

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

44 WRIT PETITION NO.4997 OF 2021

KANHAIYA SHAMLAL SAKHARE
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

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Advocate for the petitioner : Mr.A.N.Sabnis
AGP for Respondent-State : Mr.S.G.Sangle
Advocate for Respondent no.5 : Mr.Saisagar Ambilwade h/f.
Mr.A.S.Sawant

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**CORAM : RAVINDRA V. GHUGE &
S.G.DIGE, JJ.**

DATE : 18.04.2022

P.C. :

1. The petitioner who claims to be belonging to the 'Mochi community' residing at Dhule, which follows the practice of burying human dead bodies, has put forth prayer clauses-B and C, as under:

B] The Hon'ble Court may be please to issue writ or direction in the nature of writ directing the respondents to allot the 3 acres land in the name of Mochi caste burial ground out of the

CTS No. 4779A/1, located near Panzra river and and further be pleased to pass necessary orders for the said purpose.

C] Pending hearing and final disposal of this Writ Petition, the Hon'ble High Court may be pleased to direct the respondents to allot the 3 acres land in the name of Mochi caste burial ground out of the CTS No. 4779A/1, located near Panzra river and further be pleased to pass necessary orders for the said purpose.

2. We have heard the learned Advocates for the respective sides.

3. The order passed by the learned Division Bench of this Court in Public Interest Litigation No.85/2015, dated 22.06.2017 is brought to our notice. The writ land, which is situated at 4779-A/1, is a part of the land, that was before this Court in the PIL as is evident from paragraph no.1 of the order dated 22.06.2017. This Court had issued certain directions to the Local Administration to remove encroachments and ensure that the lands are developed as a public garden.

4. It would be apposite to reproduce paragraph nos.1 to 7 of the said order hereunder:-

1. In terms of the earlier order and directions, the encroachments have been removed on the land more particularly described as Government land. It is located and situated at Mauje Deopur, Tq. and District – Dhule survey no. 13/A-1 (city survey no.4778, 4779/1-A, 4779/2, 4779/1-C, 4779/1-B, 4779/A-1), the detail description of which is found at page 34 of the paperbook.

2. Now, it is stated that this stretch of land, which is near Panzra river and the statue of Swatantryveer Savarkar, was encroached by several stall owners by putting up unauthorised structures. Those structures, stalls, tables, chairs with the entire paraphernalia have been removed. The encroachers have been identified. It is stated that this entire stretch of land will now be handed over to Dhule Municipal Corporation today by 5.00 pm. This statement is made by Mrs. Jyoti Ramdas Devre, Additional Tahsildar, Dhule City, Dhule.

3. The learned Advocate appearing for

the Municipal Corporation states that the Municipal Corporation will dispute its officials to take possession of this stretch of land from the Government / Tahsildar and the Sub-Divisional Officer or the authorized official of the District Collectorate. It is stated by Dhule Municipal Corporation that on its own charges and expenses, it will develop this entire stretch of land, as a public garden. Needless to clarify that when this statement is made, it is not mandatory that the Municipal Corporation cannot obtain any financial assistance or aid but it must bear in mind that the garden has to be maintained by it for the benefit of the public. By no process or mode, it should end in private hands. It is assured that this portion will be developed as a public garden as expeditiously as possible.

4. We take the photographs of the encroachment removal on record.

5. We post this matter on 4th August, 2017, by which date, the Municipal Corporation will inform this Court the steps taken by the public body to develop the land for the above-stated use.

6. In the meanwhile, we direct the concerned Police Station to provide police assistance to both the Collector as also the Municipal Corporation, so as to guard and protect the area from any encroachment. Now, that the entire encroachment is removed, it is desirable that the property is guarded. It should be properly fenced so that no miscreant or unauthorized person can enter the land or any portion thereof.

7. If this Court finds that the Municipal Corporation is not utilizing the stretch of land as per the reservation in the development plan, it will not hesitate to take action against any official howsoever highly he may be placed.

5. The learned Advocate for the petitioner submits that 'Mochi community' has been performing burials of human bodies since 1961. He refers to certain documents placed before us in the petition paper book and contends that though this community in Deopur, Taluka and District Dhule may be a small community, they have been carrying

out the burial activities in City Survey No.13/A-1, presently City Survey No.4779/A-1.

6. We do find that the order passed by this Court dated 22.06.2017 delivered in PIL No.85 of 2015, would be a legal impediment in the path of the petitioner. If at all this community actually resorts to burial and it has not resorted to cremation i.e. burning of the dead, this will have to be resolved by the District Administration.

7. The petitioner indicates some representations made earlier to the District Collector, Dhule. He also refers to the communication by the Superintendent of Police, District Dhule, dated 03.01.2004 by which a suggestion was put forth to the District Collector to consider granting that parcel of land to the Sant Ravidas Samaj Sudhar Mandal which comprises of the Mochi community, for the purpose of burial of their dead.

8. In view of the above, this petition is disposed off with the following observations :

a] The petitioner submits that Sant Ravidas Samaj Sudhar Mandal would make a fresh representation to the District Collector on or before 10th day of May, 2022.

b] After the District Collector receives the said representation, he shall consider the same, by taking into account all the relevant factors and follow the procedure as is prescribed for resolving the said issue.

c] The District Collector shall also keep in view the order dated 22.06.2017 passed by this Court in PIL No.85/2015, reproduced above.

d] The District Collector shall endeavour to resolve the issue raised by the petitioner – Mochi community i.e. Sant Ravidas Samaj Sudhar Mandal, as expeditiously as possible and preferably on or before 15th June, 2022.

[S.G.DIGE, J.]

[RAVINDRA V. GHUGE, J.]