

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11949/2017

- 1] Sayyed Ratanbhai Sayyed,
Since deceased through his
Legal heirs.
- 1-A] Mahmood Sayyedbhai Sayyed,
Age : 38 Years, Occ. Business
- 2] Gajanan S/o. Baburao Kajale,
Age : 75 Years, Occu. Business
- 3] Raosaheb S/o Murlidhar Gondkar,
Age : 55 Years, Occ. Business,
- 4] Dnyaneshwar S/o Murlidhar Sonawane,
Age : 45 Years, Occu. Business,
- 5] Sanjay S/o Deelip Koditkar,
Age : 48 Years, Occu. Business,
- 6] Prabhakar S/o Ramchandra Vaidya,
Age : 67 Years, Occu. Business,
- 7] Rajendra S/o Manohar Manekar,
Age : 48 Years, Occu. Business
- 8] Jayesh S/o Ramchandra Bobde,
Age : 35 Years, Occu. Business,
- 9] Shyam S/o Ganpat Bobde,
Age : 62 Years, Occu. Business,
- 10] M.L. Kulkarni
Age : 65 Years, Occu. Business,
- 11] Mohan S/o Kacharu Jejurkar,
Age : 52 Years, Occu. Business,

- 12] Dnyaneshwar S/o Jagannath Nagare,
Age : 35 Years, Occu. Business.
- 13] Ashok S/o Anantrao Shinde,
Age : 59 Years, Occu. Business
- 14] Arunkumar S/o Popatlal Jani,
Age : 48 Years, Occu. Business
- 15] Ashok S/o Deoram Shivde,
Age : 52 Years, Occu. Business
- 16] Nana S/o Kedar Lade,
Age : 72 Years, Occu. Business
- 17] Rajendra S/o Sukhdeo Sajan,
Age : 35 Years, Occu. Business,
- 18] Madhav S/o Bhikaji Gondkar,
Since deceased through
His Legal Heirs & Representative,
- 18-A] Ashok S/o Madhav Gondkar,
Age : 52 Years, Occu. Business,
- 19] Bhagawat S/o Tukaram Thorat,
Since deceased through his
Legal heirs & Representatives,
- 19-A] Dattatraya S/o Bhagwat Thorat,
Age : 42 Years, Occu. Business,
- 20] Natha S/o Shankar Shelar,
Since deceased through his
Legal Heirs & Representatives,
- 20-A] Ashok S/o Eknath Shelar,
Age : 57 Years, Occu. Business

- 21] Bhikan S/o Baburao Gurav,
Since deceased through his
Legal heirs & Representatives,
- 21-A] Ramesh S/o Bhikan Gurav,
Age : 62 Years, Occu. Business,
- 22] Popat S/o Kisan Jejurkar,
Since deceased through his
Legal Heirs & Representatives,
- 22-A] Kishor S/o Popat Jejurkar,
Age : 40 Years, Occu. Business
- 23] Shankarlal S/o Mansukhlal Jani,
Since deceased through his
Legal heirs & Representatives,
- 23-A] Suresh S/o Shankarlal Jani,
Age : 58 Years, Occu. Business
- 24] Babu S/o Nana Sonar,
Since deceased through his
Legal heirs & Representatives,
- 25-A] Dattatraya S/o Balkrushna Chintamani,
Age : 55 Years, Occu. Business,
- 25] Krushnarao S/o Mahaling Shervekar,
Since deceased through his
Legal heirs.
- 26-A] Ganesh @ Gajanan S/o Krushnarao Shervekar,
Age : 45 Years, Occu. Business
- 27] Ramchandra S/o Ganpat Mali,
Since deceased through his
Legal Heirs & Representatives,
- 27-A] Deoram S/o Ramchandra Sajan,
Age : 52 Years, Occu. Business,

- 28] Baban S/o Baburao Pawar,
Since deceased through his
Legal Heirs & Representatives,
- 28-A] Sanjay S/o Baban Pawar,
Age : 40 Years, Occu. Business,
- 29] Indubai W/o Baburao Pawar,
Since deceased through his
Legal Heirs & Representatives,
- 29-A] Sanjay S/o Baban Pawar,
Age : 40 Years, Occu. Business,
- 30] Bansi S/o Mohan Dahale,
Since deceased through his
Legal Heirs & Representatives,
- 30-A] Manoj S/o Sudhakar Dahale,
Age : 42 Years, Occu. Business
- 31] Bhalchandra S/o Mahadeo Kulkarni,
Since deceased through his
Legal Heirs & Representatives,
- 31-A] Vijay S/o Bhalchandra Kulkarni,
Age : 66 Years, Occu. Business,
- 32] Madhukar S/o Balkrushna Deshpande,
Since deceased through his
Legal heirs & Representatives,
- 32-A] Saurabh S/o Vikas Shinde,
Age : 22 Years, Occu. Business,
- 33] Baburao S/o Chindhu Shivde,
Since deceased through his
Legal Heirs & Representatives,
- 33-A] Indubai W/o Shaligram Shivde,
Age : 40 Years, Occu. Business

- 34] Raosaheb S/o Umaji Jadhav,
Since deceased through his
Legal Heirs & Representatives,
- 34-A] Sushila W/o Raosaheb Jadhav,
Age : 45 Years, Occu. Business,
- 35] Tolani,
Since deceased through his
Legal Heirs & Representatives,
- 35-A] Sunil S/o Jethanand Tolani,
Age : 35 Years, Occu. Business,
- 36] Kishandas Premani,
Since deceased through his
Legal Heirs & Representatives,
- 36-A] Sunita W/o Kisandas Premani,
Age : 57 Years, Occu. Business,
- 37] Lalchand S/o Hirachand Tolani,
Since deceased through his
Legal Heirs & Representatives,
- 37-A] Rani D/o Lalchand Tolani,
Age : 45 Years, Occu. Business,
- 37] Jagannath S/o Trymbak Kulthe,
Since deceased through his
Legal Heirs & Representatives,
- 37-A] Nandkumar S/o Jagannath Kulthe,
Age : 45 Years, Occu. Business,
- 38] Jagannath S/o Chandrabhan Lute,
Age : 85 Years, Occu. Business,
- 39] Sulochana Vasant Koditkar,
Since deceased through her
Legal Heirs & Representatives,

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39-A] Pradeep S/o Vasant Koditkar,
Age : 52 Years, Occu. Business

40] Vitthal S/o Patilba Kote,
Since deceased through his
Legal Heirs & Representatives,

40-A] Ravindra S/o Vilas Kote,
Age : 35 Years, Occu. Business,

All R/o. Shirdi, Tq. Rahata,
District – Ahmednagar.

...Petitioners...

Versus

1] Shirdi Nagar Panchayat,
Shirdi. Through its Chief Officer,
Shirdi, Tq. Rahata,
District – Ahmednagar.

2] The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.

3] The District Collector,
Collector Office,
Ahmednagar.

4] Shri Saibaba Sansthan, Shirdi,
Through its Chairman,
R/o Rahata, Tq. Rahata,
District : Ahmednagar.

5] Uttam S/o Rambhaji Shelke,
Age : 63 Years, Occu. Agri,
R/o. Mothe Babanagar,
Nagar Manmad Road, Shirdi,
District : Ahmednagar.

...Respondents...

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Shri V.J. Dixit, Senior Advocate i/b Shri L.V. Sangeet, Advocate for petitioners.

Shri V.D. Hon, Senior Advocate i/b Shri A.V. Hon, Advocate for respondent no.1.

Shri A.B. Girase, Government Pleader with Shri B.A. Shinde and Mrs.M.A. Deshpande, AGPs for respondent nos.2 & 3.

Shri S.R. Chowkidar, Advocate for respondent no.4.

Miss.Pradnya Talekar and Shri K.M. Nagarkar, Advocates for respondent no.5.

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**CORAM: R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

DATE: 13.10.2017

JUDGMENT (Per R.D. Dhanuka, J.):

1] Heard learned counsel appearing for the parties.

2] By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioners seek a writ of certiorari, order or direction in the nature of writ of certiorari and pray for quashing and setting aside the order dated 26.9.2017 arising out of Writ Petition No.78/2004. The petitioners also seek a writ of mandamus *inter-alia* praying for an order and direction against the respondent no.5 for allegedly committing fraud on this Court by allegedly abusing the judicial process and obtaining collusive order. The petitioners have amended the prayers in the writ petition and seek

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additional prayer of writ of certiorari and seek correction and/or modification or for quashing and setting aside the order dated 26.9.2017 passed by this Court in Contempt Petition No.258/2017.

3] Some of the relevant facts for the purpose of deciding this writ petition and the contempt petition are as under.

4] At the outset, the learned counsel for the respondent no.5 (original petitioner in Writ Petition No.78/2004) through his counsel raises a preliminary objection about the maintainability of this writ petition by which the petitioners have prayed for a writ of certiorari for quashing and setting aside the order dated 26.9.2017 passed by the coordinate Bench of this Court in contempt petition filed by the respondent no.5. At the same time, the learned Senior Counsel for the petitioners has also raised an issue of maintainability of the Contempt Petition No.258/2017 itself filed by the respondent no.5 on various grounds.

5] It is the case of the petitioners that prior to 30.8.1974, the land bearing Survey No.1 Hissa No.1-A 1/1-A/2B2 of Shirdi, Taluka Kopergaon Dist.Ahmednagar, lying

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to the west of Shirdi Gaothan and adjacent to Nagar-Manmad road was leased out in small pieces by the Grampanchayat to the petitioners and some other persons for the purpose of carrying out trades like flower shops, sweet mart, hotel etc. The writ petitioners were allegedly paying the rent of their respective premises to the Grampanchayat. The Grampanchayat and Shri Saibaba Sansthan, Shirdi, intended to take possession of the entire 3 Gunthas land allegedly forcibly from the petitioners.

6] The petitioners, therefore, filed a suit bearing Regular Civil Suit No.600/1976 seeking declaration that they were the lawful tenants over the suit property and sought permanent injunction against those defendants not to take possession of the suit premises otherwise than due course of law. The said suit was compromised between the parties to the said suit and a decree in terms of compromise was drawn by the learned trial Judge on 20.8.1979. It is the case of the petitioners that under the said compromise decree, it was agreed that the shop owners, who were mentioned in Schedule B of the compromise term i.e. 45 shop owners, would be transferred

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and would be allotted appropriate land in Survey No.170. It was agreed that 45 shop keepers, including the petitioners herein, would be allotted specific area for their shops and will have to pay the rent to the respondent nos.1 & 2. It is the case of the petitioners that Shri Saibaba Sansthan, Shirdi, had to construct shops over the said land and to allot the same to those 45 shop keepers.

7] The petitioners filed execution proceedings in the Court of Civil Judge, Senior Division, Kopargaoon, bearing Regular Darkhast No.5/1990 on 13.11.1990. The Shri Saibaba Sansthan, Shirdi, also filed a separate execution proceeding bearing Regular Darkhast No.1/1990 for execution of the said compromise decree.

8] The petitioners also applied for temporary injunction restraining the judgment debtors from demolishing their shops or removing their shops from the suit property during the pendency of the said execution application. The execution application filed by the petitioners was opposed by the Shri Saibaba Sansthan, Shirdi. It was contended by the Shri Saibaba Sansthan, Shirdi, that near about 19 shop keepers had made

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encroachments over the Palkhi road. On 21.5.2004, the executing Court passed an order allowing the application filed by the petitioners partly and restrained the judgment debtors from removing or demolishing the shops of the decree holders whose names were shown in Schedule B alongwith compromise decree till the judgment debtors would make temporary adjustment of their shops in a triangle which was adjacent towards western site of the proposed building in suit land.

9] The respondent nos.1 & 2 herein filed a writ petition bearing Writ Petition No.5839/2004 thereby impugning the order dated 21.5.2004 passed by the executing Court. It was contended by the respondent nos.1 & 2 that the compromise decree had become in-executable because of sanction of new development plan which had come into force on 25.2.1993 wherein the Palkhi road was proposed to be widened by 15 meters and further modified and reduced to 9 meters. It was also contended in the writ petition that the decree also became in-executable in view of the provisions of Highway Act and in view of the reservation shown in the development plan to the existing position of Survey No.1/1-A, 1/1-A/2B2.

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10] The said writ petition was opposed by the petitioners. This Court called the record and proceedings from the trial Court and thereafter directed the Deputy Director of Town Planning, Nashik Region to measure 9 meters Palkhi road which was shown in town planning scheme of 25.2.1993 and to carry out inspection of the said plot and to submit the report. The authorities also drew a map of the spot by pointing out some of the shops on the Palkhi road. By an order dated 31.7.2007, this Court directed the executing Court to frame the necessary issue arising out of the pleadings of the parties including the issue of executability of the decree by framing specific issue and directed to record specific finding thereon. This Court directed the executing Court to dispose of the pending execution applications as early as possible and within a period of three months from the date of receipt of the said order of this Court.

11] By the said order, this Court quashed and set aside the order dated 21.5.2004 passed by the executing Court. This Court directed the parties to maintain *status quo* in respect of the subject premises till

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31.10.2007, which *status quo* was extended from time to time. Pursuant to the said order passed by this Court, Shri Saibaba Sansthan, Shirdi, issued a public notice in the newspaper to all the interested parties. The petitioners were aggrieved by the said order passed by this Court and filed Special Leave to Appeal (Civil) No.27988/2010 which was converted into Civil Appeal No.3154/2011 before the Supreme Court.

12] In the meanwhile, the respondent no.5 filed a writ petition bearing Writ Petition No.78/2004 in this Court *inter-alia* praying for removal of the encroachments from Palkhi road. It was the case of the respondent no.5 in the said writ petition that as a result of stay granted by the Chief Minister of the State, the encroachment drive was stayed. The said stay was subsequently vacated. The State Government filed an affidavit in the said writ petition that all the encroachments had been removed barring 13 shops as the *status quo* order has been passed by the learned Civil Judge, Senior Division, on execution application. The State Government pointed out that it had filed a writ petition in this Court against the order passed by the executing Court which was pending

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before the learned Single Judge. The learned Single Judge of this Court in the said writ petition recorded the statements made by the State Government in the said affidavit and observed that it was clear that the State and its authorities had taken all possible steps to remove the encroachments and accordingly the grievance made in the said writ petition did not survive. The said writ petition came to be disposed of.

13] The Collector had also issued a separate notification on 29.3.2003 u/s 126(4) of the Maharashtra Regional Town Planning Act, 1966 read with Section 6 of the Land Acquisition Act, 1860 proposing to acquire the land for the purpose of widening the Palkhi road situated within the limits of Shirdi Nagar Panchayat. Shri Saibaba Sansthan contributed a sum of Rs.1,23,42,262/- towards compensation for widening of the road. The said acquisition proceedings were challenged by some of the parties. By an order dated 8.12.2003, the Division Bench of this Court dismissed the said Writ Petition No.2183/2003 holding that there was no illegality in the acquisition proceedings.

14] The respondent no.1 i.e. Shirdi Nagar Panchayat,

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Shirdi demolished some of the shops constructed on the Government land Survey No.170. However, in view of the *status quo* order granted by the executing Court on 19.12.2003, the respondent no.1 could not carry out further demolition. The respondent no.1 applied for clarification of the order of *status quo* from the Supreme Court, before whom the Special Leave to Appeal was filed by the petitioners in which *status quo* order was continued from time to time. The Supreme Court passed an order on 28.2.2011 on the application filed by the respondent no.1 and clarified that the *status quo* order which had been granted *vis-a-vis* Shirdi Sansthan and the State Government will not come in the way of any action being taken by the respondent no.1 – Council in accordance with law.

15] The respondent no.1 thereafter issued a notice upon the petitioners for demolition. The said notice was challenged by the petitioners by filing a suit. The respondent no.1 invoked various provisions of the MRTP Act as well as the Maharashtra Municipalities Act calling upon the petitioners to remove their structures from the land in question. The petitioners filed a suit bearing

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Regular Civil Suit No.139/2011 in the Court of Civil Judge, Senior Division, Kopargaon, and prayed for permanent injunction. The learned trial Judge refused to grant injunction in favour of the petitioners. The learned District Judge, however, allowed the appeal filed by the petitioners and granted injunction on 11.5.2011 against the respondent no.1.

16] The respondent no.1 thereafter filed a writ petition in this Court. By an order dated 9.6.2011, the order of ad-interim injunction granted by the learned District Judge was maintained. The learned trial Judge, however, was directed to decide the application for injunction on its own merits within a period of one month. The trial Court thereafter passed an order on 17.10.2011 rejecting the application for temporary injunction holding that the petitioners herein had failed to establish a *prima facie* case and that the balance of convenience was not in favour of the petitioners. The petitioners thereafter filed a writ petition bearing Writ Petition No.8032/2012 impugning the said order passed by the learned trial Judge. The writ petition filed by the petitioners came to be dismissed. The Letters Patent

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Appeal filed by the petitioners came to be withdrawn. The petitioners thereafter filed a Special Leave Petition before the Supreme Court. The Special Leave Petition filed by the petitioners arising out of the order passed by this Court and the earlier Special Leave to Appeal arising out of the order passed by this Court in the execution proceedings were heard together by the Supreme Court.

17] By an order dated 22.2.2016, the Supreme Court dismissed the appeals filed by the petitioners with certain directions. The Supreme Court ordered that the State and its functionaries shall undertake an exercise to identify a suitable site to accommodate the petitioners. It was made clear that even if such a site is not available in the immediate proximity of the land presently in the occupation of the petitioners, a sincere endeavour would be made to locate a plot as near as possible. The District administration in coordination with Shri Saibaba Sansthan and other authorities would undertake the process. The petitioners were also directed to cooperate in the pursuit and directed not to delay the completion thereof.

18] It was made clear that in case the endeavour to identify an alternative plot did not yield any result in spite of sincere efforts, the petitioners would then be entitled to adequate monetary compensation. The Supreme Court held that a lump-sum of Rs.20,00,000/- and Rs.15,00,000/- each respectively for the bigger and smaller shops or stalls i.e. of size 16 x 11 and 7 x 11 respectively would be reasonable palliative to the petitioners. The Supreme Court directed that the entire process on both counts should be completed within a period of six weeks from the date of the said order. The Supreme Court directed the State Government and Shri Saibaba Sansthan to bear the amount of compensation payable in equal shares and to deposit the same in this Court within a period of six weeks. It was directed that the allotment of new site / deposit, as directed, would be a condition precedent for further action in terms of the impugned notice. The Registrar General of this Court is directed to make suitable arrangements for disbursement of the amount to the petitioners as due to them as expeditiously as possible on proper identification. Insofar as the notice issued by the

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respondent no.1 is concerned, the Supreme Court upheld the said notice and did not find any illegality in the said notice.

19] The Sub Divisional Officer, Shirdi, with Executive Officer of Shri Saibaba Sansthan issued notices to the petitioners in the month of March, 2016, asking them to remain present for inspection of the land as per the directions of the Supreme Court. It is the case of the petitioners that the Government authorities and Shri Saibaba Sansthan offered the optional lands in various survey numbers near the temple, which is more than 98 in number so as to facilitate the petitioners and the respondents to decide the area of the land on which the construction of the shops to be undertaken or in the ready buildings. The meetings between the petitioners and Shri Saibaba Sansthan, Shirdi and Sub Divisional Officer were admittedly held on 2.3.2016; 5.3.2016; 9.3.2016 and 13.3.2016. There was, however, no consensus amongst the petitioners for sites for rehabilitation proposed to them by the State Government as well as by Shri Saibaba Sansthan.

20] It appears that on 5.4.2016, a meeting was

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convened under the chairmanship of the Chief Minister wherein certain directions were issued by the Chief Minister. Since there was no consensus between the parties for the sites for rehabilitation within a period of six weeks, as directed by the Supreme Court, Shri Saibaba Sansthan applied for an order from the Division Bench of this Court to deposit the amounts in this Court. This Court accordingly permitted Shri Saibaba Sansthan to deposit the amount. The amount was accordingly deposited by Shri Saibaba Sansthan in this Court on 5.4.2016 pursuant to the said order dated 18.3.2016.

21] It is the case of the petitioners that after the said amount was deposited as directed by the Supreme Court by Shri Saibaba Sansthan, the Town Planning and Valuation Department, Ahmednagar division, sent a communication on 11.5.2016 to the Sub Divisional Officer, Shirdi, suggesting that in view of the order of the Supreme Court, 84 shop keepers were entitled to get the shops. The said office submitted a chart where the rehabilitation of the present petitioners was possible by constructing a proposed building. It is the case of the petitioners that in the said meeting held by the Chief

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Minister on 5.4.2016, the representative of the petitioners were present alongwith the Collector, Ahmednagar, and various other persons. It is the case of the petitioners that in the said meeting, it was positively stated that as per the said chart submitted by the Town Planning Officer, the petitioners could be rehabilitated in view of the report submitted by the Assistant Director, Town Planning. A similar resolution also is alleged to have been passed on 15.6.2017 by Shri Saibaba Sansthan in respect of rehabilitation of the present petitioners by allotting suitable land to the petitioners. Neither Shri Saibaba Sansthan nor the authorities obtained any extension of time from the Supreme Court or for modification of the order for making an offer for alternative land or shops.

22] On 22.3.2017, the respondent no.5 filed a Contempt Petition No.258/2017 in this Court *inter-alia* praying for an action against the respondent nos.2 to 7 as per the provisions of the Contempt of Courts Act, 1971 in view of the order passed by this Court in Writ Petition No.78/2004 and in view of the facts and circumstances mentioned in the contempt petition. On

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30.3.2017, the Division Bench of this Court directed the office to issue simple notice to the respondent no.2 returnable on 5.6.2017. The said contempt petition thereafter appeared before this Court on 26.9.2017. The present petitioners are not parties to the said contempt petition as no reliefs were sought against them by the respondent no.5. This Court after hearing the learned counsel appearing for various parties and after making various observations, directed the Collector, Ahmednagar, to provide appropriate Police protection to the respondent no.2 in the said contempt petition i.e. the Chief Officer, Shirdi Nagar Panchayat, Shirdi, to remove the encroachments situated on Palkhi road so as to remove those shop keepers on the Palkhi road on the date such Police protection is required from time to time as may be informed by the respondent no.2 therein.

23] The respondent no.2 was directed to inform the Collector about the date and time of Police protection needed through him three days in advance. This Court also directed the respondent nos.2 & 3 to take appropriate steps to remove remaining encroachments on the Palkhi road also in accordance with law. The said

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order passed by this Court is not impugned by any of the respondents to the said contempt petition including Shri Saibaba Sansthan and the Chief Officer, Shirdi Nagar Panchayat, Shirdi.

24] The petitioners, however, filed a writ petition bearing No.11949/2017 praying for a writ of certiorari for quashing and setting aside the said order passed by this Court on 26.9.2017 in the contempt petition. During the pendency of this writ petition, the petitioners amended the writ petition and also prayed for an order for correction and/or modification by quashing and setting aside the order dated 26.9.2017 passed by this Court in contempt petition.

25] Learned counsel appearing for the parties thus addressed this Court in this writ petition at great length in support of their rival submissions. Insofar as the issue of maintainability of this writ petition is concerned, Miss.Talekar, learned counsel for the respondent no.5, invited our attention to the prayers in this writ petition seeking a writ of certiorari or quashing and setting aside the order passed by Division Bench of this Court in the contempt petition and could

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submit that a writ petition is not maintainable for quashing and setting aside the order passed by the coordinate Bench of this Court in the contempt petition. She submits that even if the petitioners were aggrieved by the said order passed by this Court in contempt petition in any manner whatsoever, the petitioners could have filed only a Special Leave Petition before the Supreme Court u/s 19(1)(b) of the Contempt of Courts Act, 1971. She submits that the petitioners are directly or indirectly praying for stay of the order passed by the Supreme Court on 22.2.2016 in Civil Appeal No.14016/2016 and other companion matters, which order is already implemented by Shri Saibaba Sansthan and by the State Government by depositing the amount in this Court.

26] Learned counsel placed reliance on an unreported judgment of this Court in case of *Satish Mahadeorao Uke v. The Hon'ble the Chief Justice, High Court of Judicature at Bombay & others* delivered on 4.5.2017 in **Writ Petition No.3533/2017** in support of the submission that the order passed by a coordinate Bench of this Court in contempt petition cannot be set aside by another coordinate Bench of the same Court in a writ petition.

She submits that the order passed by the Supreme Court for payment of compensation can be implemented but the petitioners will have to vacate their premises in implementation of the order passed by the Supreme Court. She submits that even if the writ petition is filed by the petitioners on the ground that any fraud was alleged to have been practiced by the respondents to this petition and more particularly the respondent no.5, such allegations are totally vague in the writ petition and thus no relief can be granted by this Court in the writ petition. She submits that the petitioners were neither necessary parties nor proper parties to the contempt petition. The learned counsel raised various other objections on merits which will be dealt with in the later part of this judgment.

27] Mr.V.J. Dixit, learned Senior Advocate for the petitioners, on the other hand, relied upon an unreported judgment of the Supreme Court dated 2.1.2017 in Criminal Appeal No.1234/2007 in support of the submission that if according to the respondent no.5, the parties to the contempt petition had committed contempt of the order passed by the Supreme Court, the contempt proceedings

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could be filed only before the Supreme Court and not in this Court. He submits that the contempt petition filed by the respondent no.5 in this Court itself was thus without jurisdiction and no order could be passed by this Court in the said contempt petition.

28] Insofar as preliminary objection raised by the learned counsel for the respondent no.5 that this writ petition itself is not maintainable praying for quashing and setting aside the order passed by the Division Bench of this Court in the contempt petition is concerned, it is submitted by the learned Senior Counsel that the petitioners were deliberately not impleaded as parties to the contempt petition filed by the respondent no.5. The respondent no.5 had also suppressed various true and correct facts and have not brought on record the subsequent events happened after order of the Supreme Court. He submits that his clients are directly affected by the order passed by this Court in the said contempt petition. The petitioners being not party to the said contempt petition thus could not have filed a Special Leave Petition against the said order passed by this Court and thus the only remedy available to the

petitioners for quashing and setting aside the said order passed by the contempt Court, was to challenge the said order on the ground of fraud committed by the respondent no.5 in collusion with others by filing a separate writ petition.

29] In support of this submission, the learned Senior Counsel has placed reliance on the judgment of the Supreme Court in case of *Ramchandra Ganpat Shinde & another v. State of Maharashtra & others* (1993) 4 SCC 216 and in particular paragraph nos.10 and 11 and would submit that this Court alone could correct its own order in the contempt petition, which order was obtained by the petitioner in the said contempt petition in collusion with others and by practicing fraud on this Court.

30] He also placed reliance on the judgment of the Supreme Court in case of *Union of India v. Subedar Devassy PV* (AIR 2006 SC 909) and in particular paragraph nos.2 & 6 and would submit that the review petition is maintainable against the said order passed by this Court in the contempt petition. He submits that the reliefs sought by the petitioners in the writ petition are also in the nature of review petition.

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31] The next submission of the learned Senior Counsel for the petitioners is that there was no direction of any nature whatsoever issued by this Court in the order dated 5.7.2005 passed in Writ Petition No.78/2004. He submits that on the contrary, by the said order dated 5.7.2005 in the said writ petition, the said writ petition was disposed of as did not survive. He submits that the contempt petition filed by the respondent no.5 was thus not maintainable on that ground itself.

32] The next submission of the learned Senior Counsel for the petitioners is that the contempt petition itself was barred by Section 20 of the Contempt of Courts Act, 1971, in view of the fact that the order which is allegedly violated by the respondents to the contempt petition was passed on 5.7.2005, whereas the contempt petition is admittedly filed on 22.3.2017, which is after one year from the date of alleged contempt. He submits that it is not the case of the petitioners that the alleged breach of the order passed by this Court by the contemnors was continuous breach of the order. In support of this submission, the learned Senior Counsel

placed reliance on the judgment of the Supreme Court in case of *Pallav Sheth v. Custodian & others* (2001 (4) **Mh.L.J.**, 1) and in particular paragraph nos.24, 44, 47 and 48.

33] The next submission of the learned Senior Counsel for the petitioners is that this Court has admittedly issued only a simple notice upon the respondent no.2 by an order dated 30.3.2017. No notice has been admittedly issued by this Court under Rule 8 of the Contempt of Courts Rules, 1992 i.e. in Form I of the said Rules upon any of the contemnors. He submits that the contempt Court thus has not taken cognizance of any contempt of the orders passed by this Court in the said order and had not framed any charges. He submits that the contempt Court thus could not have issued any directions to the respondent no.1 in the writ petition for seeking any Police protection from the Collector and for demolishing the structures of the petitioners and also could not have directed the Collector to provide any Police protection for demolition of the structures on Palkhi road or other structures. It is submitted that the entire order passed by this Court is thus vitiated

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being contrary to the provisions of the Contempt of Courts Act, 1971 read with Rules.

34] Learned Senior Counsel for the petitioners invited our attention to Rule 8 and 9, Chapter XXXIV of the Contempt of Courts Rules and would submit that the respondent No.5 had not complied with the provisions of the said Rule before or after filing of the Contempt Petition. He submits that the direction issued by this Court in the said Contempt Petition to remove the encroachments was thus not contemplated at this stage. In support of this submission, he placed reliance on Rule 22 of the Contempt of Courts Rules. He submits that the interim direction issued by this Court was without any provisions in the Act or the Rules.

35] A reliance is placed on the judgment of this Court in the case of **Saurashtra Vanza Gnyati Yuvak Mandal v. Municipal Corporation of Greater Bombay**, [2006 (6) Bom.C.R. 44] and in particular paragraphs 2, 4, 6 and 10 and it is submitted that the affidavits can be filed by the parties who are alleged to be guilty of contempt only after notice in Form-1 is issued by the Court and until such notice is issued, no directions for compliance with

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the order passed by the Court can be issued in the Contempt Petition.

36] After relying upon various correspondence and the resolutions passed by Shri Saibaba Sansthan, Shirdi and the minutes of meeting held by the Chief Minister, it is submitted by the learned Senior Counsel that 13 persons are there on the Palkhi Road, whereas the others are in the garden area. He submits that the Government had already issued notification on 27.03.2003 thereby changing reservation of the plots in question and thereby reserving 50% for the shopping centres whereas the remaining 50% for garden. He submits that these facts were not brought to the notice of this Court in the Contempt Petition by the respondent No.5. Learned Senior Counsel placed reliance on various paragraphs of the order passed by the Supreme Court and in particular 57, 60 to 64 and would submit that there is no time limit of six weeks provided by the Supreme Court in the said judgment. He also invited our attention to the affidavit-in-reply filed by the respondent No.5-Shri Saibaba Sansthan and in particular paragraph No.5 and would submit that even according to the said Sansthan,

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the process of further consideration of allotment of the alternate land to the petitioners is still in progress. He submits that at this stage thus the respondent No.1 cannot be directed to remove the petitioners from the shops in question.

37] Mr.V.D. Hon, learned Senior Counsel for the respondent No.1 i.e. Shirdi Nagar Panchayat, Shirdi, on the other hand, invited our attention to the order passed by the Supreme Court and would submit that by the said order the Supreme Court had clarified the status-quo order earlier granted, that the said order will not come in the way of respondent No.1 for taking action in accordance with law. He submits that accordingly respondent No.1 had issued a notice on 11.04.2011 by invoking the provisions of Sections 42, 45, 52 and 53 of the M.R.T.P. Act and Sections 179, 180, 187 and 189 of the Maharashtra Municipalities Act against the petitioners for removal of the structures. He submits that the petitioners thereafter filed a civil suit and applied for interim injunction by filing an application (Exhibit-5). Those proceedings were decided against the petitioners right upto the High Court.

38] The petitioners thereafter filed Special Leave Petition before the Supreme Court. Learned Senior Counsel invited our attention to paragraphs 15 to 22 of the order passed by the Supreme Court and holding that the notice dated 11.04.2011 issued by the respondent No.1 was valid. He submits that the order passed by the learned Single Judge of this Court in the Writ Petition has been upheld by the Supreme Court.

39] Learned Senior Counsel invited our attention to the order dated 06.11.2012 passed by the learned Single Judge of this Court in Writ Petition No. 8032 of 2012 filed by the petitioners and in particular paragraphs 17 to 23 and would submit that this Court has categorically held that the structures of the petitioners cannot be protected. The road is required to be kept free for approach to the devotees. Steps are required to be taken to prevent commotion. Taking into account these factors, notice had been issued for removal of the structures owned by the petitioners on the suit site. The same would be in public interest. The Municipal Council being the Planning Authority, would be empowered to direct removal of such constructions which are situated in the

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area reserved for garden as per Development Plan, so also, is within 37 Metres from the Central Line of the National Highway i.e. within the control line.

40] Learned Senior Counsel placed reliance on various paragraphs of the order passed by the Supreme Court and submits that respondent No.4-Sansthan had been showing the alternate plots or premises to the petitioners since last several years, but the petitioners had not agreed to any suitable and alternate plot shown by the Sansthan. He submits that in any event, the Supreme Court has categorically held that the Municipal Council was well within its competence and authority as the Planning Authority under the M.R.T.P. Act to issue notice dated 11.04.2011. The Supreme Court was of the opinion that the steps advised therein were essential for the development of plan, already prepared and finalized, for the progress and advancement of the area.

41] It is submitted by the learned Senior Counsel that day by day the encroachment is increasing on the Palkhi road as well as in the garden area. He invited our attention to the photograph annexed to the affidavit-in-reply filed by the respondent No.1 and would submit

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that for entering in the temple via Gate No.4 the devotees have to pass through the shops illegally constructed by the petitioners. He submits that recently there was stampede on the Elphinstone Road Station, Mumbai and also in the Tulja Bhawani Temple because of the heavy and unmanageable crowd. He submits that lakhs of devotees visit the Shirdi Temple throughout the year and if the encroachments on the Palkhi road and in the garden area are not removed, similar situation may arise at Shirdi also. He submits that the plots are designated in the Development Plan for public purposes which cannot be allowed to be encroached upon or utilized for the purposes other than for the purpose for which those are reserved in the Development Plan.

42] Learned Senior Counsel for respondent No.1 invited our attention to the affidavit-in-reply filed by the respondent No.4-Sansthan and more particularly to paragraph No.5 thereof and would submit that the offer now made by the Sansthan to the petitioners is clearly in the teeth of the order passed by the Supreme Court and more particularly after the Sansthan has already deposited the amount in this Court after having found

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that there was no consensus between the petitioners and Sansthan about the alternate land in lieu of the existing structures on the Palkhi road as well as in the garden area. He submits that neither the Sansthan nor the petitioners applied for extension of time or for modification of order passed by the Supreme Court for the purpose of rehabilitation of the petitioners. He submits that since there was no consensus between the petitioners and the Sansthan, the Sansthan has already deposited Rupees Sixteen Crores in this Court after obtaining specific order from this Court. The petitioners are thus fully protected and would get compensation as already determined by the Supreme Court.

43] Learned Senior Counsel for the respondent No.1 invited our attention to a chart at page No.222 of the Writ Petition which is forming part of the affidavit-in-reply filed by the respondent No.1 and would submit that each of the petitioners and/or their relatives have large number of properties situated in Shirdi and are paying huge amount of taxes to the Municipal Council and each of the petitioner has been earning substantial amount from their properties and business and thus no sympathy shall

be shown by this Court to the petitioners.

44] Learned Senior Counsel for the respondent No.1 invited our attention to the report submitted by the Government to the High Court pursuant to an order passed by this Court showing that the structures constructed by the petitioners are on the road. Learned Senior Counsel placed reliance on the judgment of this Court in the case of **Gangadhar Narayan Wat v. State of Maharashtra and others, (2005 BCI 353)** and in particular paragraphs 7 and 8 and would submit that no encroachment on public roads and footpaths can be regularized even if there is policy of the State Government. He submits that the public roads and footpaths must be kept free from all encroachments. Learned Senior Counsel placed reliance on the judgment of this Court in the case of **Mohansing Uttamsing Tanwani v. State of Maharashtra, [2010 (5) BCR 837]** and would submit that this Court, while expressing a hope that the Corporation and the concerned Authorities would take some positive steps in helping the petitioners by providing them alternate sites and/or constructions a shopping complex for them, however, made it clear that same cannot be read to be and meant to be a condition

precedent for removal of the encroachments.

45] In so far as various submissions of Mr.Dixit, learned Senior Counsel for the petitioners on the issue of maintainability of the Contempt Petition or that no directions could be issued by this Court before issuing any notice in Form No.1 are concerned, it is submitted by the learned Senior Counsel that this Court had already issued a simple notice upon his client. His client, therefore, had expressed inability to comply with the order passed by this Court and the Supreme Court since the Collector had not provided police protection. This Court recorded the said statement and directed the Collector to provide police protection to the respondent No.1 to enable the respondent No.1 to comply with its public duty. He submits that the respondent No.1 is not concerned as to whether the respondent No.4-Sansthan provides any alternative accommodation to the petitioners or to pay compensation in lieu thereof in terms of the order passed by the Supreme Court. He submits that on one or other frivolous ground the petitioners are not allowing the respondent No.1 to remove illegal encroachment from public road and public garden though

the Supreme Court had specifically made it clear that the status-quo order granted by the Supreme Court would not come in the way of the respondent No.1 to remove the encroachment in accordance with law.

46] Ms.Talekar, learned Counsel for respondent No.5 (original petitioner in Contempt Petition), invited our attention to the order dated 05.04.2005 passed by Division Bench of this Court in the earlier Writ Petition filed by her client and would submit that in view of the false affidavit filed by State Government that steps were taken to remove the encroachment and to the effect that there were very few encroachers, this Court disposed of the said Writ Petition. She submits that the said statement made by the State Government in the said affidavit-in-reply was contrary to the actual position before the Supreme Court in so far as the issue of encroachment on Palkhi road and the garden area is concerned. She submits that before the Supreme Court the number of encroachers mentioned were '111' as against '13' encroachers mentioned before this Court. She submits that the respondents had thus committed contempt of the order passed by this Court and thus the said

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contempt petition was maintainable. She submits that the petitioners were neither necessary nor proper parties to the said contempt petition and were thus rightly not impleaded. She submits that the petitioners thus have no locus to oppose the said Contempt Petition in any manner, whatsoever.

47] It is submitted by the learned Counsel that in so far as the issue of limitation raised by the learned Senior Counsel for the petitioners in filing Contempt Petition by her client is concerned, the issue of removal of encroachment from Palkhi road and from the garden area was pending before this Court and thereafter before the Supreme Court for last more than 10 years. The last order was passed by the Supreme Court only on 22.02.2016. In spite of the said order dated 22.02.2016 which was arising out of various orders passed by this Court, the respondent No.1 and the Sansthan did not remove the petitioners from the Palkhi road and garden area which is a continuous breach of the order passed by this Court committed by the respondents to the Contempt Petition against whom the contempt was alleged by her client. She submits that the judgment of the Supreme Court, thus,

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passed in the case of *Pallav Sheth* (supra) would assist the case of the respondent No.5 and not the petitioners. She clarified that the reliefs in the Contempt Petition were sought against respondent Nos.2 to 7 and not respondent No.8 who was not named individually.

48] Learned Counsel for respondent No.5 placed reliance on the judgment of the Supreme Court in the case of **Anil Kumar Shahi (2) and others v. Ram Sevak Yadav and others, [(2008) 14 Supreme Court Cases 115]** and in particular paragraph 50 in support of the submission that the Court can pass a consequential order for enforcement of execution of the order, as the case may be, for violation of which the proceeding for contempt was initiated under Article 129 of the Constitution of India. She submits that this Court has simpliciter permitted the respondent No.1 to apply to the Collector for police protection and has directed the Collector to provide such police protection so as to enforce the order passed by the Supreme Court and this Court. The said Contempt Petition filed by her client is still pending.

49] It is submitted by the learned Counsel that no material facts are suppressed from this Court in the said

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Contempt Petition as sought to be canvassed by the learned Senior Counsel for the petitioners. She submits that all the relevant facts are already disclosed. It is submitted that even if the petitioners were entitled to allotment of alternate land or other shops in lieu of the existing shops, the same would not permit the petitioners to continue their occupation in the shops and other structures on the site in question. She submits that seeking an alternate land is a different aspect, whereas continue to trespass on the public property is another aspect. She submits that neither Sansthan nor any other parties to these proceedings applied for extension of time to comply with the order passed by the Supreme Court. She submits that on one hand the Sansthan has already filed affidavit before this Court and also addressed a letter to the Collector that the alternate land as demanded by the petitioners cannot be given to them, Sansthan has though deposited the amount as directed by Supreme Court, has once again started the discussion about allotment of other land to the petitioners in the teeth of the order of the Supreme Court. She submits that the Sansthan has also thus

committed contempt of the order passed by this Court and the Supreme Court.

50] Mr.S.R.Chowkidar, learned Counsel for respondent No.4 in the Writ Petition submits that no averments are made by the petitioners in the Contempt Petition against his client alleging that any contempt of the order passed by this Court or the Supreme Court has been committed by his client. He submits that there is no dispute that the petitioners have to be removed from the Palkhi road and also the garden area and the land which was subject matter of the proceedings before the Supreme Court. Respondent No.4 is not opposing removal of the petitioners from the lands in question. He, however, submits that the proposal given by respondent No.4 now, after depositing the amount in compliance with the order passed by the Supreme Court for rehabilitation of the petitioners, is purely based on the basis of humanitarian ground. He submits that after deposit of Rupees Sixteen Crores in this Court by his client, State Government has already paid its contribution to the Sansthan and has thus complied with the directions issued by the Supreme Court.

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51] Mr.Dixit, learned Senior Counsel for the petitioners, in re-joinder, submits that the order passed by this Court is merged with the orders passed by the Supreme Court and thus no contempt proceeding could be filed by the respondent No.5 alleging contempt of the order passed by this Court. He submits that in the order passed by the High Court holding that the said Writ Petition filed by respondent No.5 did not survive, had not recorded any undertaking as sought to be canvassed by the learned Counsel for respondent No.5.

52] Learned Government Pleader, who appeared on 12/10/2017, submits that, in the meeting of the Sansthan held on 5/4/2016, it was resolved to allot plot to the petitioners. Learned Government Pleader took time till 2.30 p.m. to produce the resolution, if any, passed by the State Government in that regard, but could not produce any such resolution.

REASONS AND CONCLUSIONS

53] We shall first decide whether the Writ Petition filed by the petitioners *inter-alia* praying for a writ of certiorari or any other writ, order or direction in the nature of writ of certiorari for quashing and setting

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aside the order dated 26/9/2017 passed by the Division Bench of this Court in Contempt Petition No.258/2017 is maintainable or not. We will also decide whether the petitioners have made out a case for issuance of a writ of mandamus for taking an appropriate action including penal action against the respondent No.5 for committing alleged fraud on this Court or not and whether such relief can be granted in this Writ Petition. The petitioners have also inserted by way of amendment, prayer clause AA, thereby seeking correction and/or for modification or quashing and setting aside the order dated 26/9/2017, passed in Contempt Petition No.258/2017.

54] Insofar as prayer clause (A) is concerned, it is not in dispute that, the petitioners have applied for a writ of certiorari for quashing and setting aside the order passed by the Division Bench of this Court in Writ Petition No.258/2017, which is a coordinate Bench of this Court. The Principal Bench of this Court, in case of *Satish Mahadeorao Uke* (supra) has considered the prayers for a writ of prohibition from proceeding any further in furtherance of the orders passed by Nagpur Bench of this Court and also seeking a declaration that the entire

criminal contempt proceedings pending before the Nagpur Bench of this Court was unconstitutional and void *ab initio*. While dealing with these prayers in Writ Petition No.3533/2017 filed by the petitioner, who was one of the respondent in the said proceedings filed before the Nagpur Bench in the Criminal Contempt Petition, this Court held that, if another coordinate Bench is engaged in deciding the correctness and propriety, legality and validity of a final judgment of a coordinate Bench, it would set a very bad precedent. Nobody would resort to appellate remedy available in law and approach the Supreme Court as was the position in that matter before the principal Bench of this Court.

55] This Court held that the petitioner in that case would have an opportunity to challenge the final judgment in the Supreme Court in terms of Section 19(1) of the Contempt of Courts Act, 1971. The principal Bench of the Bombay High Court, thus, held that, it could not entertain Writ Petition like that merely because it contained prayer that the Contempt of Courts Act, 1971 itself was unconstitutional.

56] It is held that, if there is an authority to

decide and whether a judicial or quasi-judicial Tribunal is empowered or required to inquire into a question of law or fact for the purpose of giving a decision on it, its finding thereon cannot be impeached collaterally or an application for certiorari but are binding until reversed in appeal. Where a quasi-judicial authority has jurisdiction to decide the matter, it does not lose its jurisdiction by coming to a wrong conclusion, whether it is wrong in law or in fact. This Court accordingly held that the Writ Petition was not maintainable, thereby challenging the validity of the contempt proceedings and the order passed by the coordinate Bench of this Court at Nagpur.

57] In our view, the judgment delivered by this Court in case of *Satish Mahadeo Uke* (supra) squarely applies to the facts of this case. The order passed by this Court on 26.9.2017 in Contempt Petition No.258/2017 in Writ Petition No.78/2004 is passed by a coordinate Bench of this High Court, which could be challenged also by the petitioners in the Supreme Court, if aggrieved, by the said order after obtaining leave of the Supreme Court. The petitioners can not file a Writ Petition for

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challenging the order passed by coordinate Bench of this Court by seeking a writ of certiorari for quashing and setting aside the said order. In our view, prayer clause (A) of the Writ Petition is thus not maintainable and is thus, rejected.

58] Insofar as prayer clause (B) is concerned, the prayer for seeking an appropriate action against the respondent No.5 for allegedly committing fraud on this Court also cannot be decided in the Writ Petition filed under Articles 226 and 227 of the Constitution of India. Be that as it may, the petitioners have not made out any case for any appropriate action including penal action against the respondent No.5 for committing any alleged fraud on this Court. Learned Senior Counsel for the petitioners could not point out before this Court at all in what manner and with what material on hand it can be said that the respondent No.5 has committed fraud upon this Court. The pleadings filed by the petitioners in this Writ Petition alleging fraud are totally vague and without particulars. Prayer clause (B) is accordingly rejected.

59] Insofar as prayer clause (AA), which is inserted

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by way of amendment is concerned, the petitioners are once again seeking a writ of certiorari for quashing and setting aside the said order passed on 26/9/2017, passed by the coordinate Bench of this Court in Contempt Petition No.258/2017. While seeking that prayer once again under prayer (AA), the petitioners have also prayed for correction and/or for modification of the said order dated 26/9/2017. It is the case of the petitioners that, even if the Writ Petition is not maintainable, if this Court comes to the conclusion that prayer clause (AA) cannot be granted by this Court in toto, the petitioners being affected by the order passed by this Court on 26/9/2017, and by virtue of the said order, the structures of the petitioners are likely to be demolished, the petitioners are entitled to seek modification or correction of the said order dated 26/9/2017.

60] Though this Court has held that, prayer clauses (A) and (B) and part of prayer clause (AA) cannot be granted by this Court as the same are not maintainable, we are inclined to consider part of prayer clause (AA) for seeking correction and/or for modification of the

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said order. By virtue of an administrative order passed by the Seniormost permanent Judge at this station at Aurangabad, the Writ Petition is clubbed along with Contempt Petition No.258/2017 and has been assigned to this Bench, who had passed the said order dated 26/9/2017 in Contempt Petition No.258/2017.

61] For considering the part of prayer clause (AA), whether the said order dated 26/9/2017 requires any correction and/or modification is concerned, this Court will now consider the rival submissions made by the parties and various documents and orders forming part of the record.

62] It is not in dispute that the petitioners were not parties to the Writ Petition No.78/2004 filed by the respondent No.5, *inter-alia* praying for removal of the encroachments from Palkhi Road. It is, however, at the same time, there is no dispute that, the petitioners herein were parties to various proceedings referred to aforesaid, including the proceedings before the Supreme Court of India, which culminated into an order dated 22/2/2016.

63] A perusal of the order passed by the Supreme

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Court on 22/2/2016 indicates that the said Civil Appeals were arising out of the two proceedings. There was compromise decree dated 20/8/1979, passed by the Civil Court between the petitioners and Shri Saibaba Sansthan, Shirdi and another. It is not in dispute that the petitioners and the respondent No.4 filed separate application for execution of the said compromise decree. The orders passed by the executing Court were challenged by the State of Maharashtra and the Tahsildar in Writ Petition No.5839/2004. By an order dated 31/7/2007, this Court remanded the matter back to the Executing Court for considering the issues raised by the contesting parties, keeping all the issues open. Pursuant to the said order passed by this Court, the execution proceedings were disposed of by the executing Court. The orders passed by the Executing Court were again challenged before this High Court in Writ Petition No.5451/2009 and other companion Writ Petitions filed by the petitioners

64] By an order and judgment dated 2/7/2010 and 5/7/2010, this Court has observed that, considering the size of shops, unavailability of alternate accommodation and frustration of the decree due to inexecutability

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thereof, all those shopkeepers must be suitably compensated. The learned Single Judge in the said Writ Petition held that it would be appropriate to fix quantum of compensation @ Rs.3 lakhs payable to the shopkeepers who were having bigger shops like hotels, sweet-meat shop etc. and Rs.2 Lakhs to those who were having small shops like that of flower vendors, vendors of essence sticks etc. The learned Single Judge directed that the 50% of the said amount to be paid by Shri Saibaba Sansthan, Shirdi, and remaining 50% amount shall be paid by the Government. The said order and judgment of this Court was later subject matter of Civil Appeal before the Supreme Court.

65] A perusal of the order dated 8/12/2003 passed by the Division Bench of this Court in which the validity of the acquisition of the land of the petitioners for the purpose of widening Palkhi Road situated within the limits of Shirdi Nagar Panchayat was challenged indicates that, this Court dismissed the said Writ Petition filed by the petitioners therein and held that, there was no illegality in the acquisition proceedings. The allegations of *mala-fide* were without any foundation.

The road was being widened as per the sanctioned development plan.

66] This Court also observed that Shri Saibaba Sansthan, Shirdi was to carry out several development activities at Shirdi and especially the area surrounding the temple, and as per the aims and objects in the constitution of the Trust, one of the objects was to provide facilities to the devotees of Shri Saibaba Temple. The road in question was abutting the southern side of the temple and the devotees regularly pass through the said road. The Sansthan has decided to give financial assistance to the Nagar Panchayat for the purpose of widening of the road on certain terms and conditions. The Charity Commissioner has granted necessary sanction of Rs.1,23,42,265/- to the Nagar Panchayat. The respondent No.4 Sansthan had already contributed the said amount of Rs.1,23,42,265/- towards compensation for widening of the road. The Nagar Panchayat and the respondent No.4 Sansthan were taking steps jointly for the overall development of the area surrounding the Saibaba Temple.

67] A perusal of the order passed by this Court on

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6.11.2012 in Writ Petition No.8032/2012 filed by the petitioners herein challenging the notice issued by the respondent No.1 i.e. Shirdi Nagar Panchayat under Sections 40, 42, 52 and 54 of the Maharashtra Regional and Town Planning Act and under Sections 179, 180, 187 and 189 of the Maharashtra Municipal Councils Act indicates that, it was a common ground that as far as Palkhi Road is concerned, the said land was already acquired for the purpose of Palkhi Road and this Court has already held that the development plan prepared was required to be implemented. No construction can be allowed to be remained on the site reserved for garden. The petitioners' site appears to be on Site No.13-A, which was reserved for garden and as such, no permission could be granted to carry out any business nor any permission could be granted also for the reason that they come within the control line of 37 meters.

68] It is held that, the Municipal Council is a planning authority and is invested with the duties and obligation to implement the development plan and for issuing notice, the Municipal Council has sought to implement the development plan. This Court also

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considered that the Supreme Court has already granted liberty to the Municipal Council to proceed as per law and thereafter the said notice came to be issued. This Court also observed that, in the earlier round, it has been concluded up to the Division Bench of this Court that the construction/ tenements/ shops of the petitioners are situated within the control line and in area reserved for garden. This Court rendered a finding that, since the shops of the petitioners are within the control line and are in the area reserved for garden, such shops / kiosks of the petitioners could not be permitted at the hands of this Court. The Municipal Council cannot permit the construction against the bye-laws and rules. The construction is situated in the area within the Municipal limits. No construction can be allowed to remain over an area reserved for garden and/or coming within the control line.

69] This Court held that, as lacs of devotees are visiting Shirdi town, the Ahmednagar - Manmad Highway No.10 has been widened. The road is required to be kept free for approach to the devotees. Steps are required to be taken to prevent commotion. Taking into account these

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factors, the notice has been issued for removal of the structures owned by the petitioners on the suit site, which notice would be in the public interest. This Court held that, in light of the conspectus of the matters, the structures of the petitioners' structures cannot be protected.

70] Insofar as the action on the part of the Municipal Council to issue notice for demolition of the structures and for eviction of the occupants on the plots reserved for public purpose is concerned, the Supreme Court considered this issue at length in the order passed by the Supreme Court on 22.2.2016. Supreme Court also considered its earlier order dated 13/12/2010 and 28/2/2011 and permitting the Nagar Panchayat to pursue its initiative for removal of encroachments and widening of road in accordance with law. The Supreme Court considered the issue whether the action on the part of the Nagar Panchayat to issue the notice for eviction for removal of encroachments and for widening of road was in accordance with law or not and in what circumstances such notice issued by the Nagar Panchayat / Municipal Council, which was a planning authority, entrusted with the

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statutory duty to implement the development plan was justified. The Supreme Court, after considering the facts and various provisions of the M.R.T.P. Act and Maharashtra Municipalities Act, rendered a finding that, in view of the statutory enjoyment and the legislative intent, in the face of unequivocal empowerment of the Council as the planning authority under the M.R.T.P. Act, 1966, the said notice dated 11.4.2011 is not rendered illegal, unauthorized or incompetent. It is held that, the Municipal Council was well within its competence on authority as a planning authority under the said Act to issue being of the opinion that the steps devised therein were essential for the implementation of the development plan, already prepared and finalized for the progress and advancement of the area. It is thus clear that, the notice issued by the Municipal Council for eviction is upheld by this Court and by the Supreme Court in the said judgment.

71] The question now that arises for consideration of this Court is whether various orders passed by this Court and by the Supreme Court is implemented by the parties or not.

72] A perusal of the order passed by the Supreme Court clearly indicates that the Supreme Court has held that, it shall be discernible from the affidavit filed by the State Government on 21/3/2014 that no vacant parcel of the land is said to be available for the purpose in the immediate vicinity land in occupation of the petitioners.

73] In para 62 of the judgment, the Supreme Court directed the State and its functionaries to undertake an exercise to identify a suitable site to accommodate the petitioners. It was, however, made clear that, even if such a site is not available in the immediate proximity of the land presently in their occupation, a sincere endeavour shall be made to locate a plot as near as possible thereto. It was also made clear that, in case the endeavour to identify an alternative plot does not yield any result in spite of sincere efforts, the appellants would then be entitled to adequate monetary compensation as quantified in the said order.

74] The Supreme Court held that, having regard to the permissible ponderables and also the passage of time in between, a lump-sum of Rs.20 Lakhs and 15 Lakhs each

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respectively for the bigger and smaller shops/stalls would be a reasonable palliative to the petitioners. The Supreme Court directed that, the entire process on both counts, however, should be completed within a period of six weeks from the date of the said order. The Supreme Court directed the State Government and the respondent No.4 Sansthan to bear the amount of compensation in equal shares and directed to deposit the said amount in this Court within six weeks from the date of the said order. The Supreme Court made it clear that the amount already deposited by the Sansthan in terms of the High Court order, if not withdrawn, shall be adjusted in this amount. The Supreme Court directed the Registrar General of this Court to make suitable arrangement for disbursement thereof to the petitioners as due to it as expeditiously as possible, however, on proper identification.

75] A perusal of the record indicates that, after passing of the said order by the Supreme Court, the Sansthan and the Sub-Divisional Officer issued notices to all the petitioners by showing various plots of land in compliance with the order passed by the Supreme Court.

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Various meetings were held by the Sansthan and the Sub-Divisional Officer including on 2/3/2016, 5/3/2016, 9/3/2016 and 13/3/2016. There was, however, no consensus admittedly in respect of the alternate land for rehabilitation of the petitioners proposed to them by the State Government as well as the Sansthan. A meeting was also convened under the Chairmanship of the Chief Minister on 5.4.2016, wherein certain directions were issued by the Chief Minister, but no consensus was arrived at. Learned Government Pleader could not produce any other resolution passed by the State of Maharashtra.

76] Since there was no consensus on the alternate site for rehabilitation of the petitioner, the respondent No.4 Sansthan obtained order from this Court for deposit of the amount directed to be deposited by the Supreme Court and deposited the said amount on 5/4/2016. It is not in dispute that State Government has also reimbursed the Sansthan by making payment of their contribution of Rs.8 Crores and has complied with the direction issued by this Court and the Supreme Court.

77] A perusal of the record further indicates that, the Sansthan had also addressed a letter to the Collector

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on 31/3/2017 that though several alternate plots were shown to the petitioners for their rehabilitation, the same was not agreed by the petitioners. The plots demanded by the petitioners were not available and thus, could not be offered to them.

78] A perusal of the affidavit-in-reply filed by the respondent No.4 Sansthan on 5/10/2017 clearly indicates that, various meetings were held between the petitioners and the Sub-Divisional Officer and the then Executive Officer of the Saibaba Sansthan Trust, Shirdi. There was, however, no consensus amongst the petitioners for the site for rehabilitation proposed for them by the State Government as well as the Sansthan. The Sansthan, therefore, has deposited a sum of Rs.16 Crores, towards their share and on behalf of the State of Maharashtra on 5.4.2017. In para No.5 of the said affidavit, however, it is stated by the respondent No.4 Sansthan that, the process for further consideration is in progress and if the petitioners if at all are interested in rehabilitation of themselves, shall submit proposal in writing to the said Sansthan and if any such proposal is submitted to the Sansthan and the same is in accordance

with the provisions contained in Shri Saibaba Sansthan Trust (Shirdi) Act, 2004, an appropriate decision in that regard would be taken.

79] During the course of the arguments before this court, Mr. Chowkidar, learned counsel for the Sansthan submitted that, the Sansthan is also bound to comply with the order passed by the Supreme Court. He stated that, since there was no consensus for allotment of the alternate site between the petitioners, the Sansthan and the Sub-Divisional Officer within a period of six weeks, the Sansthan exercised the second direction issued by the Supreme court after expiry of six weeks and has already deposited a sum of Rs.16 Crores on behalf of itself and on behalf of the State Government.

80] Upon raising a query by this court as to whether the action on the part of the Sansthan to keeping the process of further consideration of alternate land open after depositing the amount in compliance with the order passed by the Supreme court, is in teeth of the order passed by the Supreme court, the learned counsel submits that, the respondent No.4 Sansthan does not seek to violate the order passed by the Supreme Court and has

absolute regard for the order passed by the Supreme Court. He, however, submits that, the said suggestion given in the affidavit-in-reply and more particularly in para No.5 was considering the humanitarian ground. He did not dispute that the land acquisition proceedings were already completed and the Sansthan had already deposited substantial amount for acquisition of the said plot. He also did not dispute that the land in question is reserved for public purpose and is required to be used for public purposes and also for keeping the road free from encroachment to avoid any mishap or stampede of the devotees of the temple.

81] From perusal of the record, it is clear beyond reasonable doubt that the petitioners were offered various alternate plots for their rehabilitation by the Sansthan as well as by the Sub-Divisional Officer, but admittedly there was no consensus between the parties. The respondent No.4 Sansthan thus has already deposited the compensation of Rs.16 Cores in this court in view of the first direction issued by the Supreme Court could not have been complied with by the parties in view of there being no consensus between the parties.

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82] A perusal of the record further indicates that, all the petitioners and/or the relatives have large number of properties situated within the near vicinity of the temple and have been paying huge amount of taxes to the Council. In our view, the acquisition of the plot having been completed, the challenge to the acquisition proceedings having been failed, the order passed by the Supreme Court having attained finality, the petitioners cannot seek any stay of the implementation of the order passed by the Supreme Court in any manner whatsoever. In our view, action of the petitioners to seek such reliefs in this petition itself is contemptuous.

83] We are inclined to accept the submission of the learned Senior Counsel for the respondent No.1 that the petitioners' right is already protected by payment of certain compensation already provided by the Supreme Court in the order and thus the petitioners cannot be allowed to continue to occupy the plots in question and put the life of large number of devotees and members of public in danger. A perusal of photograph produced by the Council clearly indicates that the devotees have to pass through the shops of the petitioners while entering

the temple through Gate No.4. This Court cannot overlook several instances of such stampede on Elphinstone Road Station, Tulja Bhawani Temple and several other temples in India.

84] It is the duty and obligation on the part of the Municipal Council to keep the road and public places clear from any encroachment and to ensure that such public places and the plots reserved for public purposes are used for such purposes shown in the development plan. The action of the Municipal Council to issue notice of eviction and for removal of the petitioners from the land in question is already upheld by the Supreme Court and this Court. This Court cannot directly or indirectly grant any stay or modify the order passed by the Supreme Court. In our view, the public interest and the interest of the large number of devotees would prevail over the private interest of the petitioners / shopkeepers whose rights in the properties has been already rejected except for payment of compensation. Admittedly, the respondent No.4 Sansthan has already deposited a sum of Rs.16 Crores on behalf of itself and on behalf of the State Government in this Court. The petitioners are thus fully

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compensated. The order passed by the Supreme Court is binding. If the petitioners desire to withdraw the amount of compensation as directed by the Supreme Court, they would be entitled to such compensation after satisfying the terms and conditions mentioned in the said order.

85] Insofar as submission raised by the learned Senior Counsel for the petitioners that the Contempt Petition is barred by law of limitation is concerned, it is not in dispute that the issue of eviction of the petitioners was pending in large number of proceedings filed by the petitioners and the authorities which culminated into an order passed by the Supreme Court, which came to be decided on 22/2/2016. In these circumstances, we are not inclined to accept the submission of the learned Senior Counsel for the petitioners that the Contempt Petition filed by the respondent No.5 was barred by law of limitation. Insofar as submission by the learned Senior Counsel for the petitioners that since there was no direction issued by this Court in the order dated 5/7/2005 in the Writ Petition filed by the respondent No.5 is concerned, it is

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clear that the said order was passed by this Court by accepting the statement made by the State Government. The statement made by the State Government before this Court was not depicting the true and correct picture of the encroachment on the land in question. Be that as it may, the Supreme Court order was arising out of the orders passed by this Court upholding the notice issued by the Municipal Council for eviction. This Court has thus ample power to initiate an action under the provisions of Contempt of Courts Act, 1971.

86] The respondent No.5 has not alleged the violation of the order passed by the Supreme Court in the Contempt Petition. Be that as it may, this Court cannot consider this objection at the behest of the petitioners who have bent upon to violate all the orders passed by the Courts so far on one or the other grounds. The petitioners had delayed the implementation of the acquisition proceedings and also eviction notices issued by the Municipal Council by filing one or the other frivolous proceedings in this Court and have delayed the process of eviction for last several years.

87] Insofar as submission of the learned Senior

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Counsel for the petitioners that this Court could not have issued any direction to the authorities to demolish the structures in question till a notice under Form I would have been issued by this Court is concerned, a perusal of the order passed by this Court on 30/3/2017 indicates that a simple notice was issued against respondent No.2 Council. The respondent No.2 had made a request before this Court for police protection to comply with the order passed by this Court and the Supreme Court. In that context, this Court directed the Collector to provide police protection, if requested by the Municipal Council so as to comply with their statutory duties and obligations and to comply with the orders passed by this Court and the Supreme Court.

88] We do not find any fraud alleged to have been committed by the respondent No.5 on this count or by other authority while passing the said order dated 26/9/2017 in Contempt Petition No.258/2017 which is sought to be modified and/or corrected by the petitioners. In our view, the petitioners have not come to this Court with clean hands and are bent upon to violate each and every order passed by this Court and the

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Supreme Court and thus, no relief in favour of the petitioners can be granted for this reason also. In our view, the petition is devoid of merit. We, therefore, pass the following order :

O R D E R

Writ Petition No.11949/2017 is dismissed. There shall be no order as to costs.

(SUNIL K. KOTWAL, J.)

(R.D. DHANUKA, J.)

At this stage, Shri V.J. Dixit, learned Senior Counsel for the petitioners, seeks continuation of the ad-interim arrangement made in the contempt petition for a period of six weeks to enable the petitioners to approach the Hon'ble Supreme Court. During the pendency of this petition, Shri V.D. Hon, learned Senior Counsel for the respondent no.1 – Council had made a statement before this Court that no application would be made to the Collector for seeking Police protection to implement the order passed by this Court and the Supreme Court.

The request of the learned Senior Counsel for

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the petitioners is vehemently opposed by Shri V.D. Hon, learned Senior Counsel for the Council on the ground that the Municipal Council had been permitted by the Supreme Court to exercise its duty, rights and obligations to remove the encroachments and thus any stay, if granted by this Court, would be in breach of the order passed by the Supreme Court.

The application made for continuation of the ad interim arrangement by the learned Senior Counsel for the petitioners is accordingly rejected.

(SUNIL K. KOTWAL, J.)

(R.D. DHANUKA, J.)