

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 4109 OF 2015**

- 1 Mr. Popatlal Lalchand Navlakha,
Age: 84 years, Occu. Business,
R/o. : 1118-B, Lakaki Road,
Model Colony, Shivaji Nagar,
Pune-411 016.
- 2 M/s. Cepheus Buildcon,
Through its one of the partner
Mr. Ritesh Oswal,
Age 41 years, Occu. Business,
Add. S. No.41, Nirmal Township,
Bungalow No. A-24, Sasane Nagar,
Hadpsar, Pune-411 028.Petitioners.

Vs.

- 1 The State of Maharashtra,
- 2 The Pune Municipal Corporation (PMC),
Through its Commissioner,
PMC Building, Pune.
- 3 The Commissioner of Police, Pune
- 4 The Police Inspector, Vishrambaug,
Police Station, Pune (Law & Order)
- 5 The Police Inspector, Vishrambaug,
Police Station, Pune (Traffic Division)
- 6 Ganpati Chowk Mitra Mandal,
A Public Trust Registered

Under the provisions of MPT, 1950
Bearing PTR No. F/30742/Pune
Through its President,
Mr. Vishal Anant Salvi (At present),
Add: C.T.S. No. 48, Budhwar Peth,
Laxmi Road, Pune 411 002.

AND

Add. C.T.S. No. 46, Budhwar Peth,
Laxmi Road, Pune-411 002.

....Respondents.

WITH

CONTEMPT PETITION (STAMP) NO. 27179 OF 2016

- 1 Mr. Popatlal Lalchand Navlakha,
Age: 86 years, Occu. Business,
R/o. : 1118-B, Lakaki Road,
Mode Colony, Shivajinagar,
Pune-411 016.
- 2 M/s. Cepheus Buildcon,
Through its one of the partner
Mr. Ritesh Oswal,
Age 43 years, Occu. Business,
R/o. Survey No.41, Nirmal Township,
Bungalow A-24, Sasnenagar, Hadpsar,
Pune.

.....Petitioners.

Vs.

- 1 Mr. Vishal Anant Salvi
Age: Adult, Occu. NA,
President- Ganpati Chowk Mitra
Mandal, Pune.
- 2 Mr. Amit Ramchandra Katti,
Age : Adult, Occu. Street Vendor,
Vice President – Ganpati Chowk

Mitra Mandal, Pune.

- 3 Mr. Amit Zanjale,
Age : Adult, Occ. NA,
Member- Ganpati Chowk
Mitra Mandal, Pune.
- 4 Mr. Eknath Kamat,
Age : Adult, Occ. Business,
Member- Ganpati Chowk
Mitra Mandal, Pune.
- 5 Mr. S.B. Ghuge,
Police Sub-Inspector- Traffic,
Vishrambaug Police Station,
Pune.
- 6 Mr. S.R. Bramhne,
Police Inspector-Traffic,
Vishrambaug Police Station,
Pune.
- 7 Mr. S.R. Hemant Bhat,
Police Inspector,
Vishrambaug Police Station,
Pune.
- 8 Ms. Rashmi Shukla,
Commissioner of Police, Pune.
- 9 Mr. Abhimanyu Gade,
Encroachment Inspector,
Pune Municipal Corporation,
Vishrambaug Ward Office,
Pune.
- 10 Mr. Arun Khillari,
Assistant Municipal Commissioner,
Vishrambaug Ward Office,
Pune Municipal Corporation, Pune.

- 11 Smt. Sandhya Gcharge,
Dy. Commissioner Encroachment,
Pune Municipal Corporation,
Pune.
- 12 Mr. Kunal Kumar,
Municipal Commissioner,
Pune Municipal Corporation, Pune.Respondents.

Mr. Rahul Shivaji Kadam for the Petitioners.

Mr. Y.S. Khochare, AGP for the Respondent State.

Mr. Abhijit P. Kulkarni for Respondent No.2 in WP No. 4109 of 2015
and for Respondent Nos. 10 to 12 in CPST No. 27179 of 2016.

Mr. I.M. Khairdi for Respondent No. 6 in WP No. 4109 of 2015.

**CORAM : A. S. OKA, AND
A. S. GADKARI, JJ.
DATE : 7th MARCH, 2019.**

ORAL JUDGMENT (PER A.S. OKA, J.):

As per the Administrative Order dated 18th November, 2016 passed by Hon'ble the Chief Justice, these two Petitions have been assigned to a Bench presided over by one of us (A.S. Oka, J.) to which Public Interest Litigation No. 173 of 2010 and other connected matters have been assigned. On the earlier date, we have taken up the Petitions for final disposal.

2 The Contempt Petition arises out of Writ Petition in which the allegation is of breach of the interim Orders passed in Writ Petition.

Now coming to the Writ Petition, briefly stated, the first Petitioner is claiming to be the owner of land bearing CTS No. 44-A at Budhawar Peth, Pune. A copy of Property Registered Card of CTS No. 44-A shows that the First Petitioner is the holder thereof. It is claimed in the Petition that the Second Petitioner, the partnership firm is developing CTS No. 44-A. The case of the Petitioners is that initially CTS No.44 was a consolidated CTS number which was divided into CTS Nos. 44-A and 44-B. The area of CTS No. 44-B, as can be seen from the copy of the Property Register Card annexed to the Petition, is 8.5 square meters. It is undisputed that the land bearing CTS No. 44-B was acquired by the Second Respondent-the Municipal Corporation of city of Pune in the year 1954, for constructing public urinals. The Second Respondent is a Corporation constituted under the Maharashtra Municipal Corporations Act, 1949, (for short, "*the said Act of 1949*") which is also a Planning Authority under the Maharashtra Regional Town Planning Act, 1966 (for short, "*the said Act of 1966*").

3 The first grievance in the Petition under Article 226 of the Constitution of India is that notwithstanding the fact that the Sixth Respondent has carried out illegal construction on the land bearing

CTS No. 44-B and though a notice was issued on 22nd November, 2012 (Exhibit-H to the Petition-Page No. 56) to the President of the Sixth Respondent by the second Respondent calling upon the Sixth Respondent to remove unauthorized construction on CTS No. 44-B, the Second Respondent has not taken any steps. Therefore, a writ of mandamus is sought against the Second Respondent to remove the illegal construction. The second prayer is for preventing the Second Respondent from erecting a pandal in a lane leading to property bearing CTS No. 44-A for the purposes of celebrating Ganpati festival.

4 Further prayer is for enjoining the Second Respondent and the Third to Fifth Respondents [(the Commissioner of Police, Pune, the Police Inspector Vishrambaug Police Station (Law and Order) and the Police Inspector, Vishrambaug Police Station, Pune (Traffic Division)] to ensure that the lane subject matter of the Petition is converted into a no parking zone. Further prayer is for directing the Second Respondent Municipal Corporation to ensure that the hawkers do not create any kind of hindrance to enable the Applicants to approach the property bearing CTS No. 44-A through the lane subject matter of the Petition.

5 By amending the Petition, there is a challenge incorporated

to an Order made by the Second Respondent permitting the Sixth Respondent to erect a pandal in the lane for celebrating Ganpati festival.

6 The learned counsel appearing for the Petitioners in support of both the Petitions has taken us through the averments made in the Petition, the annexures to both the Petitions and the Affidavits filed on record. He submitted that the Affidavits filed in the Contempt Petition and material on record will show that the Sixth Respondent in Writ Petition committed several breaches of the interim Orders and even the other Authorities committed breaches of the interim Orders. He pointed out that for seven long years, the Second Respondent has not demolished the illegal structure on the land bearing CTS No. 44-B. He submitted that no action has been taken to prevent illegal hawking. He relied upon the Judgment and Order dated 1st November, 2017 passed by a Division Bench of this Court in Writ Petition No. 652 of 2017 in the case of Azad Hawkers Union Vs. Union of India & Ors. He submitted that, by not removing the illegal various structures on CTS No. 44-B, the concerned Respondents and especially the Municipal Corporation have committed breaches of the directions issued by the Division Bench of this Court in the case of Society for

Fast Justice & Anr. Vs. State of Maharashtra & Ors.¹. He placed on record additional compilation which includes a copy of the Order dated 28th February, 2018 passed by the Deputy Commissioner of Police (Traffic), Pune City by which the said lane has been ordered to be declared as a no parking lane or no parking zone. From the said Order, it appears that it is an interim Order.

7 The learned counsel appearing for the Petitioners also pointed out that the undertakings given by the office bearers of Sixth Respondent on earlier date are not in conformity with the directions issued by this Court. He submitted that in any event, the Sixth Respondent will have to abide by the undertaking which is marked as U-1 and which is accepted by this Court by the Order dated 11th September, 2018.

8 The learned AGP pointed out that the Order dated 28th February, 2018 is an interim Order and final Order will be passed after considering the objections and suggestions of the citizens. He submitted that from the material on record, it appears that the said Order is in respect of the lane subject matter of the Writ Petition. He also tendered on record a copy of the letter dated 28th August, 2018

¹ 2018 (2), Bom. C.R. 379

addressed by the Police Inspector of Vishrambaug Police Station, Transport Division, Pune to the Deputy Commissioner of Police (Transport), Pune.

9 The learned counsel appearing for the Second Respondent stated that as far as the land bearing CTS No. 44-B is concerned, it was revealed that in the same ward, apart from this property, there are other properties which are Municipal properties on which illegal religious structures have been erected. He submitted that the Municipal Corporation will categorize the structure on the land bearing CTS No. 44-B by undertaking an exercise in terms of the Government Resolution dated 5th May, 2011 and appropriate categorization will be made within a period of four months from today.

10 The learned counsel appearing for the Sixth Respondent relied upon the undertakings filed by the office bearers of the Sixth Respondent and urged that there was no intention on the part of the Sixth Respondent to commit any breach of the Orders of this Court. When this Court made a query to the learned counsel for the Sixth Respondent yesterday whether the Sixth Respondent is agreeable for the re-location of the religious structure on CTS No.44-B, he

submitted that he has not received any instructions to make any statement in response to the said query made by the Court. He submitted that there is material on record to show that even the Petitioners started illegal construction on the property bearing CTS No. 44-A and therefore, a stop work notice has been issued by the Municipal Corporation for stopping the said construction.

11 The learned counsel appearing for the Petitioners submitted that some influential person is behind the action of the Inspector of Police of Vishrambaug Traffic Division, Pune, of writing the letter dated 28th August, 2018 as the said influential person has an objection for converting the lane into a no parking lot. He submitted that the Petitioners have stopped construction on CTS No. 44-A for different reasons.

12 We have considered the submissions. There does not appear to be any dispute that the First Petitioner is the owner of the land bearing CTS No. 44-A and in fact, the Property Register Card shows that the First Petitioner is the holder of CTS No. 44-A having area of 283.4 square meters. (as shown on the Property Register Card issued in the year 2010 which is annexed to the Petition)

13 Similarly, there is no dispute that the land bearing CTS No.

44-B admeasuring 8.4 square meters was acquired by the Second Respondent-Municipal Corporation for construction of public urinals in the year 1954.

14 The Order dated 28th August 1989 passed by the Municipal Secretary (Annexure-B) shows that on the land bearing CTS No. 44-B, there were public urinals constructed and a receptacle was also kept. The said communication records that in the meeting of the Health Committee, the proposal of the Municipal Commissioner to remove the public urinals and receptacle has been accepted. There is a letter dated 1st June, 2000 signed by the Assistant Commissioner of the Second Respondent Municipal Corporation, addressed to the Petitioners (page 35 of the Petition). It mentions that the land bearing CTS No. 44-B has been acquired in the year 1954 for the construction of public urinals. It is stated that though it is not being used for the public urinals, the said property is required by the Municipal Corporation in future. In the said letter, it is stated that the said CTS No. 44-B consists of a “*bol*” (a small lane). It is further mentioned that the same will be required for pedestrians and therefore, the land bearing CTS No. 44-B cannot be returned to the First Petitioner. It is not in dispute that the Sixth Respondent has

erected a temple on the land bearing CTS No. 44-B, without prior permission of the Second Respondent.

15 Thus, it is virtually an admitted position that in 1944, the land bearing CTS No. 44-B was acquired for construction of public urinals. Initially the public urinals were constructed which were subsequently demolished with a view to ensure that the said land is available as a free thoroughfare to the pedestrians. It is also an admitted position that the Sixth Respondent has constructed a religious structure/temple on the said land.

16 In the affidavit-in-reply of the Sixth Respondent, it is stated that the temple was constructed on the land bearing CTS No. 44-B in the year 2001-2002. We are not recording any finding on the question whether the temple was constructed in the year 2001-2002 or recently. However, it is an admitted position that the temple was constructed by the Sixth Respondent. It is not the case made out in the reply that the temple was constructed after obtaining a permission of the Planning Authority i.e. the Second Respondent-Municipal Corporation. Thus, it can be safely concluded that on the land bearing CTS No. 44-B vesting in the said Municipal Corporation for the public purpose, the Sixth Respondent has illegally constructed a religious structure.

17 It is true that in terms of the decision of the Division Bench of this Court in the case of *Society for Fast Justice and Ors. (Supra)*, action ought to have been taken in respect of the said temple long back. The learned counsel appearing for the Municipal Corporation states that the classification of the said structure will be made as per the Government Resolution dated 5th May, 2011 in terms of the directions of this Court within a period of four months from today and appropriate action shall be thereafter taken. We accept the said statement.

18 It is only in view of the statement and in view of the fact that the directions issued by this Court in the aforesaid decision bind the said Municipal Corporation, we are not issuing any writ of mandamus for demolition or removal of the illegal structure. As per the mandate of the directions issued by this Court in the case of *Society for Fast Justice and Ors. (Supra)*, the Committee constituted under Government Resolution dated 5th May 2011 will have to decide whether the illegal structure was erected after 29th September 2009. If it is erected after the said date, the same will have to be immediately demolished. If it is erected prior to the said date, the Committee will have to consider whether the structure should be protected or whether

it should be relocated. In the event, the structure is found to be constructed before 29th September, 2009, we are sure that while categorizing the structure, the Committee will consider that it is erected on a land acquired by the Municipal Corporation for construction of public urinals and which even according to the Municipal Corporation, is required to be used for pedestrians as a thoroughfare considering the fact that it is a very congested and thickly populated locality. The Committee is bound to consider these two factors, if at all it is found that the structure has been erected prior to the aforesaid cut-off date.

19 Considering the peculiar facts and circumstances, we propose to direct the Municipal Corporation to complete the process of classification of the structure in terms of the aforesaid Government Resolution within a period of three months from the date on which the Order is uploaded. Needless to add that if it is decided to either demolish the structure or re-locate the same, the action will have to be taken at the earliest and within a time bound schedule.

20 As regards the allegation of the Sixth Respondent that the Petitioners have indulged illegality while making construction on the land bearing CTS No. 44-A, we make it clear that we have made no

adjudication on the said issue and that the Municipal Corporation is bound to follow due process of law and take action, if necessary.

21 Now, coming to the issue regarding converting the lane into no parking zone, as of today, in terms of the Order dated 28th February, 2018 passed by the Deputy Commissioner of Police, the said area has been converted into a no parking zone. As is apparent from the said Order, it is an interim order and the final Order will be passed after considering objections and suggestions. The letter dated 28th August, 2018 addressed to the Deputy Commissioner by the Police Officer of Vishrambaug Traffic Division, is only in the nature of a suggestion to the Deputy Commissioner of Police. The apprehension expressed by the learned counsel appearing for the Petitioners that certain influential person wants to ensure that the said lane or the said area is not treated as a no parking zone, has no basis for more than one reason. Firstly, the said influential person is not a party to the Petition. Secondly, we must note here that the Deputy Commissioner of Police of Traffic Division or the Authority which is empowered to pass the final Order converting a particular area or a particular lane into a no parking area, cannot get influenced by the alleged influential person inasmuch as the paramount consideration for taking decision

by such Authority is the traffic congestion in the concerned area or on concerned street and the convenience and safety of the pedestrians.

22 We are sure that the objection raised to the proposed no parking zone by any person howsoever influential, will not affect the decision making process unless the same is relevant to be considered by the Authority for the purposes of arriving at a decision in accordance with law.

23 Now, coming to the issue of illegal hawking, the said Municipal Corporation is bound by the directions issued by this Court from time to time including the directions issued in the case of **Azad Hawkers Union & Ors. (Supra)**. The Municipal Corporation is bound to implement the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (for short, “*the Street Vendors Act*”) and therefore, no separate directions are required to be issued.

24 Now coming to the Contempt Petition, we must note here that if the earlier Orders passed in the Writ Petition and Contempt Petition are perused, there is a substance in the allegations of the Petitioners that permissions were granted to erect pandal by the said Municipal Corporation as well as by the police without following the

law and the directions issued by this Court from time to time in Public Interest Litigation No. 173 of 2010 and other connected matters. Therefore, by an Order dated 11th December, 2015 this Court restrained the Municipal Corporation from granting permission to erect a pandal in the lane in question for any religious festival without seeking leave of this Court.

25 Perusal of the Order dated 11th September, 2018 which deals with the grant of permission to erect pandal for the Ganpati festival of September 2018 shows that the Sixth Respondent has given an undertaking to this Court. Paragraph Nos. 2 to 4 of the said Order read thus-

- “2 *The applicant has filed undertaking of Shri Amit Ramchandra Kathi, which is taken on record and marked “U1” for identification. Though the permission has been granted to erect an open pandal, the applicant has undertaken not to erect open pandal. In Clause 1 of the undertaking, the applicant has stated that the stage will be erected having dimensions of 12 X 20 ft. as shown in the sketch annexed to the undertaking. The applicant has undertaken to keep remaining width of 12 ft. of the lane open/vacant. It is stated that on the Northern side of the stage, an area admeasuring 10 ft. will be kept vacant.*
- 3 *In view of the contents of the NOC granted by the police and the conditions imposed by the Municipal Corporation and in view of the undertaking, a*

permission deserves to be granted to the applicant to act upon the permission dated 10th September, 2018 granted by the Assistant Commissioner of the Municipal Corporation, subject to compliance with the undertaking taken on record and marked "U1". Order accordingly. We accept the undertaking.

- 4 *To ensure that the applicant has abides by the conditions imposed by the Municipal Corporation as well as undertaking given to this Court (marked "U1" for identification), we direct the Assistant Commissioner of the Municipal Corporation, Pune to visit the stage which may be erected by the applicant on 15th and 17th September, 2018 and to submit a report to this Court. Photographs shall be taken and be annexed to the report."*

26 The learned counsel appearing for the Sixth Respondent clarified that the undertaking given was not confined to any particular year. That is also apparent from the undertaking and hence, the Sixth Respondent will be bound the undertaking hereafter and if any application is made by the Sixth Respondent hereafter for grant of permission to erect a pandal, the Sixth Respondent will be bound by the said undertaking. We must hasten to add here that, if a permission is granted to erect pandal, the Sixth Respondent will be bound by all other terms and conditions incorporated therein. Moreover, if in future, due to exigencies, the Police or Municipal Corporation are required to reduce the size of the pandal to an area less than 12 ft. x 20 ft, it is obvious that the Sixth Respondent will have to confine the

size of the pandal to the area prescribed. Merely because the undertaking is accepted by the Court does not mean that the Authorities are powerless to reduce the size of the pandal as mentioned in the undertaking.

27 The Orders passed in the Contempt Petition and the Affidavits tendered on record indicate that there were breaches committed by the Authorities of the directions issued in Public Interest Litigation No. 173 of 2010. However, the Sixth Respondent has given undertaking as pointed out above. There are affidavits filed by the said Municipal Corporation as well as by the police officers including an Affidavit filed by Ms. Rashmi Shukla, the then Commissioner of Police on 20th April 2017. The Commissioner has tendered an apology and has stated that the officers who had issued No Objection to the Sixth Respondent had no intention to defy to the directions issued by this Court. Considering the manner in which the Sixth Respondent and other Respondents have conducted themselves when it came to grant of permission to erect pandal in the Ganpati festival of September 2018 and considering the unequivocal undertaking given by the Sixth Respondent, we propose not to penalize any of the Respondents in the Contempt Petition. However, if in future any of them commit breaches

of the directions issued in Public Interest Litigation No. 173 of 2010, naturally such breaches will amount to aggravated contempt.

28 Accordingly, we dispose of these Petitions by passing following Order-

- a) We direct the Second Respondent-Pune Municipal Corporation to take action in respect of religious structure on CTS No. 44-B which is the subject matter of Writ Petition in terms of the directions issued by this Court in the case of *Society for Fast Justice and Ors. (Supra)*, and the process of categorization of said structure shall be completed by all the concerned as expeditiously as possible and in any event within a period of three months from the date on which this Judgment and Order is uploaded;
- b) If a decision is taken either to remove the illegal structure or to relocate the same, the action of removal or relocation shall be completed within a period of two months from the date on which the structure is finally classified. Needless to add that,

the concerned authorities empowered to classify the structure, shall keep it in mind the observations made in this Judgment and Order;

- c) We direct the Pune Municipal Corporation as well as the State Government to scrupulously implement the directions issued in the case of *Azad Hawkers Union & Ors. (Supra)* in relation to the lane in question. In the event the said Authorities fail to implement the said directions or act in contravention of the provisions of the Street Vendors Act, the Petitioners can always adopt an appropriate remedy in accordance with law;
- d) As regards the Order dated 28th February, 2018 passed by the Deputy Commissioner of Police, (Traffic Division) Pune, we direct that the said Order shall continue to operate till the final Order is passed. While passing the final order, the concerned Authority shall take into consideration the observations made in this Judgment and Order;
- e) After the final Order is passed, the concerned

Authority shall forward a copy of the final Order to the Petitioners or any one of them;

- f) If any Application is made by the Sixth Respondent or any one else for grant of permission to erect pandal on the lane subject matter of Writ Petition, the Second Respondent as well as all the officers of the State Government shall scrupulously follow the directions issued and the law laid down in Public Interest Litigation No. 173 of 2010 and any breach by them will be treated as a case of aggravated contempt;
- g) As the undertaking of Shri. Amit Ramchandra Katti given on behalf of the Sixth Respondent which is marked as “U-1” and which is referred in Order dated 11th September, 2018 in Civil Application No. 1832 of 2018 has been accepted, the Sixth Respondent shall continue to be bound by the said undertaking;
- h) We make it clear that, as the Sixth Respondent is bound by the undertaking, it is also bound by the

terms and conditions which may be incorporated by the said Municipal Corporation while granting permission, if any, to erect a pandal. We clarify that acceptance of undertaking marked as “U-1” cannot be interpreted to mean that the Police and the Municipal Corporation are bound to grant permission to erect pandal of the size of 12 ft. x 20 ft. It will be open for them to allow erection of pandal of a smaller size. The size mentioned in the undertaking shall be the maximum size for which permission can be granted;

- i) Considering the exigencies in future, the Authorities are free to take appropriate decision, including refusing the permission or granting permission for erecting a pandal having a size of less than 12 ft. x 20 ft;
- j) The apology tendered in various Affidavits filed in the Contempt Petition are accepted. It is only in view of the apology and the subsequent conduct during the Ganpati festival of 2018, that we are not

taking any action against any of the contemnors. As stated earlier, any further breaches will have to be treated as a case of aggravated contempt. Accordingly, the notices issued in the Contempt Petition are discharged;

- k) Rule issued in the Writ Petition No.4109 of 2015 is made absolute in the above terms;
- l) Contempt Petition stands disposed of in terms of this Order.

(A.S. GADKARI, J.)

(A.S. OKA, J.)