

IN THE HIGH COURT OF JUDICATURE AT BOMBAYNAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION NO. 445 OF 2017 IN WRIT PETITION NO. 5856/07.
(Shri Anandilal Hajarimal Bhutada & another .vs. The Shegaon Municipal Council
& others)

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

Mr. F.T. Mirza, Advocate/Amicus Curiae for applicant,
Mr. D.M. Kale, Advocate for respondent no.1,
Mrs. B.H. Dangre, G.P. with Mr. D.P. Thakare, Addl. G.P.
for respondent nos. 2 to 5,
Mr. A.R. Patil, Advocate for respondent no.6,
Mr. P.N. Kothari, Advocate for respondent no.8,
Mr. N. Lambat, Advocate for respondent no. 9.

CORAM : B.R. GAVAI & KUM. INDIRA JAIN, JJ.

DATED : MAY 5, 2017.

The present Public Interest Litigation has been entertained by this Court with regard to various developmental works being undertaken by the State Government in the pilgrimage town of Shegaon. The Court has been passing various orders from time to time and also monitoring the work.

2] Vide the order dated 21.12.2016 we had left the issue regarding the determination of implementing agency for rehabilitation of the encroachers occupying the Khalwadi area to the State Government. We had, however, observed that the figure of 105 crores which was estimated appeared to be *ex facie* exorbitant. Another issue that was noticed by us was with regard to the exchange of the land of the Khalwadi area which

was owned by the Government to the Sansthan and the land owned by Sansthan on the Akot road to the Government wherein the encroachers could be rehabilitated and minor modifications under Section 37 of the Maharashtra Regional and Town Planning Act, so that the reservation of the Khalwadi area could be changed for parking plaza. We had also directed the enquiry to be conducted with regard to the eligible persons to be rehabilitated. In the said order, we had also clarified that the report of completion of the works as mentioned in the minutes was being treated as an undertaking to this Court on behalf of the respective implementing agencies.

3] In pursuance of the orders passed by this Court, certain developments had taken place and we had also passed an order on 5.1.2017. We had noted that since the elections to the Municipal Council were under process, the Municipal Council could not submit a proposal for minor modifications as required under Section 37 of the Act in so far as Khalwadi area is concerned. In the said order, taking into consideration the genuine difficulties of the Municipal Council, we had directed the Municipal Council to take steps for submitting a proposal for minor modifications within a period of three months from the said date, i.e. 5.1.2017. We had also directed the State Government and the Sansthan to execute necessary documents within a period of 15 days from the said date. We had further directed that if in the development plan for Khalwadi area there is reservation for any other purpose than the parking plaza, the proposal for minor modification for changing the purpose of the said land for parking plaza would also be submitted by the

Municipal Council to the Government.

4] We had further directed that in so far as the encroachment at Khalwadi by the persons who had established the shops is concerned, the Sansthan and the Municipal Council should sit together and relocate the encroachers in the commercial complex to be constructed at Gandhi Chowk and the Sansthan would make the payment for the said shops to the Municipal Council.

5] However, in the affidavit filed on behalf of the Divisional Commissioner, it is now noticed that the number of encroachers on the commercial place is 28 and not 20. It is now thus clear that the commercial encroachers to be rehabilitated would not be 20 but 28. Shri A.R. Patil, learned Counsel appearing on behalf of the Sansthan, graciously states that though the Sansthan has already paid an amount of Rs.4,40,00,000/-, i.e. Rs.22 Lakhs per shop for the shops to be constructed at Gandhi Chowk, the Sansthan is also willing to pay for eight additional shops in order to avoid further complications. Mr. A.R. Patil and Shri D.M. Kale, learned Counsel for Municipal Council further agree that taking into consideration the sizes of the shops at Gandhi Chowk and the shops to be constructed in the commercial complex at Athwadi Bazar, it is more appropriate that the said commercial encroachers are accommodated in the shops of Athwadi Bazar which are bigger in size. It is further submitted that the 19 shops are already ready for possession and the 19 encroachers can immediately be accommodated therein.

6] Another issue that is being pointed out is that though all the encroachers in the Matangwadi area are allotted the houses in the rehabilitated area, there are still 11 houses remaining vacant and some of the encroachers in the Khalwadi area adjoining the road can be accommodated therein so that the work of expansion of the road is carried out immediately. It is further submitted that though the encroachers in the Matangwadi area have already occupied the rehabilitated accommodation, they are also continuing to occupy the old accommodation and as such, the very purpose of providing them the rehabilitated accommodation which is much more comfortable than their old accommodation is being defeated. It is submitted that though the Municipal Council had initially disconnected the water supply to the old house, the same has again been reconnected.

7] To a pertinent query Shri Kale, learned Counsel submits that the issue of rehabilitation of Matangwadi has posed a law and order problem and it is beyond the control of Municipal Council to handle the same.

8] Shri F.T. Mirza, learned *Amicus Curiae* further submits that though the majority of the work of underground drainage is completed by Maharashtra Jeevan Pradhikaran, the respondent no.11 herein, on account of the minor finishing work which is yet not complete, the entire drainage system is not functional. It is submitted that though the Divisional Commissioner and the Municipal Council have sent reminders, the Maharashtra Jeevan Pradhikaran is sitting idle over the same.

9] So far as another issue with regard to construction of foot overbridge at the Railway Station is concerned, Shri N. Lambat, learned Counsel for Railways, submits that since now the Railways has agreed for construction of the Home Platform, it may not now be necessary to construct the foot overbridge and this Court may not insist upon the same.

10] The Municipal Council has also filed a Civil Application for extension of the period for submitting the proposal for minor modification as was directed by this Court vide order dated 5.1.2017.

11] In this background, especially in the background of the factual scenario that on account of various orders passed by this Court over the couple of years, various developmental works have been undertaken, we think it appropriate to pass the following directions :-

I. That since the exchange of the land admeasuring 2.67 hectares in Sheet No. 21-C, Sheet No. 20-D (Khalwadi land) owned by the Government and the land bearing 787/3, 788/2, 791, 792, 793/1, 793/3, 794/1 and 795/1 admeasuring 4.45 hectares on Akot road owned by the Sansthan is already complete and since now the Khalwadi land vests in the Sansthan and the land of Sansthan on the Akot road vests with the State Government, there should now be no impediment in reserving the Khalwadi land for the purpose of parking plaza for the Sansthan. From the attitude of the Municipal Council, it appears that the Municipal Council is not that keen in assisting either the

State Government or this Court in taking further the developmental work of Shegaon. Though ample time has been given to the Municipal Council, no steps have been taken by it for sending a proposal to the State Government for minor modification, so as to change the reservation of Khalwadi area for the purpose of parking plaza. In that view of the matter, we find that in view of the ample powers vested with the State Government under the provisions of Section 37 of the MRTP Act, the State Government shall initiate the process for making the minor modifications in the developmental plan of Shegaon for reserving the Khalwadi area for parking plaza. The said procedure shall be completed within a period of six months from today. Similarly, the State Government shall also initiate and complete the procedure for reserving the land which has been transferred by the Sansthan in favour of the State Government on Akot road for the purpose of housing of rehabilitation of the encroachers from the Khalwadi area. We make it clear that the period of six months would not be extended by this Court in any eventuality and the State shall conform to this period strictly.

II. Vide our order dated 21.12.2016 we had clarified that the State Government would be at liberty to decide as to who shall be appointed as the implementing agency to construct colony for rehabilitation. Though initially the respondent State Government had estimated the cost of rehabilitation to be 105 crores and we had expressed concern about the same, now the cost has been estimated to Rs.62,55,78,000/-. The State Government has now already appointed the Public Works Department as implementing agency finding its offer to be more beneficial than the MHADA.

We are informed that out of the amount which is already allotted by the State Government for the developmental work of Shegaon, an amount of Rs.19 Crores is sanctioned for the purpose of rehabilitation. We direct the State Government to sanction the balance amount within a period of three months. Needless to state that though the amount is directed to be sanctioned within three months, it is not necessary that the entire amount has to be allotted within a period of three months and it can be allotted in phased manner, commensurate with the progress of construction.

III. In so far as rehabilitation of the shopkeeper encroachers on the Khalwadi property is concerned, we permit the Sansthan and the Municipal Council to rehabilitate the shop-keepers in the commercial complex at Athwadi Bazar. The amount of Rs.4,40,00,000/- is already paid by the Sansthan for 20 shops. The remaining amount for eight shops shall be paid by the Sansthan to the Municipal Council within a period of one month from today. The Municipal Council shall initially allot 19 shops to the 28 commercial encroachers in the Khalwadi area on lottery basis. Upon allotment of the said shops, a notice be given to them for removal of encroachment within a period of seven days and relocate them to the shops allotted to them in the Athwadi Bazar Municipal commercial complex. In the event the shop-keepers do not remove themselves, the Municipal Council shall forcibly remove them with the assistance of police and revenue authorities and relocate them to the commercial Municipal complex in the Athwadi Bazar. After evicting the shop-keepers, the vacant possession of the land shall be handed over to

Sansthan immediately. After the 9 shops are ready for occupation, the 9 shop owners who are encroachers shall also be removed from the Khalwadi area and allotted the shops in the Athwadi Bazar. This exercise should be completed in three months by Municipal Council. Needless to state that after removal of this encroachment also as per the procedure prescribed hereinabove, the vacant land shall be put in possession of the Sansthan. Needless to state that if the Municipal Council seeks any assistance from the police or revenue authorities for the said purpose, the same shall be provided to them by the revenue and police authorities.

IV. In so far as the 11 remaining tenements in the Matangwadi area are concerned, the Municipal authorities, the revenue authorities, the PWD authorities and the office bearers of the Sansthan will sit together and find out which of the 11 residential properties of the Khalwadi area are required to be shifted immediately in order to ensure expansion of the roads. On such determination, the 11 tenements in the rehabilitated Matangwadi area shall be allotted to such 11 persons and their encroachment shall forthwith be removed. Needless to state that for such removal of encroachment also, the police and revenue authorities shall provide their assistance.

V. In so far as rehabilitation of Matangwadi area is concerned, all the learned Counsel state that tenements in the rehabilitated Matangwadi area are fully occupational. All the facilities in the said area are functional. It is also agreed by all the learned Counsel that the tenements are much better than as compared to

the houses which were earlier in the occupation of the encroachers. In that view of the matter, we see no rationale in the encroachers again sticking to their old accommodation. We are of the considered view that this is nothing else but an attitude of unjust enrichment. In that view of the matter, we direct the Municipal Council to give them a notice of 7 days to remove their encroachment, including lanes and sub-lanes within the area of Matangwadi. In the event, if they do not vacate their old premises within a period of seven days, such an encroachment shall be forcefully removed and the old houses demolished. We direct the Collector of Buldana and the District Superintendent of Police, Buldana to provide all the necessary machinery for removal of such encroachment. If need be, the District Superintendent of Police shall seek necessary assistance from the State Reserve Police Force. Needless to state that after removal of the encroachment, the Municipal Council shall hand over the peaceful and vacant possession of the Matangwadi area to Sansthan for providing all amenities to devotees.

VI. In so far as the remaining works of the Maharashtra Jeevan Pradhikaran are concerned, we give an ultimatum to Maharashtra Jeevan Pradhikaran to complete all the works to the satisfaction of the Divisional Commissioner on or prior to 31.5.2017, failing which we shall be constrained to take such action as deemed fit against the Member Secretary of the Maharashtra Jeevan Pradhikaran. The Divisional Commissioner is requested to communicate this direction personally to the Member Secretary of the Maharashtra Jeevan Pradhikaran so that he does not claim lack of knowledge of this order.

VII. In so far as construction of foot overbridge is concerned, since the Railway authorities have graciously accepted to construct the Home Platform, we dispense with the construction of foot overbridge as all the learned Counsel agree that in view of construction of such home platform, the additional foot overbridge may not now be necessary.

VIII. We further clarify that the authorities are already in contempt of our order dated 21.12.2016, inasmuch as we had specifically clarified that the time period specified in the order was treated as an undertaking to this Court. Non-completion of the works as per the undertaking amounts to a breach of undertaking to the Court. We could have considered issuing notice of contempt to the authorities. However, for the moment, we defer the same and we direct all the authorities to complete the works by 31.5.2017. We clarify that all the expansion of roads shall be completed by 31.5.2017 in any eventuality and no impediment of whatsoever nature shall be construed as an excuse for non-completion of work of expansion of roads.

IX. We further clarify that in order to ensure smooth monitoring of the developmental work, the Divisional Commissioner shall ensure that the meetings of the committee are held periodically and at least once in three months.

X. The application for extension of time stands disposed of.
S.O. for six weeks.

J. Judge

Judge