the State, Shri Sambre, the learned counsel for the respondent Nos.3 and 4 and Mrs. Jachak, the learned counsel for the respondent Nos.5 and 7, state that in pursuance of the directions issued by this Court in Writ Petition No.2501 of 2009 and Public Interest Litigation No.51 of 2014, decided on 02/07/2009 and 27/03/2015 respectively, the Municipal Council started the encroachment drive to ensure that there were no encroachments on the roads that affected the free flow of traffic. It is stated that it was found by this Court that the non removal of encroachments by the Municipal Authorities resulted in causing problems to the smooth flow of traffic and it was necessary to remove the encroachments on all the roads in Buldhana City. It is stated that the encroachment drive was conducted in pursuance of the undertaking given by the Municipal Council in this Court in the two aforesaid cases. It is stated that the petitioners were never promised rehabilitation and the matter in respect of rehabilitation of the petitioners, if necessary, would be decided by the Municipal Council and the Zilla Parishad. It is stated that the petitioners have no right whatsoever to claim rehabilitation. It is stated that in the absence of any right in the petitioners to seek rehabilitation, the writ petition is liable to be dismissed.

On hearing the learned counsel for the parties, we find that there is much force in the submission made on behalf of the respondents that the petitioners would have no right to seek rehabilitation. The members of the petitioner No.1-Association were

admittedly encroachers on the busy roads in Buldhana City and in pursuance of the orders passed by this Court, the respondents-Authorities had initiated the encroachment drive for removal of the encroachments. Despite our repeated query to the counsel for the petitioners to point out the material to substantiate that the members of the petitioner No.1-Association have a right to claim rehabilitation, no such material is pointed out. The learned counsel for the petitioners has only relied on the Note prepared by the Encroachment Officer, Nagar Parishad, Buldhana, Chief Officer, Nagar Parishad, Buldhana and the Deputy Chief Officer, Nagar Parishad, Buldhana and the resolution of the Zilla Parishad, dated 13/12/2011. We do not find that the said documents carve out any right in favour of the petitioners to seek rehabilitation. The judgments reported in **AIR 1997 SC 152** and **AIR 1986 SC 180** are not helpful to the case of the petitioners.

Since the relief sought by the petitioners cannot be granted, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE