

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
PUBLIC INTEREST LITIGATION NO.98 OF 2013

Sandeep s/o Ramchandra Yeole,
age: 28 years, Occ: Private Service,
resident of Venkoba Temple,
Tanpure Colony, at Post Rahuri,
Taluka Rahuri, District Ahmednagar.
Adhar Card No.229064406174 issued
by Government of India,
Cell No.8308373003.

Petitioner

Versus

01 The State of Maharashtra,
through its Secretary,
Rural and Urban Development
Department, Mantralaya,
Mumbai-32.

02 The Chief Officer,
Municipal Council,
Rahuri Taluka Rahuri,
District Ahmednagar.

03 The Collector,
Ahmednagar.

04 Satish s/o Laxminarayan Bihani,
age: 48 years, Occ: Business,
R/o 292, Bihani Building,
Dhangar Lane, near Jain Temple,
Rahuri, Tq.Rahuri,
District Ahmednagar.

05 Manoj s/o Ashok Bihani,
age: 42 years, Occ: Business,
R/o 292, Bihani Building,
Dhangar Lane, near Jain Temple,
Rahuri, Tq. Rahuri,
District Ahmednagar.

- 06 Anup s/o Ashok Bihani,
age: 32 years, Occ: Business,
R/o 292, Bihani Building,
Dhangar Lane, near Jain Temple,
Rahuri, Tq. Rahuri,
District Ahmednagar.
- 07 Sushila w/o Ashok Bihani,
age: 60 years, Occ: Business,
R/o 292, Bihani Building,
Dhangar Lane, near Jain Temple,
Rahuri, Tq. Rahuri,
District Ahmednagar.
- 08 Madhuri w/o Yogesh Jaju,
age: 35 years, Occ: Household,
R/o Opp : Sikchi Hospital,
near Captain Laxmi Chowk,
Sangamner, Taluka Sangamner,
District Ahmednagar.
- 09 Kalidas s/o Martand Kashi,
age: 52 years, Occ: Business,
R/o Burud Galli, Azad Chowk,
Rahuri, District Ahmednagar.
- 10 Babasaheb Vithalrao Shejul,
age: 52 years, Occ: Business,
R/o Tanpure Lane, Rahuri,
Tq. Rahuri, District Ahmednagar.
- 11 Ashok Nanasaheb Kolapkar,
age: 55 years, Occ: Business,
R/o Kasar Galli, Rahuri,
Tq. Rahuri, District Ahmednagar.
- 12 Sanjay Marutirao Newaskar,
age: 53 years, Occ: Business,
R/o Rahuri (Khurd), Tq. Rahuri,
District Ahmednagar.
- 13 Gokulchand Chandmal Mutha,
age: 63 years, Occ: Business,
R/o Malharwadi Road, Rahuri,

Tq.Rahuri, District Ahmednagar.

- 14 Suresh Harjeetsingh Nagpal,
age: 55 years, Occ: Business,
R/o Birobanagar, Yeole Estate,
Rahuri, Tq.Rahuri,
District Ahmednagar.
- 15 Mohandas Pahelumal Hiranandani,
age: 76 years, Occ: Business,
R/o Sindhi Colony, Rahuri,
Tq.Rahuri, District Ahmednagar.
- 16 Pawankumar Punamchand Joshi,
age: 40 years, Occ: Business,
R/o Sangale Galli, Rahuri,
Tq.Rahuri, District Ahmednagar.
- 17 Radhakisan Eknath Dudhade,
age: 63 years, Occ: Business,
R/o Dhangar Galli, Rahuri,
Tq.Rahuri, District Ahmednagar.
- 18 The Superintendent of Police,
Ahmednagar, District Ahmednagar.
- 19 Maharashtra State Electricity
Distribution Company Limited,
Ahmednagar, District Ahmednagar,
through its Superintending Engineer.
- 20 Executive Engineer,
M.S.E.D.C.L., Shrirampur,
District Ahmednagar.

Respondents

Mr.P.D.Bachate, advocate for the petitioner.
Mr.S.Y.Mahajan, A.G.P. for Respondents No.1, 3 & 18.
Mr.R.V.Naiknavare, advocate for Respondent No.2.
Mr.A.N.Kakade, advocate for Respondent No.4.
Mr.R.R.Karpe, advocate for Respondents No.9 to 13.
Mr.M.S.Deshmukh, advocate for Respondents No.14, 15 & 16.
Mr.V.V.Tarde, advocate for Respondent No.17.
Mr.S.M.Godsay, advocate for Respondents No.19 & 20.

CORAM : R.M.BORDE AND

K.K.SONAWANE, JJ.

RESERVED ON : 11th April, 2018

PRONOUNCED ON : 23rd April, 2018.

JUDGMENT (Per R.M.Borde, J.) :

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The petitioner is praying for issuance of directions to Respondent No.2. i.e. Municipal Council Rahuri to demolish the illegal construction raised by Respondents No.4 to 8 in Survey No.417 and CTS No.1206, bearing Municipal Property No.W28000358 within the limits of Municipal Council, Rahuri, District Ahmednagar.

3 The petitioner contends that in the year 1969, Mula Dam came to be constructed on river Mula at about 6 to 7 Kms. upstream of Rahuri Town. As a result of construction of Dam, it became necessary to provide for the flood-line with a view to adopt precautionary measures in the event of release of water from Mula Dam. After observing procedure, the State Government directed modification in the development plan and prescribed that no construction shall be allowed to be raised in the area falling within the flood-line of water discharge from the dam to the extent of 1,00,000 cusecs. In view of the modification issued by the State prescribing restrictions, no construction or re-construction was permitted on Survey No.417 and this aspect of the matter is not at all disputed or disputable.

4 According to the petitioner, one Mr. Laxminarayan Bihani, owner of aforesaid property applied for permission for renovation of the theater constructed by him. The construction was obviously in violation of the development plan and as such, reconstruction was also impermissible. The concerned owner of the property i.e. Laxminarayan Bihani carried out the work without waiting for accord of permission by the Municipal Authority. This aspect was pointed out to this Court by presenting Writ Petition No. 187 of 1989 by one Vitthal Ramchandra Dawkhar. The Writ Petition presented by said Vitthal was taken up for consideration by the Division Bench consisting of Shri V.K. Barde and Shri D.S. Zoting, JJ and, by an order dated 18.01.2001, the Writ Petition came to be allowed. The Division Bench of this Court directed the Municipal Council to demolish the unauthorised construction of Usha Chitra Mandir. During the course of hearing of the Writ Petition, it was pointed out to the Division Bench that there are certain constructions within the flood-line and the Municipal Council ought to take steps in respect of such unauthorised construction. The Division Bench in paragraph no. 66 of the judgment observed that, *If there are any such constructions, then respondents Nos. 1, 2 & 4 will have to take steps as per the provisions of the M.R.T.P. Act and the M.M. Act.*

5 The petitioner contends that belatedly the directions issued by this Court in respect of demolition of construction of Usha Chitra Mandir were complied with by the Municipal Council. It was also pointed out that legal representatives of Laxminarayan Bihani challenged the decision of the Division Bench by presenting an appeal to the Supreme Court bearing Civil Appeal No. 2738 of

2002. The Apex Court, however, dismissed the Civil Appeal on 14.10.2003.

6 The petitioner contends that in front of portion of Usha Chitra Mandir i.e. the theater constructed by Bihani family, there was construction of shopping complex, which was also unauthorised. The aforesaid construction of shopping complex was raised while raising construction of theater or prior thereto. Since the construction of the shopping complex also falls within the prohibited zone, same being contrary to the development plan and within the flood-line of Mula dam, same ought to have been demolished by the municipal authorities. The petitioner approached the Municipal Council on several occasions, however, his request was not considered and as such, he is compelled to approach this Court seeking relief as specified above.

7 Respondents no. 4 to 8 have not presented any reply controverting the contentions raised in the petition.

8 An affidavit-in-reply has been presented by Ganesh Karbhari Shinde, Chief Officer of the Municipal Council on 29.11.2013. It is stated in the affidavit-in-reply that property survey no. 417 falls within the flood-line of 100000 cusecs discharge of water from Mula dam. It is further stated that the development plan has been revised by the Government on 10.02.2003 and survey no. 417 falls within the flood-line of 66663.50 and 93817 cusecs discharge of water from Mula River. It is further stated that the Municipal Council has issued notice to the legal heirs of Laxminarayan Bihani to pull down the illegal

construction. However, one Ashok L. Bihani has tendered a representation stating therein that he had presented a Review Petition and said Review Petition is pending. It was further undertaken that if the Court dismisses the Review Petition, he himself would demolish the theater. It is admitted by the Chief Officer, Municipal Council that the Council is bound to take steps to demolish illegal and unauthorised construction raised in survey no. 417, however, in view of the undertaking furnished by Ashok Bihani, steps have not been taken. It is stated in the affidavit-in-reply that after securing legal opinion from the higher authorities and the Town Planning department, appropriate steps would be taken for demolition of unauthorised construction.

9 Respondent no. 3 District Collector, Ahmednagar has presented an affidavit-in-reply wherein it has been stated that the local body is bound to take action in respect of illegal and unauthorised construction. It is further stated that if the Council fails to take steps, the Collector would instruct the Municipal Council accordingly and ensure demolition of unauthorised construction raised by Respondents no. 4 to 8.

10 During the pendency of Public Interest Litigation Respondents no. 9 to 17 presented an application seeking their impleadment in the petition. Respondents no. 9 to 17 contended that they are the tenants inducted by original owner in the suit property and are carrying on their business by operating shops in the shopping complex since years together. In the event of issuance of any adverse order, they would be affected. It is the contention of Respondents no. 9 to 17 that instant Public Interest

Litigation is instituted at the instance of owner of the property. It is the contention of the tenants that the original owner has constructed a new shopping complex behind present shopping complex and the owners of the property are interested in pulling down the structure occupied by the applicants-tenants. It is the contention of the tenants that in view of the modification in the development plan and change in the flood-line, construction of the shopping complex, occupied by the tenants ,can be maintained. It is in fact for the owners to apply for regularisation of the construction, however, the owners are deliberately not approaching the Municipal Council. It is also pointed out that the Municipal Council itself has granted permission in favour of Respondent No.4-Satish to raise construction after the change in flood line. It is further contended that the direction issued by this Court on earlier occasion relates to demolition of Usha Chitra Mandir only and does not relate to present structure. Respondents no. 9 to 17 – tenants in respect of the property, therefore, prayed for dismissal of the petition.

11 It is not a matter of controversy that the construction of the shopping complex as well as theater is raised by original owners during the period when flood-line in respect of the area falling within 100000 cusecs discharge was prescribed by the Executive Engineer, Irrigation and Power Department and Development Control Regulations were accordingly framed. Though, while disposing of the Writ Petition, direction has been issued to demolish Usha Chitra Mandir constructed on survey no. 417, however, the Division Bench has also observed in the judgment that if there are such other constructions raised, it would be

the responsibility of the Municipal Council to take steps as per the provisions of M.R.T.P. and Maharashtra Municipalities Act. It is not controverted that the construction of shopping complex has been made in violation of Development Control Regulations operating during the relevant period. A flood-line in respect of Mula River has been modified in the year 2003 and same is prescribed at 100000 cusecs and 210000 cusecs. The new flood-line of 66663.50 cusecs and 93817 cusecs has been prescribed and development is permitted provided the plinth / stilt height is raised atleast to R.L. Of 1672 feet.

12 Respondents, thus contend that since the shopping complex falls within the revised flood-line of 66663.50 cusecs, it would be permissible to maintain the construction. At the same time, it must be taken note of that while the construction was raised, it was in violation of the Development Control Regulations operating at the relevant time. An affidavit-in-reply has been presented on behalf of Respondent no. 4 – Municipal Council wherein it has been undertaken that within a period of three months from the date of presentation of affidavit, the construction of shopping center raised on survey no. 417 would be demolished by observing due procedure of law.

13 An affidavit-in-reply has been presented by the Municipal Council on 04.02.2015. Though till this date, Municipal Council has not taken steps for one reason or the other and at one point of time a grievance was raised that for taking steps of demolition, adequate police protection would be needed and the request made by the Municipal Council for providing police

protection has not been attended by the police department. This Court taking note of the request made by the Municipal Council permitted the petitioner to implead the Superintendent of Police, Ahmednagar and M.S.E.D.C.L. as party respondents. The concerned respondents assured to co-operate the Municipal Council in its drive of demolition of unauthorised constructions. The grievance raised by the tenants i.e. Respondents no. 9 to 17 also deserve to be considered. It is not a matter of dispute that the flood-line, which was prescribed when the construction has been raised, has been changed and considering present regulations, construction of the shopping complex cannot be said to be wholly illegal. It has also been pointed out by Respondents no. 9 to 17 that similar construction in the vicinity has been permitted by the Municipal Council. One must also take note of the fact that original owners have not responded to the notice of the Court and have remained silent spectators. The contention raised by tenants that the instant Public Interest Litigation is presented at the instance of original owners and that the original owners are interested in securing eviction of the tenants and the demolition of old shopping complex, cannot be said to be wholly incorrect.

14 In the circumstances, we deem it appropriate to direct the Municipal Council to consider the issue as regards legality and/or regularisation of existing construction. If the construction already existing if branded illegal can be regularised within the framework of relevant regulations and after following necessary formalities, the Municipal Council shall be at liberty to take appropriate steps. In the event the Municipal Council finds it cannot regularise existing construction, appropriate steps shall be

taken for demolition of illegal construction in observance of the procedure prescribed in that behalf. The Municipal Council shall take necessary steps expeditiously and, in any case, within a period of six months from today. Some of the Respondents contend that they have purchased interest in the shopping complex from the original owners and are entitled to maintain their possession. It would be open for the concerned Respondents to take steps for protecting their interest as permissible in law. No further directions need be issued in the instant matter at this stage.

15 Certain disturbing features have been pointed out during the course of hearing and those are required to be noted :

16 Learned counsel for the petitioner has filed on record a chart of dates and events, same is marked Exhibit 'X'. It is pointed out that the Municipal Council presented an affidavit on 04.02.2015 undertaking to remove unauthorised construction within three months and thereafter Respondents no. 9 to 17 presented three different Civil Applications for their impleadment. The Division Bench of this Court (Coram : R.M. Borde & S.S. Patil, JJ) heard the matter on 21.11.2016 and adjourned the same for passing further orders on 05.12.2016. Apprehending that final orders would be passed on the next date of hearing, on 29.11.2016, appearance of Advocate Shri S.B. Talekar was filed on behalf of Respondent no. 17. One Advocate Shri V.V. Tarde was already representing said respondent. All the concerned are aware that a judicial order has been passed in a Second Appeal way back in January 2008 directing the Registry that none of the matter of

Advocate Shri S.B. Talekar be placed before the Court of which R.M.Borde, J. is a member. As a result of filing of appearance by Advocate Shri S.B. Talekar on behalf of Respondent no. 17, the matter could not be listed before the Division Bench on the adjourned date. The matter was taken up from time to time by another Division Bench and ultimately on 14.02.2018, when orders were expected, a pursis was presented by Advocate Shri S.B. Talekar requesting to discharge his appearance on behalf of Respondent no. 17. The Division Bench (Coram : S.S. Shinde and S.M. Gavhane, JJ) directed discharge of appearance of Talekar and Associates for Respondent no. 17 and it was further observed that as per the assignment/roaster, the Public Interest Litigation will not lie before the concerned Division Bench and as such directed its removal from the board. The matter again came to be placed before this Court (Coram : R.M. Borde and K.K. Sonawane, JJ). Learned counsel appearing for the petitioner contends that this is an attempt to ensure that the matter should not be heard by this Division Bench.

17 This is not a sole instance. However, in recent past, there are several instances of such nature which have been pointed out and it would be appropriate to note such instances. A pursis has been presented by Advocate Shri P.D. Bachate in this Public Interest Litigation. Same is marked Exhibit 'X-1'. It is noted in the pursis that one Mohan Marotrao Patil Taklikar has filed Writ Petition No. 4001/2012 seeking direction to constitute the various committees of Zilla Parishad in accordance with Chapter IV of Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. The Writ Petition was heard by the Division Bench (Coram : R.M.

Borde & R.V. Ghuge, JJ) in the morning session on 08.07.2013 and orally directed the Zilla Parishad to produce original record in respect of constitution of various committees; and the matter was kept on next day. It is contended that in the afternoon session on 08.07.2013, intentionally and knowing fully well Advocate Shri S.B.Talekar presented *Vakalatnama* on behalf of Respondent no. 52 to ensure that the matter shall not be taken up by the Division Bench of which Justice R.M. Borde is member. Subsequently, the matter was taken up by another Division Bench and same was allowed. Rest of the narration in the pursis need not be reproduced.

18 In Public Interest Litigation No. 32 of 2015, one Mr. Amol Marutirao Talwadkar has filed a praecipe on 11.04.2018. Petitioner Amol is a practicing lawyer in the Court at Udgir, Dist. Latur and is a resident of Udgir. It is stated in the praecipe that vide judgment dated 15.01.2016 Public Interest Litigation was allowed to the extent of quashing the order of transferring liquor shop from District Raigad to District Latur. A Review Application came to be presented requesting to review the judgment along with Civil Application No. 15648/2016 seeking recall of the order. The Civil Applications were heard and disposed of by the Division Bench (Coram : R.M. Borde & K.K. Sonawane, JJ) vide order dated 24.02.2018 and the judgment dated 15.01.2016 came to be recalled by condoning the delay occurred in preferring the review application. Vide order dated 24.02.2018 the Division Bench has granted liberty to the petitioner to add Smt. Kamini Kamlakar Dali as party respondent. Advocate Shri Mantri waived notice on behalf of added respondent and the Court further directed to place the

Public Interest Litigation for consideration on 12.03.2018 and it was expected that the matter would be heard by the same Division Bench, since the earlier order was passed by the same Division Bench. However, it is stated in the praecipe that with a view to see that the matter shall not be heard by the same Division Bench, appearance of Shri S.B. Talekar was filed and it is not merely a coincidence. Respondents no. 8 and 9 engaged Talekar and Associates to represent their case. It is recorded in the note that *prima facie*, it appears to be deliberate step to ensure that instant petition shall not be listed and heard by the Division Bench of which Justice R.M. Borde is a member.

19 In Public Interest Litigation No. 27 of 2017, an affidavit has been presented on behalf of the petitioner Smt. Reshma Ashfaq Qureshi. It is recorded in the affidavit that Public Interest Litigation is presented pointing out illegalities committed by Respondent no. 6 in raising construction of Multi-Specialty Hospital. During the course of hearing, the Court (Coram : R.M. Borde & K.L. Wadane, JJ) on 05.04.2017 directed the petitioner to deposit a sum of Rs. 50,000/- to show her *bona fides* and accordingly, the amount has been deposited. The matter has been heard from time to time and Respondent no. 6 has presented reply to justify his action. It is contended that during the course of continuance of petition, Respondent no. 6 presented Writ Petition No. 14813 of 2017 seeking occupancy certificate and permission to run the hospital. The affiant-petitioner presented an intervention application in the said Writ Petition and requested for clubbing of both the matters together. The matters were listed before this Court (Coram : R.M. Borde & K.K. Sonawane, JJ.) on 06.03.2018

and the same was adjourned with liberty to the petitioner to carry out amendment. Subsequently, on behalf of Respondent no. 6 *Vakalatnama* is presented by Advocate Shri S.B. Talekar. It is recorded in the affidavit that such actions on behalf of Respondent no. 6 are to avoid the litigation by playing mischief.

20 A note has been presented with the Registry by Talekar and Associates on 02.04.2018 praying for withdrawal/removal of (1) Public Interest Litigation No. 27 of 2017 (2) Writ Petition No. 6463 of 2016 and (3) Writ Petition No. 3073 of 2018 from the board of Division Bench (Coram : R.M. Borde & K.K. Sonawane, JJ) and to place it before appropriate Bench. It is recorded in the note that since January 2008, Registry has been directed not to list matters of Advocate Shri S.B. Talekar before Justice R.M. Borde, and the order has been followed scrupulously by the board department.

21 It is stated that Shri S.B. Talekar formed a partnership firm i.e. Talekar & Associates of which he is a Managing Partner. It is stated that Advocate S.B. Talekar cannot be disassociated from the Firm and by virtue of clauses in the partnership deed, he is bound to provide legal services in the name of the Firm. It is also noted that a judicial order has been passed without assigning a single reason, though law demands that such reasons be made known to the counsel and the party in case of recusal by a Judge. The contents of the note itself constitute reason and it would be futile to record reasons after eleven years. A request is made in the note to direct not to call out the matters mentioned in the note before the Division Bench of which Justice R.M. Borde is a member, and to issue directions to the Registry not to list any of

the matters of the firm Talekar & Associates. It is made clear that matters of Advocate Shri S.B. Talekar or the firm Talekar & Associates are not being taken up by the Division Bench of which Justice R.M. Borde is a member and no further orders need be issued on the note presented on 02.04.2018. It would be sufficient to refer to the observations of the Honourable Supreme Court in the matter Re: **Sanjiv Datta and others** (1995) 3 SCC 619.

“The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more.”

22 Writ Petition is allowed to the extent as specified in paragraph no. 14 of this judgment. Rule is made absolute to the extent as above. There shall be no order as to cost.

23 Copy of this judgment be placed before the Hon'ble the Acting Chief Justice.

K.K.SONAWANE
JUDGE

R.M.BORDE
JUDGE

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