

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 3174 OF 2005

1. Kamlakar s/o Ganpat Kote
aged 32 years, occup. Agril
and Councillor of Shirdi
Municipal Council, r/o Shirdi,
Taluka Rahata, District Ahmednagar
 2. Prakash s/o Jairam Shelke
aged 44 years, occup. Agril.
r/o Shirdi, Taluka Rahata,
District Ahmednagar
- .. Petitioners

versus

1. The State of Maharashtra,
(through its Principal Secretary
Urban Development Department,
Mantralaya, Mumbai)
2. The Divisional Commissioner and
Director of Municipal Administration,
Nasik.
3. The Collector,
Ahmednagar
4. The Director of Town Planning,
Maharashtra State,
Central Office, Pune 411 001.
5. The Assistant Director,
Town Planning, Ahmednagar
6. The Chief Officer,
Municipal Council,
Shirdi, Tq. Rahata,
District Ahmednagar

7. Vasturachana Engineers and Contractors, Kopergaon, Tq. Kopergaon, District : Ahmednagar
8. National Highway Authority of India, through its Chief General Manager (Co-ordination) (Ministry and Shipping Road Transport and Highway) G-5/6, Sector-10, Dwarka, New Delhi-110075. Tel: 011-25074100/25074200
9. Maharashtra State Road Development Corporation through its Chief Administrative Officer, (Located at MSRDC Mumbai office) MSRDC, Opp. Dena Bank, Adjacent to Priyadarshini Park, Nepean Sea Road, Mumbai – 36
Tel : 23686112/ 23696109/23695618 .. Respondents

Ms Pradnya Talekar, Advocate h/f Mr. Kiran M. Nagarkar, Advocate for petitioners

Mr. Shashibhushan P. Deshmukh, Assistant Government Pleader for respondents no. 1 to 5

Mr. V. D. Hon, Senior Advocate instructed by Mr. A.V. Hon, Advocate for respondent no. 6

Mr. R. L. Kute, Advocate holding for Mr. Vikram R. Dhorde, Advocate for respondent no. 7

Respondent no. 8 served and is absent

Mr. S. V. Adwant, Advocate for respondent no.9

WITH
CIVIL APPLICATION NO. 14883 OF 2015
(For early hearing of writ petition)

Vasturachana Engineers and
Contractors, Kopergaon,
Tq. Kopergaon, Dist. Ahmednagar,

Through its Proprietor
Ravikiran Prabhakar Dake.
Age : 48 years, Occu: Business,
R/o Chhatrapati Plaza,
Dharangao Road, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar

.. Applicant

versus

1. The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai
2. The Divisional Commissioner and
Director of Municipal Administration,
Nasik
3. The Collector,
Ahmednagar
4. The Director of Town Planning,
Maharashtra State,
Central Office, Pune – 411 001
5. The Assistant Director of
Town Planning, Ahmednagar
6. The Chief Officer,
Municipal Council,
Shirdi, Tq. Rahata,
Dist. Ahmednagar
7. Kamlakar s/o Ganpatrao Kote,
Age: 42 years, occup. Agri. &
Councillor of Shirdi Municipal
Council, R/o Shirdi, Tq. Rahata,
Dist. Ahmednagar
8. Prakash s/o Jairam Shelke
Age : 54 years, occu. Agri.
R/o Shirdi, Tq. Rahata,
Dist. Ahmednagar

9. Executive Engineer,
World Bank Project,
Public Works Department,
Ahmednagar, Dist. Ahmednagar

10. Executive Engineer,
National Highway,
Division No. 9,
Trimbak Road, Nasik.

.. Respondents

Mr. R. L. Kute, Advocate holding for Mr. V. R. Dhorde,
Advocate for applicant

Mr. Shashibhushan P. Deshmukh, Assistant Government
Pleader for respondents no. 1 to 5 and 9

Mr. V. D. Hon, senior advocate i/by Mr. A.V. Hon, Advocate for
respondent no. 6

Ms Pradnya Talekar, Advocate for respondents no. 7 and 8

WITH
CONTMPT PETITION NO. 45 of 2010
IN
WRIT PETITION NO. 3174 OF 2005

1. Kamlakar s/o Ganpat Kote
aged 32 years, occup. Agril
and Councillor of Shirdi
Municipal Council, r/o Shirdi,
Taluka Rahata, District Ahmednagar .. Petitioner

versus

1. Shri Benjamin P. C.
The State of Maharashtra,
(through its Principal Secretary
Urban Development Department,
Mantralaya, Mumbai)
2. Shri Jayant Gaikwad
The Divisional Commissioner and
Director of Municipal Administration,
Nasik.
3. The Collector, Dr. P. Albalgan
Ahmednagar

4. Shri Landge
The Director of Town Planning,
Maharashtra State,
Central Office, Pune 411 001.
5. Shri Manohar Bhargave
The Assistant Director,
Town Planning, Ahmednagar
6. Shri Chandrkant Shivaji Khose
The Chief Officer,
Municipal Council,
Shirdi, Tq. Rahata,
District Ahmednagar
7. Shri Ravikiran Dake,
Vasturachana Engineers
and Contractors, Kopargaon,
Tq. Kopergaon, District :
Ahmednagar

.. Respondents

Ms Pradnya Talekar, Advocate h/f Mr. Kiran M. Nagarkar,
Advocate for petitioner

Mr. Shashibhushan P. Deshmukh, Assistant Government
Pleader for respondents no. 1 to 5

Mr. V. D. Hon, Senior Advocate instructed by Mr. A.V. Hon,
Advocate for respondent no. 6

Mr. R. L. Kute, Advocate holding for Mr. Vikram R. Dhorde,
Advocate for respondent no. 7

CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ

Judgment reserved on : 25-09-2017

Judgment pronounced on : 20-12-2017

JUDGMENT : (PER : SUNIL P. DESHMUKH, J.)

1. Heard learned counsel for the parties.

The petition mainly concerns construction of shopping

complex carried out over land bearing survey number 170/A2/1 abutting Nagar – Manmad highway seeking declaration that permission granted for development/construction of shopping complex over said land being within prohibited area of 37 metre of the centre of the highway is illegal and *void-ab-initio* and directions to respondents no. 1 to 6 to take appropriate action including demolition of said construction. The petitioners, *inter alia*, also seek directions to respondents to produce record in respect of permission for shopping complex over aforesaid land as also permissions for development/construction within prohibited area of 37 metre from Nagar – Manmad highway passing through Shirdi.

2. Petitioners no. 1 and 2 are residents of Shirdi town. Petitioner no. 1 was a councillor and petitioner no. 2's mother was also a councillor during relevant period. Respondent no. 1 is the State of Maharashtra through Principal Secretary, Urban Development Department, respondent no. 2 is the Divisional Commissioner and Director of Municipal Administration, Nasik, respondent no.

3 is the Collector, Ahmednagar, respondent no. 4 is the Director of Town Planning, Maharashtra State, Central Office, Pune, respondent no. 5 is the Assistant Director of Town Planning, respondent no. 6 is the Municipal Council, Shirdi, respondent no. 7 is builder – contractor, whereas National highway authority of India and Maharashtra State Road Development Corporation ("MSRDC") have been added as party respondents no. 8 and 9 respectively pursuant to amendments made in 2016 as per order dated 22-01-2016 passed in civil application no. 14883 of 2015.

3. While the petitioners pray for reliefs as aforesaid, it would be worthwhile to refer to events taking place giving rise to the writ petition as well as further events occurring during its pendency.

4. Nagar Panchayat, Shirdi under administration of the administrator had passed a resolution on 07-07-2001 to utilize land survey no. 170/A2/1 for erection of a shopping complex. It appears, on 16-07-2001, a communication had been sent by the Nagar Panchayat to the office of Town Planning, Ahmednagar seeking approval / recommendation

to permission for construction with a condition to obtain no objection certificate. Said communication had been responded to on 01-08-2001 by the Assistant Director of Town Planning, Ahmednagar, pointing out various deficiencies and further that the proposed construction is required to be at a distance of 37 metre from the central line of the highway and also that approval to plans cannot be recommended without obtaining no objection certificate, on the condition of obtaining no objection certificate, further referring to that the development over the entire area of land will have to be shown and upon removal of deficiencies as referred to in aforesaid communication, proposal for recommendation for approval can be considered.

5. A general body meeting of the Nagar Panchayat, Shirdi, had been convened on 21-06-2002 for discussion of subjects on the agenda, *inter alia*, at serial no. 11 about the construction of shopping complex over land survey number 170/A2/1 on build, operate and transfer (B.O.T.) basis. Accordingly, on 21-06-2002, a resolution had been passed

deciding to construct shopping complex on said land on certain conditions therefor. Thereafter, tender notice had been issued in *marathi* daily '*Loksatta*' on 07-09-2002. From the bids received, the one by respondent no. 7 – Vasturachana Engineers and Contractors had been accepted and an agreement for construction of commercial complex on survey number 170/A2/1 had been arrived at between Nagar Panchayat and Vasturachana Engineers and Contractors and had been executed in November, 2002. It is claimed pursuant thereto, construction of shopping complex over said survey no.170/A2/1 had commenced in 2003.

6. Petitioners contend that in a special meeting of municipal council, Shirdi, held on 30-09-2003, a resolution was purportedly passed providing for two staircases in place of lift.

7. Petitioners had submitted application on 21-10-2003 to respondent no. 3 - the office of Collector, Ahmednagar and for inquiry into the permissions and construction over the lands belonging to Nagar Panchayat and seeking certain

information. Petitioners had been informed by the Collector under communication dated 18-08-2004 that enquiry pursuant to their application has been made by the Sub Divisional Officer, Shrirampur and Deputy Engineer, Public Works Department, Loni, Taluka Rahata and the deficiencies noted in the enquiry report in respect of building *Saisuvida* have been brought to notice of Chief Officer, Nagar Panchayat, Shirdi, Sub Divisional Officer, Shrirampur and Deputy Engineer, Public Works Department, Loni, Taluka Rahata and that the Chief Officer has been given instructions to take action in respect of the same, further communicating that section 308 is not applicable to their application.

8. Petitioners had also sent an application on 05-06-2004 to respondent no. 6 – Chief Officer seeking certain information. Responding to the same, on 28-06-2004, petitioners had been communicated that in 7x12 extract land survey number 170/A2/1 is shown in the ownership of Nagar Panchayat, Shirdi and further that the construction over said land had been sanctioned by the Chief Officer, Nagar Panchayat and a proposal was

sent to Assistant Director, Town Planning, Ahmednagar, however, plans were not approved by his office, further referring to that the work had been given to respondent no. 7- contractor on F.B.T. basis to construct. He has to construct 40 *galas* (shops) on F.B.T. basis and that about six shops would be given to Nagar Panchayat, three on ground and three on first floor. The same are to be auctioned or rented out by Nagar Panchayat on deposit and that the entire building would be in ownership of Nagar Panchayat. The letter further refers to that a distance of 37 metre is necessary to be kept from Nagar - Manmad highway, however, construction has been proposed at a distance of 25 metres from the central line of the highway and also that tender notice had been published in daily ' *Loksatta* ' on 07-09-2002.

9. In the meanwhile on 19-06-2004, it appears, some communication had been made by the Chief Officer, Nagar Panchayat, to the office of the Director of Town Planning, Maharashtra State, Pune. The same was responded to on 15-07-2005 by the Director, Town Planning, Maharashtra

State, Pune, with that, relaxation sought in obligation under bye-law no. 28.02 of building bye-laws for construction of shopping complex over land survey no.170/A2/1 at a distance of 25 metres cannot be allowed. It had further been referred to in the letter by the Director, Town Planning, that under prevailing rules relaxation would not be possible without approval therefor by the highway authorities. As such, it would be necessary to obtain a prior permission/consent from the Public Works Department for the distance to be kept between central line of the road and the proposed construction.

10. The petitioners had through advocate issued notice to the respondents in writ petition on 03-03-2005 seeking cancellation of permission for construction of shopping complex over survey no. 170/A2/1 belonging to Shirdi Municipal Council and till such time, to stop construction over the same, expecting to do needful within a fortnight. However, it is the contention of the petitioners that since no action pursuant to their notice had been taken, they have approached this court under present writ petition.

11. The petition has been moved based on observations in the decision of Supreme Court, in the case of *M. I. Builders Pvt. Ltd. v. Radhey Shyam Sahu*, reported in *AIR 1999 SC 2468*, on the premise that natural resource viz; air, water and the forests should be freely available to every one and the doctrine enjoins upon the government to protect said resources for the enjoyment of general public rather than to permit their use restricted for private ownership or commercial purposes as the government is the trustee of all natural resources and public at large is the beneficiary of the same.

12. It is submitted in writ petition that aforesaid public trust doctrine as emerging from the citation referred to above finds its incorporation in various enactments, *inter alia*, Maharashtra Regional Town Planning Act, 1966 ("MRTP") obligating the planning authority not to grant permission for construction/development within prohibited/restricted area and that illegal permissions granted are required to be revoked and cancelled and illegal/irregular construction is required to be demolished but, respondents no. 1 to 6 are alleged not to have lived upto aforesaid public trust doctrine.

13. Despite development / construction is not allowed, permitted and not possible within area of 37 metres from the central line of the State highway, petitioners complain that respondent no. 6, flouting relevant regulations, rules and conditions had undertaken construction and development of a shopping complex over the land belonging to Shirdi municipal council bearing survey no. 170/A2/1 abutting Nagar-Manmad State highway.

14. It is averred in the petition that the Assistant Director of Town Planning had refused to grant permission to construction of shopping complex. It has been alleged, despite aforesaid, municipal council is proceeding with construction with a view to see adverse orders, of revocation of permission for development are not passed and subsequently a possible demolition order may be met with an argument of irreparable loss being caused to municipal council and respondent no. 7. The petitioners had become aware of rumours in the Municipal Council's office that the construction undertaken by the Council is illegal and unauthorized since being stated to be within 37 metres from the central line of the State highway.

15. According to petitioners, thus, it is obvious that permission granted by respondent no. 6 to respondent no. 7 for construction of shopping complex is illegal and *void ab initio*. The construction under such illegal permission is also illegal and unauthorized and therefore liable to be demolished and the events call for a criminal action against the responsible persons / officers.

16. In its reply, filed in January, 2006, respondent no. 6 - the then Chief Officer of the Nagar Panchayat has resisted the claims in the writ petition, contending that all relevant and correct facts were not referred to in the writ petition and the petitioners have kept back certain facts. It is claimed that the petitioners have alternate remedy under section 308 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. It has been further averred that the petitioners are residents of Shirdi and have been aware of the resolution passed by Council granting permission for construction way back in 2003 whereas the petition has been filed in 2005. In the meanwhile, two years have elapsed and the construction is almost on the verge of completion.

17. It is contended that in view of Build, Operate and Transfer ("BOT") tenders had been invited by the State Government in the year 2004 for construction of bypass, four-laning Kopargaon-Ahmednagar road, the shopping complex being at a far off distance from said bypass, the contention about construction of the shopping complex being within 37 metres from central line of the highway is misconceived. It is contended that upon bypass being constructed to existing road, the existing road would naturally become an internal road and would vest in Nagar Panchayat according to the government resolution dated 09-03-2001. It is contended that the petitioners despite being aware of it, have kept the same away. It is contended that Collector's letter dated 18-08-2004 was concerning *Saisuvidha* building and not shopping complex involved in the writ petition.

18. Respondent no. 6 has submitted that an application had been moved to respondent no. 4 - Director of Town Planning, Pune on 19-06-2004, him being competent authority under the Building Bylaws for B and C class of Municipal Councils and, in turn, said authority under communication dated 15-07-2005 had conveyed that it would be necessary for

Municipal Council to approach the Executive Engineer, Public Works Department for relaxation of the necessary conditions. Accordingly, the Nagar Panchayat had approached the Public Works Department on 16-06-2005 with a detailed proposal.

19. Along with reply, government resolution dated 09-03-2001 Exhibit R-2 is relied on which has been issued with a view to bring uniformity in building line and control line across the State. Said government decision refers to building line for urban and industrial area to be 20 metres from the centre of road or 4.5 metres from side borders of the road whereas the same is 4 metres for non urban area. Said resolution also refers to control line for factory, cinema hall, commercial go-down, market etc. where there would be crowd for State highway, is of 37 metres from the centre of the road.

20. In his affidavit in reply filed in May, 2007 on behalf of respondents no. 1 and 3 to 5, the Assistant Director, Town Planning has referred to that as per the standard building bye-laws and development control rules relating to B and C class Municipal Councils, the building line shall be 25.0 metres for residential and for commercial public / semi-public area, it

shall be 37 metres from the centre of the Nagar – Manmad highway and urban development rules could be relaxed only with approval of the highway authorities. Said reply further refers to that the shopping complex constructed by respondent no. 6 is at a distance of 25 metres from the central line of Nagar – Manmad State highway. He further purports to refer to that permission had been refused in 2001 by respondent no. 5, for, shopping complex was not at a distance of 37 metres from the centre of Nagar – Manmad State highway and that the same is against the Urban Development Rules which can/shall be relaxed only with approval of the State highway authorities.

21. Respondent no. 7 in affidavit in reply filed in June, 2007 through its proprietor has submitted that the petition has been moved with ulterior motive to have unlawful gains for the petitioners and the petition tantamounts to misuse of process of law and is liable to be dismissed in limine. Respondent no. 7 contends that the petitioners are very much aware of the happenings of events in the Municipal Council. It has been referred to that the administrator had been functioning till December, 2001 over respondent no. 6 which

then was a Nagar Panchayat. During his period, resolutions for appointing architect for survey of concerned land for shopping complex over the same had been passed. In the general body meeting held in January, 2002, petitioner no. 1 and mother of petitioner no.2, who were councillors of Municipal Council while resolution had been passed to give work of construction of shopping complex on B.O.T. (F.B.T) basis, had been present. Subsequently, in June, 2002, a meeting was convened to decide terms and conditions of allotment of work. Thereafter, tenders were invited in September, 2002. In the meeting held in October, 2002, it had been resolved to accept offer of respondent no. 7 pursuant to which an agreement came to be executed in November, 2002 and work order was issued also in 2002. A meeting thereafter had been convened in September, 2003 for modifications in the work, such as, cancellation of lift and providing certain stair-cases and resolution accordingly was passed. In said meeting, petitioner no.1 himself had been proposer for modifications and mother of petitioner no. 2 had also attended the meeting. It is contended that in all these proceedings, petitioner no. 1 and mother of petitioner no. 2

had participated and had been party to the resolutions being passed.

22. It is further contended that by July, 2004, major portion of construction had already been over and a part completion certificate had also been issued. Accordingly, respondent no. 7 has dealt with quite some portions of the construction and has executed agreements in favour of other persons/allottees. Agreements have been signed by respondent no. 6 – Municipal Council. It is submitted that the petitioners are estopped from making grievance in respect of said construction being illegal and *void-ab-initio*. Obvious malafides of petitioners are involved in approaching the court. Their underlying intention is writ large to have unlawful gains and it appears to be their *modus operandi*. The petition is misuse of process of law. It is contended that the petitioners cannot be permitted to turn around and now claim it to be illegal while they had participated in meetings hitherto taking decision to develop the property on F.B.T. Basis, bringing up shopping complex, granting contract, entering into agreement.

23. It is submitted that the construction cannot be dubbed as illegal. It is at a distance of 25 metres from the central

line of the State highway. The road is within municipal limits of Shirdi Nagar Panchayat. Moreover, with the bypass having been decided on and tender and work order also having been issued, the road in question in the petition ceases to be a highway. Along with reply, tender notice therefor has been annexed by respondent no. 7 with an extract of a newspaper. It is submitted that huge sum of about Rs. 45 lac has been spent on the construction which is partly completed and respondent no.7 accordingly has been allowed to take further steps. Petition suffers delay and laches.

24. It, in the alternative, appears to have been suggested in the reply that petitioners be directed to deposit entire cost of construction for prosecution of present writ petition as they have raised various objections to the construction. It is submitted that huge amount is locked in the construction which has been raised by taking loan from the different sources and interest thereon is mounting. In the circumstances, petition deserves to be dismissed.

25. Petitioners have filed a common rejoinder to replies by respondents no. 1, 3, 4, 5, 6 and 7. It is purportedly contended in the rejoinder that averments in the writ petition

about sections 44 and 45 of the MRTP Act have not been denied by the Respondents, further contending that it is obligatory on the Town Planning authorities to take appropriate action and to demolish the construction for non-compliance of section 44. A grievance is made that instead of taking action contemplated pursuant to the provisions under the MRTP Act, particularly sections 44, 45, 52 to 59, alternatives have been suggested. It is contended that, having regard to sections 44, 45 and 52 to 59 of the MRTP Act, the activities of respondents are illegal. The Municipal Council being a local authority and creature of statute, ought to act and function according to law and cannot be excused for any unauthorized construction. Further Municipal Council has no reason much less justifiable, to forward application to the Town Planning Department after completion of construction. The illegal construction at a distance of 25 metres from the central line of highway frustrates the object underlying the control line and its concept. In the circumstances, a demolition order would be justifiable. Alternatively, it has been submitted that even rule 28.2 of standardized rules for B and C classes of municipal council does not provide for relaxation for construction within prohibited area of highway. Even rule 6 of the Bombay

Highways Rules, 1958 contemplates application pursuant to section 21(1) as to the State Highway authority and no such application had been made under the Maharashtra Highways Act, further referring to that the provision is not for erection of permanent construction.

26. It is alleged, the construction in question also violates the purport underlying the Motor Vehicles Act. Further it is contended that the Highway authorities under sections 20 and 21 of the Maharashtra Highways Act, 1955 cannot be said to be competent to grant permission or relaxation in conditions and Municipal Council has no power or authority to grant any relaxation on the basis of Urban Development Rules. So is the case under the Maharashtra Highways Act where-under no relaxation is contemplated or is available. The contention of respondent No.7 of having entered into agreements with other persons is refused to be believed for want of requisite documents on record. It is submitted otherwise also, no legal right can be said to have been bestowed upon respondent No.6 to enter into any such transaction. It is submitted that respondent No.7 is not supposed to and is not competent to take objections as have been referred to in its affidavit in reply, particularly about petitioner No.1 being councillor and

member and mother of petitioner No.2 also being councillor, and further that in the capacity of contractor respondent No. 7 is not supposed to take up such defences. The contentions of the respondents are fallacious.

27. It is contended that there is reference by respondents to construction activities having been commenced and as such, it tantamounts to admission and two years thereafter, relaxation had been sought which is not permissible in law. Rule 28.2 of the Standardized Rules for B & C Class municipal councils does not provide for relaxation of conditions in respect of construction in prohibited area of highways and pursuant to decision in *M.R. Builder's* case (supra) unauthorized construction is required to be removed.

28. In January, 2010, contempt petition bearing No. 45 of 2010 had been lodged, alleging utilization of shopping complex in breach of order dated 16-07-2007 passed by high court in writ petition no. 3174 of 2005, contending that the shops have been rented out and given to other persons for business. The shopping complex is being used for commercial purposes in spite of the orders of this court. It had further been contended that respondents no. 1 to 5 being competent and superior authorities ought to have controlled and

restrained such activities of respondents no.6 and 7. It has been alleged that there is commission of willful disobedience by respondents no. 6 and 7 of the order passed by high court in writ petition.

29. An affidavit in reply filed by respondent no. 6 on 05-05-2010 to the contempt petition makes reference to communication dated 19-11-2007 by the Executive Engineer, World Bank Project, stating particularly that while the municipal council had approached competent authority to relax condition of 37 metres, a communication has been made by the competent authority that it has relaxed condition and Nagar Panchayat is directed to carry on construction beyond 24.35 metres from the central line of the highway.

30. In rejoinder by petitioner filed on 02-11-2010 to aforesaid reply affidavit in contempt petition of respondent no. 6, it has been pointed out that the communication dated 19-11-2007 has not been annexed along with reply by respondent no.6.

31. In affidavit in reply dated 23-06-2010 filed on behalf of respondents no 1, 4 and 5 to contempt petition, said

respondents i.e. the State, Director of Town Planning, Maharashtra State, Pune and Assistant Director, Town Planning, Ahmednagar have replied the contempt petition but the reply does not make reference to communication dated 19-11-2007 nor to any relaxation or permission to change of user to respondent no. 6 nor there is any reference to the application by respondent no. 6 for relaxation.

32. In the rejoinder to reply by respondents no. 1, 4 and 5, it has been contended by petitioners that after letter had been given by one of the petitioner viz; Prakash Jairam Shelke on 17-08-2009, respondent no. 1 had issued letter in September, 2009 to all concerned in respect of order of the high court passed on 16-07-2007, asking them to take appropriate action. According to the rejoinder, letters dated 15-09-2009 and 10-11-2009 have been elusive contending that as the superior authorities, respondents have not tried to implement the order of the high court in the matter as required and only issued letters as aforesaid without taking steps expected from them and , as such , there is gross failure on their part in discharge of their duties and obligations. Petitioners contend

that the respondents cannot sneak away from realities, stating that the contempt relates to respondents no. 6 and 7.

33. Respondent no. 7 had around August, 2012 filed its affidavit in reply to aforesaid contempt petition. It has been contended that the contempt petition has been moved with ulterior motive by petitioners to gain undue advantage. The reply purports to arrange events in chronological order, submitting that from 40 shops, 34 shops had been allotted by respondent no. 7 as per agreement and 6 shops were given to municipal council. Allotment of 34 shops had been in consideration of amounts spent by respondent no. 7, stating further that 9 shops were leased out and handed over before 16-07-2007 and not a single shop has been leased out thereafter. Municipal council has been receiving rent from the shops and this position had been pointed out before the order came to be passed by the high court. As such, the contempt petition was resisted with a request to dismiss the same.

34. Till middle of December, 2014 no material in respect of communication dated 19-11-2007 had been placed forth despite there being orders of this court directing respondents

for production of the same. There being reference in 2010 order in contempt petition pursuant to which respondent no. 6 was required to submit record with regard to relaxation order, and under orders dated 13-08-2012 and 16-04-2014 extending time to comply with said directions, the same had not been complied with and on 11-08-2014, the Division Bench of this court had directed to produce the same upto 01-09-2014. On 26-11-2014, the court had noticed that order dated 13-08-2012 in contempt petition directing to produce relaxation order as submitted by respondents had not been complied with and nobody had appeared on behalf of respondent no. 6 before the court, in the circumstances, the court had issued bailable warrant in the sum of Rs.25,000/- making it returnable on 17-12-2014.

35. While contempt petition no. 45 of 2010 in writ petition no. 3174 of 2005 was on board on 18-12-2014, the Division Bench passed an order, observing in paragraphs no. 3, 4, 5 and 8, thus;

" [3] While hearing this matter, on 13th August, 2012 this court recorded a statement that, condition of 30 Mtrs. Distance from center of the roadline was relaxed and construction has been permitted beyond 24.35 Mtrs. This court directed Respondent No. 6

to submit on record the relaxation order as also allotment order, if any. The matter was then adjourned to 27th August, 2012. This relaxation order has not been produced till date. It is, in this background, this court was constrained to issue Bailable Warrant. Things appears to have started moving after Bailable Warrant was issued.

[4] Yesterday, when the matter was heard, efforts was to show that, relaxation order was already on record. When the petitioner pointed out that the Competent Authority is prescribed under the National Highways Act, adjournment was sought and today additional affidavit is being pressed into service. It is urged that user of building, as such, has been changed by the Town Planning Deptt. And, therefore, from 12/12/2014 entire construction has become legal. It is submitted that as per new user, the construction can be done after leaving 24.35 Mtrs. Open space from center of the road.

[5] It is, therefore, apparent that the Chief Officer of the Municipal Council, Shirdi as also the Asstt. Director of the Town Planning have attempted to mislead this court. When the matter is pending before this court, we fail to understand, how change of user could have been asked for and granted. At present, it appears that grant of such permission is only on paper and the actual or physical user has not been altered. Thus, the activity which is going on since prior to 12/12/2014, continues unabated even today.

[8] Before proceeding to pass further orders, in the matter, against the Chief Officer, we direct the other respondents, namely, - Divn. Commissioner and Director of Municipal Administration,

Nashik as also the Dist. Magistrate [present incumbents] to file their responsible affidavits. Similarly, present incumbents working as Director of the Town Planning Maharashtra State, Pune and the Asstt. Director, Town Planning, Ahmednagar shall also file their personal affidavits. After receipt of their affidavits, court shall pass suitable orders in the matter. "

36. Thereafter, respondents no. 4 and 5 in their affidavit in reply filed on 20-12-2014 to contempt petition have referred to respondent no.6's communication dated 05-12-2014 which is at page 175 of contempt petition. Affidavit refers to that on scrutiny of plans submitted, those were found to be in order for lodging and dormitory and partial convenience commercial use on ground floor can be recommended for commencement of construction. The affidavit in reply further makes a clear reference in paragraph no. 7 to that communication dated 12-12-2014 by deponent's office is only a recommendation and not permission. Reference to order dated 16-07-2007 of the high court has been made. It is also said that in the letter dated 12-12-2014 office of the deponent had given recommendation for change of user for already constructed building for the purpose of dormitory and particular convenience shopping on the ground floor on certain conditions. It has been pointed

out that the Municipal Council has forwarded the letter after almost about seven years. It has been purportedly clarified in the affidavit that grant of permission or refusal to change of user is a domain of Municipal Council as it is a planning authority. It is stated that appropriate authorities were given liberty to decide the issue of application / representation of the Municipal Council in accordance with law and with reference thereto, letter dated 12-12-2014 had been issued.

37. Respondent no. 3 – Collector had filed an affidavit in reply to the contempt petition pursuant to order of high court dated 18-12-2014 making reference to submission of proposal by respondent no. 6 dated 16-06-2005, requesting for issuance of no objection certificate for construction of commercial complex and a proposal dated 01-08-2006 by respondent no. 6 to Executive Engineer, World Bank Project, Ahmednagar for issuing no objection certificate to construction for residential purpose. The reply further refers to no objection having been issued by the Executive Engineer for residential purpose, further referring to a proposal dated 05-12-2014 to Assistant Town Planning Officer, Ahmednagar to give recommendation to construction for residential

purpose and that said authority had given recommendation on 12-12-2014 on certain terms and conditions. It has been made clear in the affidavit by the Collector that respondent no. 6 or the Executive Engineer, World Bank Project had never submitted any proposal in respect of construction. The Collector in his affidavit further makes reference to that for relaxation in urban rules, procedure required to be followed is as referred to in the circular dated 13-11-1995 and that no such proposal had been received for relaxation by his office from any of the authorities, stating further that in the circumstances there was no question to forward proposal to the government.

38. An affidavit has been filed by contempt petitioner on 22-12-2014 asserting that shopping complex is within 37 metres of control line of the State highway and contending that more than 25 shops have been handed over to shopkeepers for running business along with certain photographs of the complex in order to buttress his submission that the building is being used for commercial purpose.

39. Added respondent No.8 – National Highways Authority of India has in June, 2016 filed its reply stating that Central Government has declared stretch of road starting from Sinnar to Ahmednagar, via Shirdi as National highway No.160 vide Gazette Notification S.O.814(A) dated 22.03.2013, further pointing out that though there is such declaration, but the same is not entrusted to the National Highway Authority of India yet. It has further been pointed out that the Ministry of Road Transport & Highways under its Circular dated 22-12-2003 communicated that henceforth, land acquisition for right of way would be minimum of 60 metres for all projects under National Highway Development Project (NHDP) and that the right of way is that no construction on national highway in prohibited area is allowed. It is further submitted that the claims and grievances in the petition are not against national highway authorities.

40. Respondent No.5 has filed additional affidavit in September, 2016, referring to that his office under letter dated 12-12-2014 recommended building permission and communicated the same to the Nagar Panchayat, Shirdi and while making such recommendation for permission, a letter

dated 19-11-2007 by Executive Engineer, World Bank Project, Ahmednagar to Nagar Panchayat, Shirdi, had been referred to in which no objection to change of user from commercial to residential was considered. It is submitted that a request had been received from Nagar Panchayat, Shirdi on 5-12-2014 for revised building construction permission for lodging and dormitory use since user of lodging and dormitory is permissible in residential area under Development Control and Promotion Regulations in Maharashtra State which came into force in 2013. His Office had recommended the permission for construction of building beyond 24.35 metres from the central line of State Highway, pointing out further that the permission is given for residential purposes making it clear that for any change of user otherwise than from the permission recommended by his Office, Chief Officer, Nagar Panchayat, Shirdi would be responsible. The power to relax obligatory conditions regarding construction of building from central line of State highway vests in Respondent No.8- National Highway authority and respondent No.9-State Highway Authority.

41. Respondent No.3 - Collector has also subsequently filed one more affidavit in reply on 30-01-2017 through District Administrative Officer, pointing out that there is no relaxation

as claimed by the respondents purportedly allowing the construction to be made at a distance of 24.35 metres from the central line of the State highway, further referring to that the *panchanama* reveals that on the ground floor, there are shops and as such, the construction is a commercial complex.

42. An affidavit in reply has been filed on 30-01-2017 by Assistant Engineer, Grade-I, World Bank Project Division (Public Works), Ahmednagar, purporting to be on behalf of Respondent no. 8, Executive Engineer, Public Works Department, Nashik Region, Nashik, stating that though his office is not party to the petition but affidavit is being filed pursuant to the order passed by this court on 18-08-2016, pointing out that the deponent had no power to grant or authority to relax conditions and no relaxation has been granted by his office, further pointing out that commercial complex has to be at a distance of 37 metres from the center of State highway and spot *panchanama* reveals that on ground floor of the building there are shops and as such there is a commercial use of the complex. The deponent also states that he had personally visited the spot and the *panchanama* reveals

that building is at a distance of 24.35 metres from the central line of the State highway.

43. Respondents No. 1, 4 and 5 have filed additional affidavit in reply on 02-02-2017 through Assistant Director of Town Planning, Ahmednagar, referring to that on 12-12-2014, his office had recommended the plan to Nagar Panchayat Shirdi for change in use, partly residential and partly commercial, on certain conditions for construction at a distance of 24.5 metres from central line of State highway and on visiting the spot, it was found that the construction is not as per the plan recommended by his office and that the inspection revealed that the construction of the total building till today is commercial and a commercial building has to be constructed at a distance of 37 metres from the central line of the State highway.

44. One more affidavit in reply sworn on 07-02-2017 appears to have been filed on behalf of the Chief Engineer, Public Works Department, Nashik Region, Nashik by Executive Engineer, World Bank Project Division (Public Works) Ahmednagar, stating the same being filed pursuant to order of the high court passed on 4-01-2017. The deponent refers to

that his office had no power or authority to grant relaxation in conditions and had not granted any relaxation as claimed by some of the respondents, allowing the construction of commercial complex at a distance of 24.35 metres from the centre of the highway, further pointing out that such construction can be made at a distance of 37 metres from the central line of the State highway. The deponent had visited in person, the spot and *panchanama* reveals that building is at a distance of 24.35 metres from central line. It is further purported to be communicated that pursuant to the spot *panchanama* drawn in January, 2017, at the ground floor, there are shops and as such, it may be a commercial building.

45. While the matter was on board on 19-06-2017, learned counsel appearing for respondents no. 6 and 7 stated that they had been informed that a bypass road of national highway is created and due to that road, the road over which construction which is claimed to be illegal will not be used as highway. The court observed that this statement may have some importance and had directed the State to collect information. It had also been referred to that in the affidavit in reply of local body, there is reference to the same and such information and record needs to be supplied. However, it

appears no such information subsequently had been made available.

46. Learned counsel Ms Pradnya Talekar appearing on behalf of petitioners submits that the use of words "flout", "breaches", "contravention" of "law", "rules", "regulations" and "procedure" is too euphemistic in present scenario as the actions and whole process indulged into by respondents, particularly respondent no.6 has absolutely supplanted rule of law. She submits that not even the words and assurances in replies given and made during pendency of writ petition have been kept up. She submits the truth has been ripped open and exposed by averments/admissions in the affidavits filed.

47. Learned counsel Ms. Talekar submits that foremost thing that should be taken into account is, the control line prescribed pursuant to decision of the State government dated 09-03-2001 (writ petition page 37) shows that any commercial building has to be at a minimum distance of 37 metres or farther from the central line of the State highway. The situation has not altered at all hitherto nor does any change has taken place as contended about concerned particular stretch of highway has ceased to be a highway.

48. Ms. Talekar puts emphasis on that prior permission of the Town Planning department is a mandatory compliance before issuance of commencement certificate and thus claims that aforesaid deficiency had not been brought forth to the notice of petitioner no.1 and in the circumstances, the question of *locus standi*, suppression and estoppel would not arise in present matter specially when petitioner no. 1, despite being party to resolution, was kept unwary of relevant fact of approval / recommendation not having been granted. She submits that the arguments by respondents about estoppel for petitioners has no legs to stand on, for, there can be no estoppel against law.

49. She submits, with the affidavits in reply true state is ripped open and is exposed that building in question is constructed and is utilized as commercial building, no amount of acrobatics and aerobic exercise is going to save the situation and let respondent no.6 sneak out of clutches of law extending now for administration. She submits that change of user and relaxation of conditions turn out to be subterfuge.

50. She points out and emphasizes that Assistant Director of Town Planning had on 01-08-2001 rejected the request for recommendation for approval to plans on the condition of obtaining no objection certificate to develop shopping complex over the land bearing survey no.170/A2/1, pointing out various deficiencies in the proposal, viz; construction was within prohibited area of 37 metres of central line of the State highway. Measurement map does not disclose boundaries of the proposed building and layout of entire area would be required and that the building plans are incomplete and requires details referred to in the communication. It had been made further clear under the communication that upon removal of deficiencies, scrutiny would be made and thereupon approval may be considered, however, in the present state of affairs no recommendation of shopping complex would be possible.

51. She submits tender notice is as vague as it could be, and it does not mention the area of layout or sanction/approval provided by the Assistant Director of Town Planning, apart from the commencement certificate. According to her, it is with obvious intention that respondent

no. 7 could be favoured in allotment of the tender. She submits that even the terms and conditions of the contract are lopsided in favour of the contractor-respondent no. 7 and are inequitable whereunder Municipal Council is to be provided with only three shops on ground floor and three shops on the first floor whereas rest of the 34 shops will vest in respondent no.7-contractor reaping profits. She submits, the agreement is also ambiguous and not determinative allowing the contractor – respondent no. 7 indefinite period of exploitation of the building at a prime location in Shirdi.

52. Petitioners realized illegalities involved in the construction when there were whispers around Municipal Council that the construction is being carried out without permission and approval of the concerned department particularly by the Assistant Director of Town Planning. Even inspection of documents had not been allowed to the petitioners. The petitioners, as such, had to resort to written applications to the Collector and Chief Officer of the Municipal Council seeking relevant information. Thereupon, the petitioners came to know about the blatant manner in which

decision of illegal construction of shopping complex had been taken and the project was being executed.

53. According to learned counsel, while petitioners realized about not only blatant illegalities have been involved but also that the entire public in the process was put in peril and their safety was at stake, the petitioners had tried to dissuade the municipal authorities viz; Chief Officer and the President of the Council, however, their attempts turned out to be exercise in futility. Under the circumstances, petitioners had been constrained to approach this court through present writ petition.

54. Ms. Talekar, learned counsel submits, interim relief had been granted by this court in present writ petition, the same had been discontinued for want of report about service on the respondents initially, and, the high court on 16-07-2007 had issued rule in the writ petition and further by way of interim order restrained respondents no. 6 and 7 from using the portion of shopping complex within 37 metres from the central line of Nagar-Manmad State highway passing through Shirdi, or from disposing it of in any manner. Yet, nonchalant

respondents no. 6 and 7 went ahead dealing with portion of shopping complex within 37 metres of central line of Nagar – Manmad State highway.

55. Learned counsel submits, while it had been given to understand that Municipal Council had approached appropriate authority seeking relaxation in condition of construction of shopping complex within prohibited distance, the court had observed that it is for the authorities to consider such a request in accordance with law and the relevant rules. Municipal Council had been restrained from issuing completion certificate until further orders.

56. Learned counsel contends that there had been restraint imposed not to use and deal with in whatsoever manner the portion of building falling within 37 metres of central line of the State highway, it did not mean at all that user of the portion of the building within 37 metres from central line of the State highway which has been leased out before the date of order under so-called transactions had been allowed. Despite that, respondents no. 6 and 7 continued to willfully and deliberately disobey unambiguous interim order of the high court and permitted not only the use of already leased

out shops but also of all the shops on the ground floor without entering even formal lease agreement. Such a conduct of respondents, she claims to have led to filing of contempt petition no. 45 of 2010.

57. She submits that even filing of the contempt petition in this court had not deterred respondents no. 6 and 7 at all from continuing to use the building within 37 metres of center line of State highway and both the respondents were found collecting rent from the lessees to whom shops were earlier leased out.

58. She submits, approach of respondents is blatant and fallacious, inviting attention to that during the course of hearing of contempt petition, it had been purportedly submitted on behalf of respondent no. 6 that the condition of construction of building not to be within 37 metres of the State highway has been relaxed. Thereupon, the high court had granted respondents time to produce relaxation order, however, the time limit given by the court had not been kept up and on 26th November, 2014, the high court had passed order to issue bailable warrant in the sum of Rs.25,000/- against the incumbent Chief Officer of the Municipal Council.

It is thereupon, an additional affidavit came to be filed, submitting that the Town Planning Department has allowed to alter the user of building and under the circumstances the construction is now legal.

59. Learned counsel submits that so-called communication purporting to be by the Executive Engineer, Public Works Department, Ahmednagar dated 19-11-2007 claiming to inform change of user from commercial to residential beyond 24.35 meters from central line of State highway is a handwritten communication, stamped as having been issued by the Executive Engineer without letterhead or name of the signatory. Letter although bears date of 2007, it took about further seven years for it to come on record. Said letter dated 19-11-2007 is purportedly in response to application by Municipal Council dated 01-08-2006.

60. She goes on to submit that such a communication from the Executive Engineer is not competent taking into account circular dated 13-11-1995 and could not issue no objection certificate without forwarding it to the Chief Engineer and the Collector and with their recommendations to Revenue and

Forest Department, and relaxation is not possible which in any case has to be prior to commencement of construction.

61. Learned counsel points out order dated 18-12-2014 of this court in contempt petition and lays emphasis on paragraph 5 thereof whereunder, according to her, it has been observed that the Chief Officer, Municipal Council as well as Assistant Director, Town Planning have attempted to mislead the court and the court further has taken note of the fact that the grant of permission is only on paper and actual and physical user of building as commercial has not been altered at all and the court had further observed, the activities which had been going on before 12-12-2014 continued unabated even today.

62. Learned counsel Ms Talekar goes on to submit that it can thus be very well gathered that the liberty as may be operating under order dated 16-07-2007 was confined only with respect to taking decision on the application made by the Municipal Council with regard to relaxation of condition of construction to be beyond 37 metres of central line of the highway. Thus, Municipal Council could not have sought from

other authorities any order other than relaxation of condition and much less change of user was at all contemplated. A change of user having been purportedly granted is an attempt to come out of the apparent illegalities and to avoid resultant consequences and to avoid action and order upon the same by the court.

63. Respondent no. 4 and 5 i.e. the Director of Town Planning, Maharashtra State and Assistant Director of Town Planning, Ahmednagar and respondents no. 2 and 3 i.e. Divisional Commissioner, Nashik and Collector, Ahmednagar have filed their affidavits in contempt petition on 20-12-2014 and 21-12-2014 respectively, denying that any permission or relaxation of condition had been granted by them. She submits that the Collector has pointed out the procedure for relaxation of condition for construction to be within 37 meters of central line of the State highway under circular dated 13-11-1995 which has necessarily to be routed through Executive Engineer to the Chief Engineer who shall forward the same to the Collector and the Collector, in turn, would send the same to the Revenue and Forest Department as said department alone can grant relaxation after obtaining remarks from Public

Works Department. She draws attention to that the Collector points out in his affidavit that no such procedure had been followed and no proposal had ever been received by his office. Thus, according to her, letters dated 19-11-2007 and 12-12-2014 are illegally obtained and have no efficacy in law and are manufactured to get out of the mess and procurement of letters in such a manner is an attempt to wriggle out of situation and escape enforcement of law.

64. She points out that three additional affidavits have been filed by three authorities in January/February, 2017 making it clear that *panchanamas* show that user of the building is still for commercial purpose and all the three authorities unequivocally clarified that no relaxation had ever been granted by them and that, in fact, they were not empowered to grant any such relaxation. She, therefore, submits that observations as had been recorded by the Honourable High Court in its order dated 18-12-2014 in contempt petition had emerged to be true and prophetic. In the circumstances, according to her, flagrant actions and acrobatic attempts of respondents no. 6 and 7 to come out of the mire, rigour of contempt, deserves stern action. She submits that an action

for contempt is warranted by the circumstances because respondents' approach is unabashed and does not indicate even a semblance of remorse. There is no tender of genuine apology. In fact, what is tried is an attempt to wriggle out of the contempt by misleading the court.

65. Learned counsel relies on two decisions of the supreme court, one *Debabrata Bandopadhyay and others vs. The State of West Bengal and another*, 1969 1 SCR 304, and she particularly refers to paragraphs no. 9 and 10 from the same and another *Priya Gupta and another vs. Additional Secretary, Ministry of Health and Family Welfare*, (2013) 11 SCC 404.

66. She submits that taking into account the rationale as reflected in aforesaid two judgments of the supreme court, the situation in present matter calls for a very serious action against the contemnors. She submits that in stead of taking corrective and recouping action, the intention of respondents no.6 and 7 has been to sneak out of the situation and justify their act of bringing up illegal construction giving friable and untenable excuses which do not at all stand the test of any reason or rationale. She submits, spurious excuse had been put forth referring to that since a bypass has been proposed,

the Nagar-Manmad highway passing through Shirdi would be an internal road, however, no notification as yet has come forth. Nothing to that effect is proposed. On the contrary, the State highway is now declared as national highway. She submits that respondents no. 6 and 7 were in haste and in trance for reaping benefits from illegal construction. Nothing could affect them, not even the orders of the high court. The construction and user of complex poses danger to safety of people coming to Shirdi and/or passing through Shirdi. The area is being used as parking place for buses and user is causing congestion to traffic and is fomenting road accidents, even fatal ones.

67. Ms Talekar submits that the Maharashtra Highways Act, under section 7, provides for determination of control line and empowers the State Government to issue notification. Section 9 of the Act prohibits construction, erection of any building within the building line and control line without prior permission of Highway Authorities. Government Resolution dated 09-03-2001 prescribes 20 metres building line in urban areas from the centre of the road while control line is of 37 metres from the centre of the road. Construction of shopping

complex in present matter is at a distance of 25 metres from the centre of the road as has been referred to in the joint *panchanama* undertaken by the Public Works Department and the Collector. She submits that even the permission to change the user from commercial to residential within control line is not legal and is impermissible without prior permission of the Highway authorities. Even a residential building is forbidden without such permission. She submits, distances for building line and control line are necessarily required to be implemented, which are not a mere formality or technical requirement. There are many aspects underlying, viz; human safety, scientific considerations, traffic, avoidance of congestion, inconvenience.

68. For aforesaid purpose, learned counsel places reliance on decision of this court rendered in its Principal Seat in the case of *Satyanarayan Dayma v. State of Maharashtra*, reported in 2009 (4) *MH.L.J.* 544, which refers to the object of the Maharashtra Highways Act and observes about, mandatory nature of section 9 of the statute which forbids any construction within the control and building lines without prior permission of the Highway authorities.

69. She particularly emphasizes the change of user as has been purportedly allowed by the Assistant Director of Town Planning would seldom be reliable alteration and would not at all legalise regularization of unauthorized construction under the Maharashtra Highways Act. She submits that seeking prior permission under section 9 of the Act is the mandatory condition. The same is in public interest and any breach in seeking such prior permission affects fundamental rights of all, particularly of residents around and passers-by over the road. Waiver of such mandatory condition is not possible. The legislature has carefully drafted said provision beginning with non-obstante clause and in such cases, relaxation of condition with retrospective effect is not possible. The provision is clear and unambiguous and any other interpretation may crush the clear intention of the legislation.

70. She refers to and relies on decisions of the supreme court in the case of *Krishnan Lal v. State of Jammu and Kashmir*, (1994) 4 SCC 422 and *Ritesh Tewari v. State of Uttar Pradesh*, reported in (2010) 10 SCC 677.

71. Learned counsel further buttresses her claim with reference to a Supreme Court decision in the case of *Oswal*

Agro Mills vs. Hindustan Petroleum Corporation Limited and another, reported in (2014) 2 SCC 491, putting emphasis particularly on paragraph no. 23 thereof, contending that the provisions will have to be consistently and purposively interpreted and not disjunctively and a change of user without regard to the object and purport underlying the provisions would not be accommodated.

72. She further refers to a case of *Deepak Kumar Mukherjee v. Kolkata Municipal Corporation and another*, reported in (2013) 5 SCC 336 to emphasize that illegal / unauthorized construction causes public hazards and violation of fundamental rights of other citizens and it cannot be regularized by the court, pointing out paragraphs 8 and 29 of said judgment.

73. She, referring to the case of *Vinayak Shankar Bapat and another vs. Superintendent of Police and another*; ALL MR (Cri.) 2044 particularly paragraphs no. 18, 19 and 20 therein, stresses on the problems caused by traffic, congestion and the risk to human lives having become severe by the illegal construction of respondents no. 6 and 7. She for said purpose also points out the case *Tamil Nadu vs. K. Balu and others* (2017) 2 SCC 281

banning liquor shops in 500 metres from all State and National Highways.

74. Learned counsel contends, the case of *Syyed Ratanbhai Sayyed and others vs. Shirdi Nagar Panchayat*, reported in (2016) 4 SCC 631, that it effectively brings before court the importance of building line and control line and the Supreme Court has upheld the decision of the Shirdi Nagar Panchayat to evict the tenants of the shops which were built within the control line and points out paragraphs no. 24, 25, and 48 to 56 therefrom.

75. Learned counsel in the backdrop of aforesaid submits that high court would not be able to regularize something which is not permissible in law since it would amount to giving premium over illegalities and tantamount to perpetuate the same.

76. According to her, decision in the case of *Syyed Ratanbhai Sayyed and others vs. Shirdi Nagar Panchayat* (supra) has considered that it is not only enough to direct demolition of building but it is equally important to bring the offenders to the book. She,

therefore, urges this court to order demolition of the construction of shopping complex and along with the same, an inquiry by police to investigate into offences committed by raising construction, in order to bring the offenders to the book. She desires a court monitored inquiry since, according to her, authorities appear to work hand in glove.

77. Learned counsel reiterated that section 9 of the Maharashtra Highways Act, 1955 read with Government Notification dated 09-03-2001 would show that it is not possible to differentiate between residential and commercial user for the purpose of restriction to construct building within control line and building line and mere change in user cannot be a ground to relax or exempt conditions for regularization of such illegal construction. She submits that a thing which is not possible to be done directly under the law shall not be allowed to be done indirectly and this court should not allow the same. She submits that section 9 of Maharashtra Highways Act with the employment of non-obstante clause requiring prior permission will not be and ought not be interpreted with leniency and would not at all allow retrospective relaxation of condition and in this case,

compounding sought of illegal construction raised not with due procedure, and required prior permission, is not possible and cannot be made possible.

78. She submits that the arguments on behalf of respondents no. 6 and 7 to let compounding of illegalities by permitting change of user from commercial to residential is illusory, for, the events thus far show respondents no. 6 and 7 have no real and honest intention in seeking such change and the arguments are merely a subterfuge. She submits, even residential user of the building is not possible with the structure as has come up on the prohibited land. Besides, many other interests are stated to have developed in respect of shops which can hardly be put to any residential use.

79. Learned counsel submits that though respondent no. 7 has attempted to exemplify that change of user from commercial to residential may be allowed as it would undergo heavy financial losses, in fact, there is no such real intention of respondent no. 7. Written submission on this reads, thus;

" But his utmost willingness to undergo losses seems to be a mere charade to get out of this litigation and keep using the building for commercial purpose, as has been done from 2007-2017, despite the alleged change in use granted by Executive Engineer PWD. "

80. Communication of the Assistant Director of Town Planning had been ignored by Nagar Panchayat. Fraudulently, Nagar Panchayat had taken a decision to go ahead with illegal and unauthorized construction of shopping complex on F.B.T. basis. She submits, thus it is apparent that Chief Officer of the Municipal Council and respondent no. 7 were acting hand in glove.

81. She submits, the situation calls for a direction to the concerned authorities under the Maharashtra Regional Town Planning Act, 1966 to stop user and occupation of and remove unauthorized construction and also to penalize the concerned for the same pursuant to sections 52 to 55 including section 56A which stipulates punishment for failure to take action against unauthorized construction, including against the Municipal council, Shirdi for high handed actions. She submits, with the State highway now being declared national highway, the shopping complex being at 25 metres and developments having come up in breach of mandatory provisions, *inter alia*, section 9 of the Maharashtra Highways Act, the same is *ab-initio* illegal and fortiori deserves

demolition along with initiation of criminal proceedings fixing responsibility on persons / officers concerned.

82. Mr. V. D. Hon, learned senior advocate appearing on behalf of respondent no. 6 – Chief Officer, Municipal Council, Shirdi submits that a hue and cry over so-called and referred to as illegality in raising construction of building over the land belonging to municipal council is nothing but making mountain out of a mole hill. He submits, the construction as it subsists as on the date cannot be dubbed as illegal at all.

83. He submits that had permission been taken for residential purpose then it would not have posed any difficulty. Earlier intention underlying construction assuming a concession can be possibly had may have been a mistake but, respondent no. 6 has resiled with the circumstances and mistake has now been rectified, as such, no action against respondents, particularly respondents no. 6 and 7, is called for and court may not indulge into request being made by petitioners.

84. Mr. Hon, learned senior advocate submits that respondent no. 6 had applied to the Director of Town

Planning, Pune, on 19-06-2004 seeking relaxation of application of rule 28.2 and further that Nagar Panchayat had also sent a detailed proposal on 16-06-2005 to allow construction of the building at a distance of 25 metres from centre of the highway for residential use. Communication dated 19-06-2004 had been responded to by the Director of Town Planning, Pune on 15-07-2005, stating that relaxation would not be possible and respondent no. 6 may approach the Public Works Department. The request under communication dated 16-06-2005 was followed by letter dated 01-08-2006 and on 19-11-2007 no objection to change of user had been duly given.

85. He submits that there had been initially an aberration in seeking permission for construction, for, a building referred to as shopping complex, however, having realized that the building would not legitimately be possible to be used for commercial purposes, a change of user had been sought which has been granted. He submits that as on the date, the building has been allowed residential user which takes within its fold as allowed some activities for convenience. According to his instructions, the activity under the style of shops,

appears to have impressed upon the authorities that the building is being used for commercial purposes but it would not be the factual position, for such an activity being for convenience of occupants is permissible. The building now being used as a dormitory requires convenience shopping as allowed for residential user of the building and it cannot be said that the building is being used for commercial purpose. A convenience shopping would take different form in different activities in different circumstances. While the building is abutting a highway and is being used as dormitory, the shops in the building in majority are ticket vending outlets of the transporters making it convenient to dormitory occupiers. A few other shops of medicines and dispensary of a doctor also serve purpose of dormitory occupiers. He submits, since the building is allowed to be used for residential activities, initial position of breaches or contravention in following certain procedure pale away.

86. He submits that it is not a case that now it is a commercial building within 37 metres from the centre of Nagar-Manmmdad State highway. It being not commercial building, the consideration of 37 metres control line put forth

by petitioners would not have any role to play in the present matter. He submits that even otherwise a bypass has been suggested, as such, in all certainty present highway would be an internal road and would be free from restrictions of building and control lines. He submits, demolition would be a huge public exchequer loss coupled with that Municipal council will have to face action from stake-holders in the construction and may endanger existence of municipal council.

87. Mr. Hon submits, affidavits filed by authorities in 2017 are under erroneous impression about ticket vending outlets of transporters is a commercial activity which, in fact, having regard to use of the building as dormitory is a matter of convenience shopping for a person lodging in the dormitory and, therefore, the statements and averments in that context shall not sway the court to consider the real user of the building to be for commercial purpose. He, therefore, urges this court not to indulge into the request made by petitioners and prays for dismissal of writ petition.

88. He submits, even *M.I. Builder's* case (supra) on which reliance is placed by petitioners shows that demolition had

been directed in said case, of only such portion of the building over such area in which it cannot be allowed to stand under the rules whereas petitioner in the present case is seeking demolition of entire construction.

89. He submits, here, it is not the case that the building as is existing cannot be allowed to stand for the purposes for which it is now being put to use and as such, a demolition which is not only a harsh action but would also put the respondents to heavy financial loss/detriment as lot of money, labour and time has been spent in the construction and would not be justified as it would result into public loss. While the building is allowed residential user and the same is being used as such, harsh action of demolition of the building is not called for. He, therefore, submits that with the developments as aforesaid especially of alteration in user, challenge purportedly posed in the writ petition is unsustainable and writ petition be dismissed.

90. Learned counsel Mr. R. L. Kute appearing on behalf of respondent no. 7 – contractor submits that land survey no.170/A2/1 abutting Nagar – Manmad highway was owned by the then Shirdi Nagar Panchayat. The same had been

encroached upon by various persons and in order to remove the encroachments, it had been decided to erect shopping complex under a resolution by Nagar Panchahayat. Subsequently, elections to Shirdi Nagar Panchayat were held and petitioner no. 1 and mother of petitioner no. 2 were elected as councillors. They had participated in the meetings held in January, 2002 to discuss subject of construction of shopping complex over the land on F.B.T. basis. Thereafter in June, 2002, general body meeting had been called to decide on terms and conditions of construction of shopping complex. Resolution accordingly had been passed on 21-06-2002 by general body allotting the work on F.B.T. basis. In all these meetings petitioner no. 1 and mother of petitioner no. 2 had been present and had participated in the proceedings. In September, 2002, public advertisement had been issued in newspaper, inviting tenders for construction of shopping complex and a community hall. In the same construction of area of 1073.965 square metres had been proposed and an area of 566 metres had been reserved for Nagar Panchayat, including a community hall and about 507.315 square metres area had been kept for construction of shops.

91. He submits that, thereafter, bids received were discussed in general body meeting in October, 2002 and a resolution had been passed to accept tender of respondent no. 7 since it was found to be most profitable for the Municipal Council wherein a community hall had been agreed in favour of Municipal Council along with six shops, i.e. shops no. 9, 13 and 20 on ground floor and three shops bearing no. 25, 33 and 40 on the first floor. Accordingly, an agreement was executed and work order had been issued. In all these proceedings, petitioner no. 1 and mother of petitioner no. 2 had been present and had participated. Subsequently, plan also was amended by calling a general body meeting in September, 2003 wherein also petitioner no. 1 and mother of petitioner no. 2 had been present and had signed register concerned.

92. Suddenly after about two years, in 2005, a notice came to be issued by petitioners making allegations of building construction being within 37 metres area of control line of Nagar-Manmad State highway and without permission for shopping complex. Before the same, in general body meeting held in November, 2004, a resolution had been passed by

Municipal Council wherein it had demanded four shops on the ground floor in stead of earlier three and had retained two shops on the first floor.

93. Mr. Kute submits, on 15-07-2005, the Director of Town Planning purported to reject permission on the ground that relaxation of condition for construction of shopping complex within 37 metres of central line of State highway had not been possible without permission from the State highway authorities and had suggested to take prior permission of the public works department. The rejection was in response to application dated 19-06-2004 by the Nagar Panchayat to the Town Planning Department for relaxation of condition of construction to be beyond 37 metres from central line of State highway. He submits that in the meanwhile despite being participants in the meetings held hitherto, petitioners had moved present writ petition seeking demolition of shopping complex.

94. Mr. Kute submits that the Government has under its resolution dated 09-03-2001 prescribed 20 metres distance from central line of State highway for construction of residential building in urban area and maximum of 37 metres

control line for the commercial complex in urban area. He submits, a tender notice had been issued on 01-03-2005 by the Executive Engineer, World Bank Project Division, Ahmednagar who is also the Executive Engineer and the Highway Authority to construct four laning Kopargaon – Ahmednagar State Highway with construction of two lane Shirdi bypass on BOT basis and work of Shirdi-Rahata bypass has started immediately and is under progress.

95. He submits that Nagar Panchayat, Shirdi is a planning authority under M.R.T.P. & Municipal Councils Act and as such is competent to grant permission for construction and user of building. Competent authority had granted permission for change of user from commercial to residential in order to bring the construction in tune with the law and the relevant rules.

96. Mr. Kute submits that on 01-08-2006, the Chief Officer of Nagar Parishad had made an application to the Executive Engineer, World Bank Project under the Highway Act, seeking permission to change, user of building constructed on survey no.170/A2/1 from commercial to residential. He submits that allegation by respondent no. 7 of suppression of material facts

by petitioners have not been denied in the rejoinder filed by the petitioners.

97. Learned counsel submits that while issuing rule in writ petition in July, 2007, the high court had permitted the Municipal Council to approach the authorities to seek relaxation of condition of construction to be not within prohibited distance from central line of the State highway and had also given liberty to appropriate authority to decide on the application by Municipal Council in accordance with law.

98. He submits, accordingly on 19-11-2007 the Executive Engineer under the Highways Act had granted permission to change user of the building from commercial to residential in pursuance to application submitted by Nagar Panchayat on 01-08-2006. He submits, said permission is not challenged by the petitioners. He further refers to that on 05-12-2014, the Municipal Council had applied to the town planning officer to sanction building and construction plan for lodging and dormitory for residential purpose with convenience shopping.

99. He submits that the petitioners have not come to the court with clean hands and have, in fact, suppressed material

facts. He submits that it has been suppressed by petitioner no. 1 and mother of petitioner no. 2 that they as councillors had participated in the meetings and had been instrumental in passing resolutions from time to time for construction of shopping complex for commercial purpose. He submits, this particular aspect not only has not been denied by petitioners, but has been suppressed from being disclosed in the writ petition. He submits that passing reference to any document is not sufficient and all documents need to be placed on record, else the proceedings are liable to be dismissed. He submits that for suppression of facts and not coming to the court with clean hands and making only stray references, the writ petition is liable to be dismissed. He submits that there is nothing on record to show that any notification had been issued by the State Government in the official gazette prescribing building line, control line from central line of the State highway and much less after calling objections and deciding the same.

100. Mr. Kute submits that the government resolution dated 09-03-2001 is general resolution prescribing control lines and building lines, 20 metres building line for residential purpose

and 37 metres of control line for commercial purpose, however, said Government Resolution would not take place of of notification pursuant to section 7 of the Maharashtra Highways Act. In the circumstances, according to him, requirement of prior permission was not obligatory. He submits that if a statute prescribes notification to be published in government gazette and if the same has not been done, the alleged non compliance of prior permission pursuant to section 9 cannot be insisted upon and would not render the proposal and construction illegal. If statute prescribes a particular act to be done in a particular manner, the same shall be done in such manner only and as such, the allegation of breach of section 9 is absolutely untenable.

101. He submits that prior permission is not envisaged in Government Resolution dated 09-3-2001 in which prescribed are the building and control lines for State Highway and National Highway. Hence, the case of the petitioners about there being no prior permission of the Executive Engineer, Highways shall stand razed to the ground. He submits, the Municipal Council has subsequently resolved on 18-07-2006 to change user of building from commercial to residential.

Said resolution has not been challenged at all and the same has thus become final. As a matter of fact, Executive Engineer, World Bank Project - State highway authority had allowed change of user from commercial to residential on 19-11-2007 and said permission by the highway authority is not challenged by the petitioners till date.

102. Relying on decision of the supreme court in the case of *Managing Committee, Khalsa Middle School and another v/s Mohinder Kaur (Smt) and another* reported in 1993 *Sup. (4) SCC 26*, learned counsel Mr. Kute contends that a resolution takes effect immediately on the date of its passing and in view of the same since the resolution with regard to change in user had been passed on 18-07-2006, effect of change of user had already taken place prior to the date of order passed by the high court on 16-07-2007 and the respondents have not changed user after 18-07-2006.

103. He purports to submit that the land concerned is in yellow zone of erstwhile Shirdi Gram Panchayat since 1992. He submits, initial construction had been at a distance of 24.35 metres from the central line of the State highway but in view of Government Resolution dated 09-03-2001,

commercial construction was not permissible, however, while the purpose itself has undergone change from commercial to residential, the construction now is beyond 20 metres stipulation under aforesaid Government Resolution dated 09-03-2001. In the circumstances, residential purpose of construction is outside impermissible distance of 20 meters under Government Resolution dated 09-03-2001 and is not affected by the Maharashtra Highways Act or for that matter Government Resolution dated 09-03-2001. The same is also not affected by development plan it being in residential zone. In the circumstances, taking into account decision of the supreme court in the case of *M.I. Builders (supra)* subject action can be compounded for the reason that the same now is in compliance with requirements of provisions of the MRTP Act and the rules as also other laws and rules and the same belongs to Shirdi Nagar Panchayat.

104. He submits, respondents no. 6 and 7 undertake the user of the building only for residential purpose including convenience shopping and the same would not be utilized for commercial purpose. He submits that though change of user has been allowed, actual user for residential purpose could

not take place in view of order passed by this court on 16-07-2007. He submits, town planning officer has already sanctioned residential use of said building. He submits that with subsequent events taking place during pendency of writ petition and the same having not been challenged by the petitioners, those have become final and the petition is, in the circumstances, rendered infructuous and as such requests for dismissal of the same.

105. Learned counsel submits that shops were given to concerned respondents long before the order dated 16-07-2007 had been passed by this court. Agreements allotting shops had been before 16-07-2007, however, save a very few shops, rest of the shops have not been allotted. He, therefore, submits that respondents no. 6 and 7, in the circumstances, are not liable to be attributed commission of any contempt of the order of this court dated 16-07-2007. The Municipal Council is receiving rent pursuant to agreements executed before the date of said order. He submits, respondent no. 7 has expended huge amount over the construction of the building and has completed the same and if the user of the building is not allowed as per change, the same would put

everybody's right to peril and loss. He, therefore, seeks compounding of building and to permit the same for residential user. He submits that the decisions relied on, on behalf of the petitioners, would not be applicable to the present facts and circumstances since in those decisions issue with regard to conversion of commercial building into residential as in the present case was not involved.

106. Although learned counsel for respondent No. 7 Mr. Kute purports to rely on the case of *Managing Committee, Khalsa Middle School and another Vs. Mohinder Kaur (Smt.) and another, 1993 Supp (4) Supreme Court Cases 26*, to impress upon that resolution would be effective from the date of passing itself. The case appears to have been on a different factual background altogether and may have little relevance to the present matter.

107. Learned Assistant Government Pleader Mr. Shashibhushan Deshmukh has submitted that there has been no relaxation given by the concerned authorities for construction of a commercial complex at a distance of 25 metres from central line of highway as would emerge from the affidavits filed on their behalf from time to time. However,

while the Standardized Development Control and Promotion Regulations for municipal councils as enforceable since 2013, upon communication dated 05-12-2014 from Nagar Panchayat and with reference to letter dated 19-11-2017, letter dated 12-12-2014 had been issued.

108. The Government had taken a decision dated 09-03-2001, stipulating building line and control line uniformly applicable across the State. On 16-07-2001 Nagar Panchayat had sent a communication to town planning office seeking approval / recommendation for permission to construct a shopping complex over land survey no. 170/A2/1 with condition to obtain no objection certificate. Response to the same had been sent back on 01-08-2001 from the Assistant Director, Town Planning, Ahmednagar, pointing out various deficiencies and that the proposed construction will be required to be at a distance of 37 metres from the central line of highway and stating clearly that merely on the condition of obtaining no objection certificate, approval to plans cannot be recommended.

109. Nagar Panchayat convened a meeting on 28-01-2002 including on agenda discussion on construction of shopping

complex over land survey number 170/A2/1 and passed a resolution to go ahead with construction of shopping complex. Construction it appears was proposed at a distance of 25 metres from central line of the Highway. On 07-09-2002, a paper publication had been given in *Marathi* daily '*Loksatta*'. Pursuant to the same, tender of Respondent no.7 was accepted and agreement came to be executed with respondent no. 7 in November, 2002. It is stated that the construction had accordingly commenced in 2003. At the end of September, 2003, a resolution was purportedly passed altering the construction by providing for two staircases substituting lift.

110. It appears, petitioner had made an application to the Collector in October, 2003 asking for enquiry into the permission and construction over the lands belonging to Nagar Panchayat and for certain information. Collector issued letter dated 18-08-2004 in respect of aforesaid application.

111. Petitioners had applied to Nagar Panchayat on 05-06-2004 for information. On 19-06-2004, Nagar Panchayat had written to Director of Town Planning, Pune. Subsequently under letter dated 28-06-2004, petitioners had been

communicated by Nagar Panchayat about that distance of 37 metres is necessary to be kept from Nagar – Manmad highway, however, construction has been proposed at a distance of 25 metres skipping reference to communication dated 19-06-2004 to Director, Town Planning, Pune.

112. On 03-03-2005, petitioners issued notice to respondents. Present writ petition is filed on 06-05-2005.

113 High court had initially issued notice on 06-05-2005 along with interim relief. Subsequently, since certain compliances had not been made, interim relief had ceased to operate.

114. Respondents had filed their responses to the writ petition. Respondent no. 6, Chief Officer, Nagar Panchayat, filed reply in January, 2006, alleging petitioners having kept back certain information from the court and contending that the concerned Nagar-Manmad Highway, as bypass was being constructed, would cease to be a highway. In this reply, it has been referred to that Nagar Panchayat had written on 19-06-2004 to Director, Town Planning, Maharashtra State, Pune, seeking relaxation referring to rule 28.2 of the Standardized building bye-laws. Nagar Panchayat has stated that a detailed

proposal had been sent on 16-06-2005 to give no objection to construction for commercial building at a distance of 25 metres from centre of road. This communication was made to the Executive Engineer, Public Works Department, World Bank Project. Although it is stated in the affidavit in reply of January, 2006 by Nagar Panchayat that accordingly it had approached the Public Works Department on 16-6-2005, in the meanwhile, the Director of Town Planning, Maharashtra State, Pune, under communication dated 15-07-2005 responding to request of Nagar Panchayat dated 19-06-2004 had conveyed that relaxation is not possible and municipal council will have to approach Executive Engineer, Public Works Department for a prior consent.

115. In May, 2007, respondents no. 1 and 3 to 5 had filed affidavit in reply to writ petition, referring to requirements under various rules and particularly to that requirement of keeping distance of 37 metres from central line of the highway can be had relaxed only from highway authorities and that the shopping complex constructed by respondent no.6 is at a distance of 25 metres. 16-06-2005 approach of respondent no. 6 appears to have been followed by sending a

letter requesting for no objection to conversion to residential user to Executive Engineer, World Bank Project.

116. Respondent no. 7 filed reply to the writ petition in June, 2007, contending ulterior motive of writ petitioners etc. and that by July, 2004, major portion of construction of shopping complex had already been over, further contending that the construction cannot be dubbed as illegal as it is at a distance of 25 metres from central line of State highway and not 37 metres.

117. Thereafter, petitioners had filed rejoinder to the replies in June, 2007, terming the construction to be illegal and to take action pursuant to sections 44, 45 and 52 to 59 of the Maharashtra Regional Town Planning Act.

118. Thereafter, the high court had passed an order on 16-07-2007 injuncting respondents from utilizing premises within 37 meters from the central line of the highway for any purpose and also directed not to issue completion certificate, further, letting the authorities to decide on applications/representations made by respondent no. 6.

119. In affidavit in reply filed by respondent no. 6 in 2010 to contempt petition no. 45 of 2010, it has been referred to that under communication dated 19-11-2007 by Executive Engineer, World Bank Project while municipal council had approached competent authority for relaxation of condition of 37 metres distance, a communication had been received back from competent authority relaxing condition, directing Nagar Panchayat to construct beyond 24.35 metres.

120. In rejoinder thereto in November, 2010 petitioner had pointed out that communication dated 19-11-2007 has not been annexed along with reply by respondent no. 6.

121. Respondents no. 1, 4 and 5 in their reply to the contempt petition have not made reference to communication dated 19-11-2007 nor to any relaxation or permission for change of user to respondent no.6.

122. It appears that till middle of December, 2014, communication dated 19-11-2007 had not been placed on record before the high court despite there being orders for its production from time to time. The court had noticed in November, 2014 that despite order in 2012 for production of relaxation order, the same had not been complied with nor

respondent no. 6 had appeared before the court and as such court was impelled to issue bailable warrant against him. The court had been, in the circumstances, constrained to pass an order on 18-12-2014 making observations referred to hereinbefore.

123. There has been an affidavit-in-reply by respondents no. 4 and 5 filed on 20-12-2014 in contempt petition, referring to that communication dated 12-12-2014 is only a recommendation and not permission allowing change of user of the building, further pointing out that, the same was in response to forwarding by municipal council a letter after about seven years, clarifying that grant of permission or refusal to change of user is domain of municipal council.

124. Added respondent no. 8 – National Highway Authority had in its reply of June, 2016 pointed out that Central Government had declared a stretch of road starting from Sinnar to Ahmednagar, via Shirdi as national highway No.160 vide Gazette Notification S.O.814(A) dated 22.03.2013, albeit, the same had yet not been entrusted to national highway authority and had also referred to that a right of way would be minimum of 60 metres for all projects under the national

highway development projects whereunder no construction on national highway in prohibited area is allowed.

125. Despite aforesaid being the position, it appears that respondent no. 5 had filed additional affidavit in 2016 referring to that recommendation dated 12-12-2014 had been issued with reference to communication dated 19-11-2007 and request for revised building construction permission dated 05-12-2014 had been considered as the same would have been permissible under the Development Control and Promotion Regulations brought into force in 2013 and further making it clear that power to relax obligatory condition regarding construction at a particular distance from central line of highway rests with respondents no. 8 and 9.

126. In January-February, 2017, further affidavits have been filed by Collector – respondent no. 3 and National Highway Authority – respondent no. 8 pointing out that there is no relaxation as erroneously claimed by respondents no. 6 and 7 for construction at a distance of 24.35 metres from central line of highway and further that a commercial building has to be at a distance of 37 metres from central line of

highway and also that building in question appears to be used for commercial activities.

127. Further affidavit had been filed on 02-02-2017, on behalf of respondents no. 1, 4 and 5, stating that user of building partly for residential and partly for commercial had been allowed on certain conditions, however, on visiting the spot, it was found that construction is not as per the plan recommended by their offices and pointing out that inspection revealed that construction of the building is commercial and that commercial building has to be constructed at a distance of 37 metres from central line of highway.

128. Further, one more affidavit has been filed on behalf of Chief Engineer, Public Works Department, dated 07-02-2017, stating that no relaxation in the condition has ever been granted as claimed by respondents no. 6 and 7 and that the construction of building is at a distance of 24.35 metres from central line of highway, stating that building is a commercial complex. Said affidavit also refers to that commercial

construction according to prevailing rules has to be at a distance of 37 metres from central line.

129. While the matter had been before this court in June, 2017, it had been given to understand that a bypass road of national highway is created and as such concerned disputed road would not be used as highway. Thereupon, the court had considered that this assumes some significance and such information and record needs to be supplied to the court, however, no such information had ever been subsequently given nor any record in this respect had been placed before the court.

130. Letter dated 19-06-2004 has not appeared on record from respondent no. 6 or for that matter respondents no. 3 to 5 which had been claimed to have been issued requesting for relaxation which appears to have been replied under letter dated 15-07-2005 rejecting said request.

131. There had been a long hiatus between the communication/letter by the authority dated 19-11-2007 and its mention in affidavit in reply filed by respondent no. 6 in

2010 in contempt petition. Not only this, reference has been made rather casually and cursorily that relaxation order has been passed while it does not appear to be so. Even communication dated 01-08-2006 by respondent no. 6 to the authority of the World Bank Project has emerged only in 2014 along with affidavit by Collector in contempt petition at page 188. This so called communication of 01-08-2006 purportedly seeks no objection certificate for change of user of commercial building pursuant to resolution passed in the special meeting held on 18-07-2006, bearing no. 54. It has to be taken into account that said letter is dated 01-08-2006 and affidavit in reply to writ petition has been filed on behalf of respondent no. 7 in June, 2007 and yet in the affidavit, there does not appear to be any reference either to such resolution nor any communication being issued based thereon to the competent authority nor there is any reference in the affidavits subsequently filed on behalf of respondent no. 6 to the meeting dated 18-07-2006 or resolution number no. 54 or even the communication to concerned authority. It only makes a reference to that the municipal council had approached the Executive Engineer, World Bank Project for relaxation of condition whereas document at page 188 of the

contempt petition clearly bears that only no objection had been sought. Yet, the position is that calling of meeting, passing of resolution, issuing communication to the Executive Engineer, World Bank Project and response thereto had not been placed before this court at any time before December, 2014.

132. An aspect that needs attention to is about despite 19-11-2007 letter / communication by concerned authority neither respondent no. 6 nor respondent no. 7 had moved in furtherance of the same while order had been passed by high court in 2007 and it is the contention on behalf of respondent no. 7 majority of shops in the building could not be used. Thus, overall situation suggests that everything had not been alright as is sought to be put forth in the affidavits in reply from time to time on behalf of respondents no. 6 and 7.

133. Further, it does not appear that any action pursuant to so-called permission for change of user by competent authority had ever been thereafter pursued by respondents no. 6 and 7 till affidavits came to be filed around December – 2014.

134. Additional affidavit filed in writ petition in September, 2016 on behalf of respondent no. 5 refers to that recommendation is given for permission to construct within 24.35 metres from central line of highway for residential use, further referring to that power for relaxation is with State Highway Authority – respondent no. 8 and National Highway Authority - respondent no. 9 as have been referred to in said affidavit whereas, affidavit in reply on behalf respondent no. 8 filed in January-February, 2017 in writ petition has explicitly made it clear that respondent no. 8 has no power to grant any relaxation and had not granted any relaxation to respondent no. 6 allowing construction of commercial complex building at a distance of 24.35 meters from central line. According to prevailing rules, commercial complex/building can be only had at a distance of 37 metres from central line of the highway. Affidavit further makes reference to that spot inspection had been carried out on 29-01-2017 by concerned Circle Officer, Shirdi in presence of two representatives of the office of World Bank division, Ahmednagar and that the *panchanama* refers to that it is a commercial complex and building and further that distance of the same should be 37 metres from the central line of highway.

135. The conduct of respondents no. 5, 6 and 7 in the matter does not appear to be in keeping with their positions and tends to be rather overbearing and casual, for, it appears to be now the case of respondent no. 6 that pursuant to order dated 16-07-2007 of this court an application purportedly had been moved with the World Bank Project Officer. It is being projected that the same had been responded to by communication dated 19-11-2007. Despite that, till 2010 neither respondents no. 5 and 6 nor respondent no. 7 had brought forth the same and much less had placed any material in respect of the same on record till 2014. In reply to contempt petition, respondent no. 4 purportedly referred to communication by the Executive Engineer, World Bank Project, allowing change of user from commercial to residential. Reply by respondent no. 7 to contempt petition does not make reference to the same. While order was passed in July, 2007 by high court imposing restraint on respondents no. 6 and 7 for putting the building in question to any user, finances were claimed to be at stake in construction, yet neither respondent no.7 nor respondent no.

6 appear to have moved on with reference to communication dated 19-11-2007.

136. Along with reply, respondent no. 6 has annexed and relied on government resolution dated 09-03-2001 Exhibit R-2 which has been issued with a view to bring uniformity in building line and control line across the State under various enactments and rules and guidelines.

137. Aforesaid resolution dated 09-03-2001 shows, there has been a decision by the State Government for bringing in uniformity throughout the State, in respect of building line and control line, under the rules and Maharashtra Highways Act, 1955, Maharashtra Land Revenue Code, 1966, guidelines dated 13-01-1977 issued by the Central Government and standard building and development control rules for municipal councils in categories A, B and C since there was absence of the uniformity. The Government had taken decision directing the building line and control line across the State shall be as given under said resolution, specifying certain exceptions to the same.

138. Said government decision prescribes building line for urban and industrial area to be 20 metres from the central line of road or 4.5 metres from side borders of the road. Said resolution also prescribes control line for factory, cinema hall, commercial go-down, market etc. where there would be crowd, for urban and industrial area, distance would be of 37 metres from the central line of the State Highway.

139. The situation further shows among authorities that there is no dispute that the building line and control line stipulated under Government Resolution dated 09-03-2001 holds the field and apply in the present case.

140. As a matter of fact, it is not the case that respondent no. 6-Nagar Panchayat had been unaware of that the proposed construction would have to be and is governed by conditions, terms and stipulations issued by the Government. Thus, when proposal was put up for commercial building, there had been an attempt by respondent no. 6 to seek requisite approval and/or recommendation from town planning authority and Assistant Director, Town Planning, Ahmednagar had sent a communication in response stating

that construction shall be at a distance of 37 metres from the central line of the State highway and that approval to the plans cannot be recommended on the condition of obtaining no objection certificate.

141. While the petitioners sought certain information, respondent no. 6-Nagar Panchayat had clearly communicated to the petitioners that proposal forwarded for sanction to the Assistant Director, Town Planning, Ahmednagar, had been rejected and that it was obligatory to carry out the construction beyond 37 metres of the central line of the State highway and the proposed construction is just at a distance of 25 metres from the centre of the highway.

142. However, it may have to be noted that it is only after petitioners application dated 05-06-2004, Nagar Panchayat had requested on 19-06-2004 to Director of Town Planning to grant relaxation in condition of keeping distance according to rules. Yet, this was not referred to in communication to petitioners dated 28-06-2004. Further the purported letter seeking relaxation was responded to on 15-07-2005, refusing to accede to request and guiding to seek permission of other authority.

143. Purportedly, before 15-07-2005, a proposal had been stated to be sent under communication dated 16-06-2005 seeking no objection to construction of commercial building at a distance of 25 metres. It was followed by letter dated 01-08-2006 with reference to which the Executive Engineer issued letter dated 19-11-2007 purporting to grant no objection to change of user.

144. While respondent no. 6 had been submitting that relaxation had been given to it for construction of commercial complex, yet it does not appear to have any basis. The relaxation sought does not appear to have come through at any point of time. All along after institution of writ petition, it had been tried to be impressed upon that relaxation has been given by concerned authority, yet, no such relaxation order had been produced.

145. No relaxation order could ever be produced on behalf of respondent no. 6 at any point of time, and what has been produced before the court seven years after institution of writ petition and four years after contempt petition is, no objection by concerned authority to change of user. The authority in its

so called communication purporting to give no objection does not appear to have taken into account considerations required while issuing such communication/letter, relevant provisions of law and its power. It has not made reference to the provisions of law at all.

146. Attention may be had to that the communication by Assistant Director, Town Planning, Ahmednagar, dated 12-12-2014 recommending construction of the building from commercial to residential with convenience shopping beyond distance of 24.35 metre from the central line of the State highway has been issued only after bailable warrant was issued on 26-11-2014 against Chief Officer of Nagar Panchayat and upon a letter by Nagar Panchayat, Shirdi dated 05-12-2014, it is explained by the Assistant Director of Town Planning in his affidavit filed on 20-12-2014 in reply to contempt petition that it was not relaxation of condition as sought to be interpreted by respondents to permit construction within 37 metres from the central line of the State highway.

147. Further, the Collector – respondent no. 3 has, in his affidavit in reply of December, 2014 in the contempt petition,

clarified the position that the procedure has been prescribed in the circular of 1995 and that there had been no proposal received at his end from any of the authorities for any relaxation of condition and he had not forwarded any proposal to the government therefor.

148. Repeatedly, it has been stated by respondents that there has been no relaxation granted. However, respondent no. 5 purports to state in an affidavit that no objection for the change of user pursuant to some rules has been given since that may be permissible. It is further being stated by him that communication dated 12-12-2014 in response to letter of 05-12-2014 is only a recommendation and not a permission.

149. While respondents no. 4 and 5 have purportedly issued communication dated 19-11-2007, giving no objection to user of shopping complex for residential purpose, in their affidavit in reply filed in December, 2014 to contempt petition, they purported to clarify that grant of permission or refusal to change of user is a domain of municipal council as it is a planning authority. In such a case, if that is so, the communications so made on 19-11-2007 as well as on 12-12-2014 with reference to communication of 05-12-2014

communication of respondent no. 6, appear to have been issued pursuant to demand made by respondent no.6 despite respondent no. 6 being a planning authority and according to respondents no. 4 and 5, change of user of building is a domain of planning authority. Thus, the question arises not only about power, authority of respondents no. 4 and 5 and/or validity and/or efficacy of no objection to change of user but also about propriety of such communication while it does not appear to be that such an action is relatable to any provisions of law. The submissions on behalf of the petitioners about efficacy of communication dated 19-11-2007 appear to carry a lot of weight. The communication dated 19-11-2007 appears to be obviously issued in an attempt to alleviate severity of illegality and its perpetration in causing construction of commercial complex despite refusal to give relaxation in condition. Such an acrobatic exercise by the authorities appears to have been indulged into under a perception that the illegalities committed would be shrouded under the same.

150. Queerly, respondent no. 7 defends change of user of building from commercial to residential when his commercial

interests are at stake and with the change in user it is unlikely that respondent no. 7 would be able to secure its interest. This conduct by respondent no.7, in the circumstances, gives rise not only to suspicion but also gives re-enforcement to the position that the building is not only being used for commercial purpose but in all certainty is likely to be continued to be used for commercial purpose.

151. Section 9 of the Maharashtra Highways Act, 1955 forbids any construction, erection of any building or alteration in existing building or means of access to or from a highway or a layout upon any land lying between building line or control line even proposed to be fixed without previous permission.

152. Admittedly, there has been no prior permission by the highways authorities as required under section 9 of the Maharashtra Highways Act. It is not the case of any of the respondents that the highway authorities are invested with powers to give no objection to such construction. It does not appear that the procedure prescribed under the Maharashtra Highways Act for obtaining permission has been followed. It is not the case at all that construction of shopping complex

can be said to be covered under section 11 of the Maharashtra Highways Act nor it is a case that section 12 of said Act can be invoked in present matter.

153. It does not appear that pursuant to Government Resolution dated 09-03-2001, such permission could have been granted and received.

154. If the authority is not vested with power to permit a construction for intended purpose, no objection to change of user of building from commercial to residential given in the circumstances would not be compatible with the purpose for which it is vested with power and authority. It does not appear to be in accordance with provisions of law. Section 9 does not give any allowance to such an exercise of powers in the authority. It does not appear that under the provisions of the Maharashtra Highways Act, such an exercise of powers by contemplated. It further emerges that purported no objection for residential user issued on 19-11-2007 had been long before letter dated 12-12-2014 which is stated to be with reference to Standardised Development Control and Promotion Regulations as enforceable from 2013 and 19-11-2007 letter. Even otherwise, ambivalent approach of

respondent no. 5 has been exposed with the progress of the matter.

155. Intriguingly, while it has been referred to that on 16-06-2005 a communication had been made by respondent no. 6 seeking permission to have construction at a distance of 25 metres from central line of highway purportedly pursuant to section 9 of the Maharashtra Highways Act yet, it does not appear to be case at all of any of the respondents that such a communication had ever been made with reference to any meeting of Nagar Panchayat or any resolution therefor.

156. It may be noted that 16-06-2005 was a proposal of Nagar Panchayat for construction at a distance of 25 metres from central line of highway purporting to be pursuant to section 9 of the Maharashtra Highways Act. Going by the cases on behalf of respondents themselves, building had been almost completely constructed by 2004 and in such a case while section 9 provides for a previous permission of the authorities concerned, said proposal by Nagar Panchayat to the Public Works Department would not be consistent with the provisions, the object, the intent and the purpose underlying the provisions of the Act. This was an attempt by Nagar

Panchayat to put a gloss over its unauthorized and illegal action, which in its estimate would dilute and diffuse the flagrant breaches and contraventions and violations. It does not appear at all that despite legal provisions, stipulations, conditions, rules, regulations and the prevailing position of law, Nagar Panchayat had ever intended to use the construction which is illegal and unauthorized for other activities than the commercial ones.

157. The authorities through their affidavits have conveyed that they have no power to relax and had not relaxed any condition. The authorities have consistently referred to that it had not granted any relaxation. As such, no objection would hardly enure any benefit legalising or regularizing an act which is incompatible with and untenable in law and surrounding circumstances. On the other hand it has the effect of making it far more incongruous to rule of law and its fragility vivid.

158. Decision in the case of *Arun Krishna Patil and ors. vs. State of Maharashtra and ors.*, 2008 (4) ALL MR 345 cited to lay stress on that since atleast ostensibly there is no procedure followed according to section 7 of the Maharashtra Highways Act, there

would be no binding efficacy to stipulation dated 09-03-2001, since if a thing is to be done in a particular manner under a statute, the thing will have to be done in that manner alone.

159. Aforesaid submission made on behalf of respondent no. 7 about there being want of following procedure pursuant to the Maharashtra Highways Act is rather pedantic and has been taken with a view to avoid the liability and face consequences. The decision as appearing under resolution dated 09-03-2001 is a decision which embraces various State laws taking into account the Central Government guidelines and has been taken with a view to maintain uniformity in building line and control line all over the State. Thus, the combined effect of section 9 read with decision of the government referred to above would show that the protective cover would hardly be available to the actions taken by respondents no. 6 and 7 for so called non observance of procedure under section 7. In such an event, although it is contended that there is no notification published in the official gazette as prescribed under section 7 of the Maharashtra Highways Act, yet, there has been a clear Government Resolution covering the field and all the concerned persons,

citizens or legal entities/authorities are supposed to abide by the same. Nagar Panchayat, in fact, while dealing with cases of eviction of encroachers over its land on Nagar – Manmad highway had referred to and relied on the distance of 37 metres to be kept between central line of the road and the occupation by encroachers. It is not open to Nagar Panchayat now to go back from the same and take a different stand. Stickler's insistence in respect of so called non appearance of the procedure as required cannot be insisted on now by respondent no. 7. The plea at instance of respondent no. 7 would not be pertinent. Even, respondent no. 6 has been treating said Government Resolution to be applicable and binding on it and accordingly permission, no objection were being sought. Thus, it is not open nor respondents would be able to take up such a plea / ground to defend the construction. The declaration of building line and control line in the government resolution dated 09-03-2001, indeed, has strong nexus and bonding to various enactments and guidelines including the Maharashtra Highways Act. The stipulations and terms are with reference to the statutory requirements. The respondents would not be able to avoid,

and/or extricate themselves from, liabilities and consequences for breaches, contraventions and violations.

160. In the face of aforesaid situation it would not be open for respondents no. 6 and 7 to contend that keeping of 37 metre distance for a commercial building cannot be insisted upon for want of notification while respondents on their own have treated a distance of 37 metres from central line of highway as control line and shall intervene for a commercial construction.

161. The respondents themselves, in respect of very same highway, have been treating distance of 37 metres from central line of the Highway to be a binding stipulation all along, as can be gathered from their approach earlier on, as is reflected in the decision of the Supreme Court in the case of *Sayyed Ratanbhai Sayeed deceased, through legal representatives vs. Shirdi Nagar Panchayat*, 2016 (4) SCC 631 cited by petitioners. As such, it would not be open for the respondents to contend that the stipulation under the resolution dated 09-03-2001 would not bind them or in this case that would not apply, for,

the very stipulations have been referred to and relied on in the case before the Supreme Court of India.

162. It may not be out of place to refer to the case cited on behalf of the petitioners viz; *Sayyed Ratanbhai Sayeed deceased, through legal representatives vs. Shirdi Nagar Panchayat*, reported in 2016 (4) SCC 631 in which, following observations occur in paragraphs no. 34, 51, 52 and 56.

" 34. *As is discernible from the pleaded stand of the respondent-defendants and endorsed by the nagar Panchayat/Municipal Council, the shops of the appellants have not only encroached upon the Palkhi Road (9 m. width) but also the adjoining road (15 m. width) adjacent to their plots and used as service road to the Temple. Further, their constructions also come within the prohibited distance of 37 m. from the centre of the Ahmad nagar Manmad Road, State Highway No. 10 i.e. the control line fixed under the Highways Act. Such encroachments, according to the respondents, being in derogation of the provisions of the 1965 Act, the 1966 Act and the Bombay Highways Act as well as in conflict with the Development Plan are required to be removed not only to promote the development of the area but also to secure the convenience and safety of the surging volume of devotees in particular and the local population in general.*

51. From the additional documents laid before this Court on behalf of the Nagar Panchayat/Municipal Council, it would transpire that by Notification No. BHA.3765/116348 dated 19-4-1967 of the Buildings and Communication Department, Sachivalaye, Bombay, the Malegaon - Manmad - Ahmednagar - Dhond - Patas Road, as specified therein, was declared as a State highway and that the said notification was published in the Official Gazette. By a Resolution of the State Government dated 9-3-2001, the building line and the control line amongst others of the State highway and main State highway were fixed as hereunder:

Sr. No.	Status of road	Building line		Control line (places like factory, cinema hall, commercial godown, market etc.) where crowd takes place.	
		Civil and industrial section	Non-civil section	Civil and Industrial Section	Non-civil section
3	State highway and main State highway	20 m from the centre of road	40 m. from the centre of the road	37 m. from the centre of the road	50 m from the centre of the road

52. The declaration of Ahmad Nagar Manmad Highway 10 and the fixing of the building line and the control line under the Highways Act are also matters of record and supported by above documents.

56. As the recorded facts demonstrate, the growingly felt exigency of clearing the area of the structures and encroachments in conflict with the statues involved is in the preponderant public

interest and it would thus be apparently inexpedient to trivialise the aspects of safety, security and convenience of the burgeoning devotees and the local population as persistently highlighted by the respondents. Any contrary view, in disregard to this otherwise salutary cause, would signify a retrograde step in the context of greater public import. "

163. Observations aforesaid appear to be with reference to the stand of the very Nagar Panchayat in that case. It may not thus be open for respondents no. 6 and 7 to contend that commercial construction shall be allowed within a distance of 37 metres from the central line of highway. From the case cited it appears that the same Ahmadnagar – Manmad highway passing through Shirdi has been considered. Nagar Panchayat, Shirdi appears to have opposed the claims of the appellants therein on the grounds as appearing under aforesaid observations. Having regard to the situation as appreciated, the appellants before the supreme court were not given any relief by the supreme court and it was directed that the appellants be paid compensation by the respondents.

164. Thus, the contention on behalf of respondents no. 6 and 7 that a distance of 37 metres would be required to be kept is not mandatory or binding condition/stipulation, is not sustainable.

165. Other thing that will have to be looked into is in the matters of such importance, technical approach with obstinate insistence would let erring persons roam with impunity while there is sufficient material indicating that there have been lot of breaches and contraventions and actions which are not legal and legitimate at all.

166. Learned counsel for respondent no. 7 had also referred to decision of Supreme Court in the case of *Bhaskar Laxman Jadhav and others Vs. Karmaveer Kakasaheb Wagh Education Society and others*, (2013) 11 Supreme Court Cases 531, contending that there is no disclosure of all the material facts and the petitioners having not approached the Court with clean hands, as they were parties to the resolutions passed deciding construction and bringing up the same, however, this decision as well would not dissuade us, since it has emerged on record that as stated above, there are lot of breaches and contraventions. Approach of the respondents does not appear to be in consonance with prevailing position under rules, regulations, law, guidelines and their own earlier acts in other matter.

167. It is, therefore, apparent that the observations as are appearing from time to time in various orders passed by this court, all along reference was being made up to 2014 that there has been a relaxation order by concerned authority. Yet, the situation had not been altered nor it is case of respondents that a commercial construction can be allowed or has been allowed within 37 metres area from central line of highway.

168. Thus, situation clearly emerges that respondent no. 6 had gone ahead with its decision to construct commercial complex despite being warned by respondents no. 4 and 5 that there can be no approval and/or recommendation with the deficiencies pointed out in the communication dated 01-08-2001 drawing attention as well to requirement of keeping distance of 37 metres from central line of highway for the shopping complex. Despite this being position, respondent no. 6 ventured to go ahead with its decision to construct commercial complex within 37 metres to which it appears, to quite a large extent, even petitioner no. 1 and mother of petitioner no. 2 had been parties. While construction as

resolved went ahead, it appears that some equations have changed for petitioners and they have revolted.

169. It emerges that the building in question has been conceived and treated right from beginning as commercial project and has been put to use and consumption as such.

170. It is being submitted on behalf of respondents no. 5, 6 and 7 that no objection had been given for a building for residential purpose allowing change of user from commercial to residential yet, it would have to be taken into account that no objection would not tantamount to compliance of section 9 of the Maharashtra Highways Act. Section 9 of the Act ordains a prior/previous permission for any construction within building line and control line. Thus, an admitted position emerges that there had been no prior permission sought and thus even going by the cases being developed by respondents no. 5, 6 and 7, no legality or legitimacy can be accorded to the construction which has come up in breaches, violations and contraventions of rules, regulations, provisions of law, stipulations and conditions prevailing.

171. Respondent no. 6 purports to lay emphasis on paragraph number 5 of resolution dated 09-03-2001, reading

thus :

" वेगवेगळ्या शहराच्या बाबतीत ज्यावेळी वर्गीकृत रस्त्यासाठी वळण रस्त्याची बांधकाम पूर्ण होतील, त्या त्या वेळी शहरातून जाणारे वर्गीकृत रस्ते अवर्गीकृत (de-classify) करणारी अधिसूचना सा.बा. विभागामार्फत प्रसिद्ध करण्यात यावी अशा प्रकारे वर्गीकृत रस्ते अवर्गीकृत होताच सदर रस्त्याचा ताबा संबंधीत महानगरपालिका / नगरपरिषदेला द्यावा. "

and as such, according to him, in view of the bypass being constructed, present writ petition does not carry any force. However, neither notification declassifying the Highway nor anything is placed on record that Nagar-Manmad road ceased to be a Highway.

172. While authority which had been approached, had refused to give approval/recommendation, a body incorporated under a statute had not been and is not expected at all to act recklessly and blatantly disregarding and digressing from the prescribed procedure considering that the legality and legitimization and compliances can be brought about. A statutory authority is expected to be conscious and cautious about that the compliances of requirements, legal and other ones, will have to be strictly abided by and adhered to. While the town planning authority had declined to grant approval/ recommendation for

commercial building and had made certain suggestions yet, it appears that Nagar Panchayat went nonchalantly ahead and had caused to issue tenders as if the body had unbridled power to do so and the persons then in charge went ahead unabashedly making commercial construction. It appears that it had been thought by the persons comprising the body that they are law unto themselves and would be able to do and undo law and flex the law to their wishes and desires. In the process, disregarding the statutory requirements and rules and regulations, they went ahead with the intended action like vandals. It does not appear that it is a case where persons at the helm in the body can be said to be unaware and ignorant of that they would have to abide by the law, rules, provisions, regulations, stipulations, conditions, guidelines especially it being a public body and persons representing cause of people at large.

173. It appears that there are too casual approaches by respondents particularly no. 5, 6 and 7 in the matter, for, they purported to casually seek and allow conversion of user of building from commercial as had been intended and had been planned by simply saying that it now can be used for

residential purpose with a convenience shopping. Even remotely, viability and feasibility of such a building being now sought to be used for residential purpose has not been brought forth. There had been binding prescription that no commercial construction can come up within control line of 37 metres from central line of the State highway. Yet, it has been considered by respondents no. 6 and 7 and other authorities, a residential construction permission is retrospectively possible and while building has come up as commercial complex. Permitting change in its' user now for residential purpose appears to be an eyewash and an attempt to get approval to what is patently illegal. This is amply borne out from affidavit of respondents no. 1, 4 and 5 filed on 02-02-2017 which refers to that the building is not as per plan recommended and the construction is commercial.

174. The things are even more grave in the matter with the affidavits coming up and filed by responsible authorities before this court in January / February, 2017 referring to that the building is being used for commercial activity. To turn Nelson's eye to the activities by persons then constituting respondents no. 6 - body and at its helm, which are flagrant

and violent would be giving a premium to the undeterred and brazen activity of constructing a commercial building. Legal provisions had not deterred the men who could not control their urge and had taken brash actions and the same is now casually tried to be justified and protected, contending that the building would be used for residential purpose. If people who are supposed to represent people and public at large and further their cause, do not control themselves and try to overcome barriers unabashedly and do not respect law, administration of justice would not let such people go scot-free without realizing impact and consequences of their brazen action, especially those persons who at the relevant time were at the helm and those who have connived at and were trying to justify the illegal action, should have lessons from long arms of law.

175. It thus emerges that the building in question which has been constructed as commercial building indisputably appears to be between the control line and central line of highway and being prohibited cannot be allowed to stand not only for the reason that there have been affidavits that despite conversion of building being allowed now for residential purpose, the

building is yet used for commercial purpose but also for, the very initiation of the proposal and construction of building and its execution even after realizing that the same is not recommended or approved and being casually allowed change of user *dehors* the law and rules, and in complete disregard to relevant rules, law, conditions, guidelines in that respect. Under the circumstances, we consider that this is a grave case wherein court shall intervene directing the law shall take course against erring persons.

176. In this case, it appears to have been considered that acrobatics would stay put to the action in accordance with law. If the matter is given legitimacy by simply and casually allowing commercial construction to be used now for residential purpose, justice in such case would not be met with to people at large.

177. All the acrobatics, in order to legitimize and regularize illegal and blatant violation of the rules and the laws fall too short to wriggle out of nonchalant, brazen illegality. Scruples are conspicuous by their absence in the whole process and in the projections, representations before this court.

178. We would not commend the petitioners' role, them being aware of the functions of the Nagar Panchayat, had travelled with the body to quite some distance and may be for the reasons best-known to them purport to bounce back on the decisions to which they are stated to be parties. Thus, though we are not lauding petitioners, however, once they have brought nonchalant, illegal and supercilious action of undeterred and brazen body before this court, we do not think weakness, deficiencies and defects of the persons approaching would dissuade us from going ahead and decide the matter since there appear to be blatant and flagrant breaches of rules, law, stipulations, conditions, guidelines, requirements under the rules and law.

179. However, in this matter it appears that the authority which is supposed to take action itself is involved in construction in question. It would, therefore, be for appropriate and/or higher and/or superior authorities to take action for removal/demolition of the construction in accordance with law.

180. The concerned authorities / respondents, apart from respondent no. 6, would have ample powers, including under the provisions of various enactments viz. Maharashtra Regional Town Planning Act, Maharashtra Highways Act, Municipal Councils, Nagar Panchayats and Industrial Townships Act, and relevant rules and regulations which to quite a large extent prohibit illegal, unauthorized and/or irregular construction and provide for appropriate action including for demolition of such construction.

181. Damages to public property/exchequer in such cases may have to be recouped and recovered from the responsible persons and the persons who were at the helm at the relevant time and whose actions / connivance has led to the same. Leniency in such matters is seldom going to serve the purpose and earn respect for law. The huge amount of investment/loss being referred to by respondents no. 6 and 7 shall not be a consideration in such case, for, respect, solemnity and abiding by law, onus and responsibility for the same which in turn facilitates civil life, civic sense and civilization which are invaluable and are priceless and not

computable in material terms would not and shall not cede its place and position to monetary consideration. Civilization necessitates such a course of action against wrong doers.

182. In the circumstances, we deem it appropriate to direct the authorities to take action in accordance with law and demolish the construction in question.

183. Writ petition, as such, stands allowed in terms of prayer clause (B). The appropriate and/or higher and/or superior authorities to take action in right earnest. Damages/loss to public property / exchequer and/or burden on the same be recovered, from the persons concerned then at the helm and responsible, by following a proper procedure. Rule made accordingly absolute. Writ petition is disposed of.

184. In view of aforesaid, civil application seeking early hearing of writ petition stands disposed of.

185. So far as contempt petition is concerned, we wish to give further opportunity of hearing to respondents.

186. At this stage, there is a request by Mr. P. S. Dighe, learned counsel holding for Mr. R. L. Kute, learned counsel appearing on behalf of respondent no. 7 to stay operation of this order for a period of eight weeks.

187. As such, the effect and operation of this order is stayed for the period as requested for.

SANGITRAO S. PATIL
JUDGE

SUNIL P. DESHMUKH
JUDGE

pnd/-