

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10626 OF 2019

Balraj D. Jadhav

Age : Adult, Occ - Business

R/at - 3, Lords Premises,

1026, E Ward, Rajaram Road,

Kolhapur - 416 008.

... Petitioner

Versus

1. Union of India
through Ministry of Culture,
having office at 24, Tilak Marg,
New Delhi - 110 001.
2. National Monument Authority,
Government of India,
Ministry of Culture, having office at 24,
Tilak Marg, New Delhi - 110 001.
3. Regional Director (Western Region)
And Competent Authority,
Government of India,
Archaeological Survey of India,
having office at Archaeological Survey of India,
Sion Fort, Sion, Mumbai - 400 022.
4. Superintending Archaeologist,
Archaeological Survey of India,
Mumbai Circle, Mumbai.
5. National Highway Authority of India,
Ministry of Road Transport and Highway,
having office at G-5 and 6,
Sector 10, Dwarka, New Delhi.

6. The State of Maharashtra,
through its Secretary,
Ministry of Revenue and Forest,
Revenue & Forest Department,
having office at Mantralaya, Mumbai.
 7. Executive Engineer,
National Highway Division, Kolhapur,
Having office at Bandhkam Bhavan,
Tarabai Park, Near Head Post Office,
Kolhapur - 416 003.
 8. District Collector, Kolhapur,
having office at Kolhapur.
 9. District Superintendent of Land Records,
having office at Kolhapur.
 10. City Survey Officer, Kolhapur
having office at Kolhapur.
 11. Jr. Conservation Assistant,
Archaeological Survey of India,
Kolhapur Sub Circle,
having office at Panhala, Tal - Panhala,
Dist - Kolhapur - 416 201.
 12. Kolhapur Municipal Corporation,
having its office at Kolhapur,
Through Municipal Commissioner.
- ... Respondents

.....

Mr. Drupad Patil i/by Mr. B.G. Ligade for the Petitioner.

Mrs. Shehnaz Bharucha i/by Mr. A.A. Ansari for Respondent Nos.1 to 4.

Ms. M.P. Thakur, AGP for the Respondents - State.

Mr. Rakesh Singh i/by M.V. Kini & Co. for Respondent No.7.

Mr. Abhijit M. Adgule for the Respondent No.12 - Corporation.

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**CORAM : S.J. KATHAWALLA AND
MILIND N. JADHAV, JJ.**

**RESERVED ON : 29th OCTOBER, 2021
PRONOUNCED ON : 12th JANUARY, 2022
(through video-conferencing)**

ORDER (PER : S.J. KATHAWALLA & MILIND N. JADHAV, JJ.)

1. By the present Writ Petition, the Petitioner has prayed for the following reliefs:

"(a) This Hon'ble Court may be pleased to issue a Writ of Mandamus and / or any other Writ, Order or Direction in the nature of Mandamus thereby directing Respondent Nos. 9 and 10 to forthwith withdraw and / or cancel the impugned Survey Report dated 28.05.2018 being Exhibit - "Y" and the impugned Survey Map dated 28.05.2018 Exhibit - "Z" respectively to the Petition.

(b) that this Hon'ble Court may be pleased to issue a Writ of Certiorari and /or any other Writ, Order or Direction in the nature of Certiorari thereby directing Respondent Nos. 9 and 10 to forthwith quash and set aside the impugned Survey Report dated 28.05.2018 being Exhibit - "Y" and the impugned Survey Map dated 28.05.2018 Exhibit - "Z" respectively to the Petition.

(c) that this Hon'ble Court may be pleased to hold and declare that the ancient site of Brahmapuri of Kolhapur declared as ancient site under the provisions of Ancient monuments and Archaeological Sites and Remains Act, 1958 is not situated in any part of CTS No. 2357 of Kolhapur.

(d) that this Hon'ble Court may be pleased to issue Writ of Mandamus and / or any other Writ, Order or Direction in the nature of Mandamus thereby directing Respondent nos. 9 and 10 to conduct Survey of ancient site of Brahmapuri of Kolhapur, situated at CTS No. 2355 of Kolhapur and declare that the ancient site of Brahmapuri of Kolhapur is falling within the CTS No. 2355.

(e) that this Hon'ble Court may be pleased to issue Writ of Mandamus and / or any other Writ, Order or Direction in the nature of

Mandamus thereby initiating proper action for fabrication of the Survey Map against the concerned Officer occupying office of Respondent Nos. 8 to 10 on 28.05.2018 and directing further action under Indian Penal Code for fabricating public documents and creating false and bogus record.

(f) that this Hon'ble Court may be pleased to direct Respondent Nos. 9 and 10 to issue a fresh Survey Map to the Petitioner indicating that the ancient site is of Brahmapuri is not situated in any part of CTS No. 2357 of Kolhapur.

(h) that this Hon'ble Court may be pleased to issue a Writ of Certiorari and /or any other Writ, Order or Direction in the nature of Certiorari and be pleased to quash and set aside the notice dated 31.07.2021 issued by Respondent No.11 i.e. Jr. Conservator, Archaeological Survey of India, being Exhibit - "M" to this Petition.

(i) that this Hon'ble Court may be pleased to issue a Writ of Certiorari and /or any other Writ, Order or Direction in the nature of Certiorari and be pleased to quash and set aside the notice dated 07.09.2021 issued by Respondent No.12 i.e. Kolhapur Municipal Corporation, being Exhibit - "O" to this Petition."

2. The Petitioner is challenging the legality and validity of the Survey Report and Survey Map, both dated 28.05.2018, prepared by the District Superintendent of Land Records, Kolhapur, and the City Survey Officer, Kolhapur respectively, through which the location of the ancient site of Brahmapuri (for short **"the said site"**) is shown as situated in CTS No. 2357 and for a declaration that the said site is located in CTS No. 2355, Kolhapur City.

2.1. CTS No. 2357 admeasures 15369.4 sq. mtrs. in total. On 15.12.2007, the Petitioner purchased an area admeasuring 2498.155 sq. mtrs. from the legal heirs of the original owner out of the total area of CTS No. 2357, by three registered conveyances. On the same date, i.e. 15.12.2007, the brother of the Petitioner, Mohan Digambar Jadhav purchased an identical area admeasuring 2498.131 sq. mtrs. from the

legal heirs of the owner by three separate registered conveyances. In November 2018, pursuant to a Consent Decree dated 27.10.2016 in Civil Suit No. 172 of 2010, with the consent of the co-owners, CTS No. 2357 was divided into two parts, viz. CTS No.2357/A (admeasuring 11369.4 sq. mtrs.) and CTS No.2357/B (admeasuring 4000 sq. mtrs.) and the Petitioner and his brother were declared as owners of 4000 sq. mtrs. out of CTS No. 2357. Thus from November 2018, the Petitioner and his brother Mohan Digambar Jadhav are the exclusive owners of CTS No. 2357/B and in possession thereof. That apart, the other legal heirs have also executed a registered Leave and Licence Agreement in favour of the Petitioner for a period of five years for an area admeasuring approximately 2200 sq. mtrs. out of CTS No.2357/A, which is in the possession of the Petitioner. The Petitioner has put up a fence around the licensed area for which the Petitioner has been served with a Notice dated 07.09.2021 under Section 53(1) of the MRTP Act.

2.2. In the present Petition, the Petitioner has also challenged Notices dated 31.07.2021 and 07.09.2021 issued by the Respondent No.11 - Jr. Conservator, Archaeological Survey of India - and the Respondent No. 12 - Kolhapur Municipal Corporation, Kolhapur ("**the Corporation**").

2.3. The first Notice dated 31.07.2021 states that the Petitioner has contravened the provisions of Section 20(C) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 ("**the said Act**") and Rule 38(1) of the

Ancient Monuments and Archaeological Sites and Remains Rules (framing of Heritage bye-laws and other functions of the Competent Authority), 1959 ("**the said Rules**") and therefore liable for penal action and fine under Section 30 of the said Act.

This Notice does not refer to any CTS number.

2.4. The second Notice dated 07.09.2021 is issued under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 ("**the MRTP Act**"), stating that the Petitioner has carried out unauthorized construction on CTS No. 2355. The Petitioner denies being in possession of CTS No.2355.

3. Before we avert to the respective submissions, it will be apposite to briefly refer to the relevant facts.

3.1. According to the Petitioner, the said site is located / situated in CTS No. 2355, Kolhapur, and not in CTS No.2357.

3.2. By relying upon the Excavation Report of the excavation carried out some time in the year 1945, it is asserted by the Petitioner that the said site is included in the Schedule of the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951. The Deputy Superintending Archaeologist and Central Public Information Officer has supplied a copy of the site plan to the Petitioner under the Right to Information Act, 2005, which shows that the said site is located in CTS No. 2355. The said Letter and Plan are annexed as Exhibit "D" to the Writ Petition, at page Nos. 91 and 92.

3.3. In the year 1945, the then Princely State of Kolhapur Government, at the suggestion of Professor D.R. Gadgil, Director of Gokhale Institute of Politics and Economics, invited the Research Institute, Pune, to undertake the work of excavation at the said site on scientific lines. The excavation work lasted for four months and thereafter with the sanction of the Government of Bombay, a report titled as "Excavations at Brahmapuri (Kolhapur) 1945-46" was published. In the said Report, the location of the ancient site of Brahmapuri is mentioned as North latitude $16^{\circ}41'$ and East longitude $74^{\circ}71'$.

3.4. According to the Petitioner, the aforesaid location of the site is shown on CTS No. 2355 in the Development Plan of Kolhapur City. The Development Plan prepared by the Corporation is sanctioned by the State Government on 18.12.1999, wherein the location of the site is shown in CTS No.2355.

3.5. The said site is situated in close proximity to "Shivaji Bridge" which is constructed on the Panchganga River on Ratnagiri - Kolhapur Road (National Highway No. 204). In the year 2012, Ministry of Road Transport and Highways sanctioned work of construction of a New Bridge near the existing "Shivaji Bridge". Since construction of the "New Bridge" was within the prohibited area under the said Act, NOC / approval from the Archaeology Department became necessary. On 01.03.2014, a proposal seeking NOC was submitted before the Directorate of Archaeology which was then forwarded to the National Monument Authority. The

Authority refused to grant permission to construct the New Bridge since the proposed construction of the New Bridge was at a distance of 40 mtrs. i.e. within the prohibited area (of 100 mtrs.) from the said site as per the provisions of the said Act.

3.6. The Competent Authority, by its Letter dated 09.03.2016, accordingly informed the Executive Engineer, National Highway Division, Pune, that permission to construct the New Bridge cannot be granted since the proposed construction is within the prohibited area, i.e. at a distance of 40 mtrs. from the said site.

3.7. In the meanwhile, construction of the New Bridge which had commenced was stopped for want of NOC from the Department of Archaeology.

3.8. Thereafter, a series of correspondence was exchanged between various authorities for the purpose of obtaining the NOC / approval from the Department of Archaeology, but to no avail.

3.9. On 28.05.2018, the Collector, Kolhapur, directed the District Superintendent of Land Records and the City Survey Officer, Kolhapur (Respondent Nos. 9 and 10), to carry out measurement and sub-division of lands bearing CTS Nos. 2331, 2332, 2355. 2356. 2357/A and 2357/B and directed the Survey Officer to ascertain the exact location of the said site.

3.10. On the same date, i.e. 28.05.2018, survey of land parcels was carried out and a survey map was prepared. According to the Petitioner, no survey was ever carried out since no notice was given to the land owners of the said lands. However, in

the Survey Map dated 28.05.2018, location of the said site is shown in CTS No. 2357, with which the Petitioner is concerned.

3.11. CTS No. 2357 is private property, which was originally owned by Shri. Mamulal Sadullakhan Hakim since 1939. Since the location of the said site is shown in CTS No. 2357, the Petitioner filed complaints dated 22.06.2018 with the Superintending Archaeologist, Collector Kolhapur and the City Survey Officer, Kolhapur.

3.12. Some time in the month of May 2019, the Competent Authority and Regional Director, Archaeological Survey of India, Western Region issued permission for completing construction of the New Bridge over Panchganga River at Kolhapur, pursuant to which the construction of the New bridge has been completed and the said New Bridge has been made operational and thrown open to the public for use.

3.13. The Petitioner filed the present Petition on 04.07.2019 to challenge the Survey Report and the Survey Map, both dated 28.05.2018 which shows the presence of the said site on CTS No. 2357.

3.14. Since the Petitioner had put up a fence over the licensed area of 2200 sq. mtrs. on CTS No. 2357, on 31.07.2021, Respondent No. 11 issued a Notice to the Petitioner stating that the Petitioner has violated the provisions of Section 20(C) of the said Act and is therefore liable for penal action. Immediately thereafter on 07.09.2021, Respondent No. 12 - Corporation - issued another Notice dated

07.09.2021 under the provisions of Section 53(1) of the MRTP Act to the Petitioner stating that the Petitioner has carried out unauthorized construction on CTS No. 2355.

3.15. The Petitioner amended the present Petition and has challenged the Notices dated 31.07.2021 and 07.09.2021.

4. Mr. Drupad Patil, Learned Advocate appearing for the Petitioner, submits that as per the available record, viz; Site Plan of Brahmapuri (Page Nos. 91 to 93) and the Development Plan (Page No. 127), it is *prima facie* evident and clear that the said site is located in CTS No. 2355 of Kolhapur City; by Letter dated 18.02.2016 the National Monument Authority has asserted that the then proposed construction of the New Bridge is at a distance of 40 mtrs. from the protected area, i.e. the said site, hence to circumvent and overcome this hurdle a completely bogus Survey Report and Survey Map has been prepared on 28.05.2018 by the Respondent Nos. 9 and 10 showing the location of the said site in CTS No. 2357 of Kolhapur City; consequently, by relying on the said Survey Map dated 28.05.2018, an NOC for construction of the New Bridge was issued on 07.05.2019 and the construction of the New Bridge was completed.

4.1. Advocate Patil submits that on comparison of the 1948 Map prepared by experts, i.e. Professor H.D. Sankalia and Dr. M.G. Dixit and the so-called Site Map dated 28.05.2018, the fabrication is apparent on the face of the said Maps, in as much

as all the structures in the 1948 Map are shown at the same location in the fabricated map prepared on 28.05.2018, except for the location of Mound - II; the structures which are falling in CTS No. 2355 and the structures falling in CTS No. 2357 are also shown at the exact same location; the 1948 Map clearly shows that Mound-II is situated between the structures situated in CTS No. 2355, whereas in the 2018 Map, the site of Mound-II is incorrectly shown on the southern side of CTS No. 2357. He therefore submits that these facts clearly show a brazen act of fabrication of the official record and preparation of the Survey Map, so as to overcome the hurdle of the proximity of the New Bridge to the said site and to complete construction of the said New Bridge. He submits that in the Affidavit-in-Reply, Respondent Nos. 8 to 10 have clearly admitted that notices of survey held pursuant to the Collector's Order dated 28.05.2018 were not given to the land owners; and, most importantly, the case of the Petitioner is not answered. Hence, it is clear that only with a malafide intention to complete construction of the New Bridge; the impugned Survey Report and the Survey Map, both dated 28.05.2018 were prepared without following the due process of law; Section 20 (E)(3) of the said Act read with Rule 21 of the said Rules of 2011 provide a detailed procedure required to be followed while preparing the Site Plan of an Ancient Site i.e. Protected Area Prohibited Area / Regulated Area; till date the "Site Plan" of the said site is not prepared and declared by the Competent Authority under the said Act; Respondent Nos. 9 and 10 have prepared the purported Survey

Report and the Survey Map of the said site without giving any notice to the Petitioner and the other land owners; that action of the Respondents depicting location of the said site in CTS No. 2357 instead of the existing CTS No. 2355 has jeopardized the Petitioner's / land owner's rights because of various sanctions and restrictions that would now be imposed under the said Act and Rules; and that there is a clear and admitted breach of the principles of natural justice.

4.2. Advocate Patil submits that the sequence of events show complete arbitrariness on the part of the Respondent Nos. 9 and 10 and the entire exercise smacks of malafides and brazen use of power conferred on the Collector, District Superintendent of Land Records and City Survey Officer under the Maharashtra Land Revenue Code, 1966 (for short "**the MLRC 1966**"). He further submits that despite the fact that by Letter dated 18.02.2016, the Competent Authority exercising powers under the said Act has clearly refused permission for construction of the New Bridge since it was within 40 mtrs. from the said site situated in CTS No. 2355, without any change of circumstances and solely with a view to prepare a false record to show that the New Bridge being constructed is beyond 100 mtrs. from the said site, a fabricated Survey Report and Survey Map has been prepared by a brazen act of manipulating the official record solely with a view to completing the construction of the New Bridge; that merely because construction of the New Bridge being in public interest, it cannot mean to put the private land of the Petitioner under false sanction and restrictions and

that too without notice and knowledge of the Petitioner. Moreover, on paper the location of the said site could not be shown on CTS No. 2357, when it actually exists and is situated on CTS No. 2355. Hence, he has urged for quashing and setting aside the Survey Report and Survey Map, both dated 28.05.2018, for a declaration that the said site is situated in CTS No. 2355 and for quashing the subsequent Notices dated 31.07.2021 and 07.09.2021 issued by the Respondent Nos. 11 and 12 respectively.

5. Ms. M.P. Thakur, Learned AGP appearing on behalf of the Respondent Nos. 8 to 10, has referred to the Affidavit-in-Reply dated 21.09.2021 filed by Shri. Kiran Sampatrao Mane, City Survey Officer, Kolhapur, and contended that the Survey Report and Survey Map, both dated 28.05.2018 have been prepared by following the due process of law after conducting appropriate survey measurements in the presence of the Officers of the Archaeological Department and the State. She submits that construction of the New Bridge was required to be undertaken on an emergency basis considering that the previous bridge on the Panchganga River was 140 years old and in a dilapidated condition and could have led to accidents and casualties; that considering this emergency, measurement and survey of CTS No. 2357 and more specifically, the said site was required to be undertaken in order to determine the proximity of distance of the said site from the proposed construction site of the New Bridge; hence, in view of the urgency, notices to all affected parties including the Petitioner were not issued and that measurement and survey of CTS No. 2357 was conducted in the presence of

Officers of the Archaeological Department of India and the Collector's Office. She submits that if the Petitioner is aggrieved by the Survey Report and Survey Map, it is open to the Petitioner to file Nimtana Application for seeking verification of the Survey Report and Survey Map which was conducted in the presence of all officials and the Petitioner be directed to do so, or in the alternative the Petitioner be directed to file a statutory appeal before the Appellate Authority to challenge the impugned Survey Report and Survey Map.

6. Mr. Abhijit Adgule, Learned Advocate appearing for the Respondent No.12 - Kolhapur Municipal Corporation - has issued Notice dated 07.09.2021 to the Petitioner under the provisions of Section 53(1) of the MRTP Act, on the ground that the Petitioner has constructed a stage and a fence around the compound wall without the permission of the Planning Authority, i.e. the Corporation, which is required under the Development Control Rules; that the construction being unauthorized, the Corporation invoked the provisions of the above Act and thus the action of the Corporation is justified.

7. We have heard the Learned Advocates appearing for the respective parties; perused the material on record and considered the submissions made by the parties.

8. Section 20A of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 is relevant and reads thus:

" [PROHIBITED AND REGULATED AREAS

20A. Declaration of prohibited area and carrying out public work or other works in prohibited area.-

(1) Every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred metres in all directions shall be the prohibited area in respect of such protected area or protected monument:

Provided that the Central Government may, on the recommendation of the Authority, by notification in the Official Gazette, specify an area more than one hundred metres to be the prohibited area having regard to the classification of any protected monument or protected area, as the case may be, under section 4A.

- (2)
- (3)
- (4)]"

In terms of the above provision, i.e. Section 20A(1), all areas upto a distance of 100 mtrs. from the said site are protected / prohibited areas and if the said site is located on CTS No. 2355, then the site where the New Bridge is constructed, is a protected or prohibited area.

8.1. After going through the pleadings before us, it is crystal clear that in order to overcome the above statutory provision under which no construction / development could have taken place within a distance of 100 mtrs. from a protected area or protected monument, the impugned Survey Report and Survey Map is prepared on 28.05.2018, in order to show that the said site is situated on CTS No.

2357 and not on CTS No. 2355, so that the NOC from the Archaeological Department could be obtained and construction of the New Bridge could be completed. The deafening silence of the Respondents in answering this aspect of the matter and the specific grounds raised in the present petition, is clearly evident. None of the Respondents have ventured to answer the aforesaid ground with respect to the proximity the New Bridge from the said site. In fact, the Development Plan of Kolhapur City prepared by the Corporation and sanctioned by the Government, clearly bears out the location of the said site on CTS No. 2355 and not on CTS No.2357. The correctness and authenticity of the statutory documents are not disputed by the Respondents.

9. We have carefully perused the site map showing the location of CTS No. 2357 (land belonging to the Petitioner), CTS No. 2355 (land showing the presence of the said site) and Shivaji Bridge on the Panchganga River. The site map prepared by the Archaeological Survey of India, Mumbai Circle, is annexed at page No. 91 to the Letter dated 14.03.2017 issued by the Deputy Superintending Archaeologist and Central Public Information Officer under the Right to Information Act, 2005. The site plan clearly shows that CTS No. 2355 is situated between Shivaji Bridge and CTS No. 2357. It is asserted by the Petitioner that the distance of Shivaji Bridge is merely 40 sq. mtrs. from CTS No. 2355 in which the said site is located and due to the proximity of the New Bridge from a heritage site, it was not possible for the Corporation to carry

out the construction and development of the New Bridge as the said construction / development would have been prohibited in law. Hence, it clearly appears that to circumvent the provisions of the said Act, the purported Survey was carried out on 25.08.2018, without giving notice to any party and the Survey Report and Survey Map was prepared on the same date itself, showing the said site as situated in CTS No. 2357 and not in CTS No. 2355. Due to this, the National Highway Authority was in a position to carry out and complete construction of the New Bridge by obtaining the NOC from the Archaeological Department of India. Hence, to serve the interest of the National Highway Authority and to complete development and construction of the New Bridge; the Survey Report and Survey Map was prepared without giving notice to the land owners / Petitioner and the existence of the said site was shown on CTS No. 2357.

10. In the present case, the action on behalf of the authorities is not only arbitrary and high-handed but completely illegal. The authorities, i.e. the Collector has declared the private land of the Petitioner, i.e. CTS No. 2357 as an archaeological site by showing the location of the said site on CTS No. 2357, and has thereby completely abused the due process of law. Admittedly, no notices are issued to the owners of CTS No. 2357 by the statutory authorities before declaring the private property as an archaeological site, or for that matter to any of the land owners of CTS Nos. 2331, 2332, 2355, 2356, 2357/A and 2357/B. Apart from the gross violation of the

principles of natural justice as observed hereinabove, the impugned action of declaring the private land of the Petitioner which falls in CTS No. 2355, as being in CTS No. 2357 is grossly illegal. There is substantial documentary evidence on record which shows that the said site is located on CTS No. 2355 and not on CTS No. 2357. The Development Plan of the Municipal Corporation is sanctioned by the State Government on 18.12.1999 and it clearly shows the location of the said site on CTS No. 2355. The said plan is issued by the Office of the Commissioner, Kolhapur Municipal Corporation, and is annexed at Exhibit "G" (page No.127 to the Petition).

11. From the said Plan, it is clear that CTS No. 2357 is located below CTS No. 2355 and the Shivaji Bridge is located above CTS No.2355. There can be no better evidence than the sanctioned Development Plan. It is also clear that the said site is admittedly situated in close proximity to Shivaji Bridge across the Panchganga river on Kolhapur - Ratnagiri road (National Highway No. 204). It is also on record that the National Monument Authority, to whom the Directorate of Archaeology had forwarded a proposal for an NOC to construct the New Bridge, had refused to grant permission for the same since the proposed construction was at a distance of 40 mtrs, i.e. within the prohibited area from the said site. Though as far back on 30.03.2012, the Ministry of Road Transport and Highway had sanctioned construction of the new bridge on the Panchganga River, next to the old Shivaji Bridge and the work order was issued on 13.03.2013, the construction of the new bridge did not materialize as the

same was prohibited due to want of NOC/Approval from the Archaeological Department of India. The Letter dated 18.02.2016 issued by the Under Secretary of the Government of India, Ministry of Culture, National Monuments Authority to the Competent Authority, State of Maharashtra and the Regional Director (Western Region), Archaeological Survey of India, in this respect is relevant and reads thus:-

“F. No. 2-17/380/2015-NOC/NMA
Government of India
Ministry of Culture
National Monuments Authority

24, Tilak Marg, New Delhi - 110 001
Dated: 18.02.2016

To,

The Competent Authority,
State of Maharashtra &
Regional Director (Western Region),
Archaeological Survey of India,
Sion Fort, Sion,
Mumbai - 400 022 (Maharashtra)

Sub : Forwarding proposal of the Executive Engineer National Highway Division, Executive Engineer National Highway Division, Kolhapur Turobal Park Behind New Palace Post Office for NOC - reg.

Sir,

This is in response to your letter No. 1/261/CA-Mum/2015-2356 dated 19th November, 2015 on the subjected cited above.

In this context, I am directed to return the file to you as the proposed construction is at a distance of 40.00 mt. (Prohibited area) from the "Bramhapuri", Kolhapur, Maharashtra and as per the provision of the amended act i.e. Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 to take appropriate action so deemed fit against encroachment in the prohibited area of any protected monument or protected area declared as of national importance.

This issues with the approval of Competent Authority.

Encl. as above

Yours faithfully,
sd/-
(Kuldeep Kumar Takkar)
Under Secretary
Telefax:- 011-23073837
Tel:- 011-23380535

Copy to :

1. The Executive Engineer National Highway Division, Executive Engineer National Highway Division, Kolhapur Turobai Park Behind New Palace Post Office."

12. Another relevant Letter dated 09.03.2016 issued by the Competent Authority for Maharashtra and Regional Director (Western Region), Archaeological Survey of India and addressed to the Executive Engineer National Highway Division, *inter alia*, further states that no construction or re-construction even for public utility works can be allowed in the prohibited area of any protected monument and thus the permission was refused. The said Letter reads thus:

"F. No. 1/261/CA-MH/2014 - 3761-3762
GOVERNMENT OF INDIA
ARCHAEOLOGICAL SURVEY OF INDIA
REGIONAL DIRECTOR (WEST)
& COMPETENT AUTHORITY (MAHARASHTRA STATE)
SION FORT, SION (EAST),
MUMBAI - 400 022
Dated: 29/02/2016

To,
Executive Engineer National Highway Division,
Kolhapur Turobal Park Behind New Palace Post Office
Kolhapur - 416003

Sub : Proposal of the Executive Engineer National Highway Division,
Executive Engineer National Highway Division, Kolhapur
Turobal Park Behind New Palace Post Office for NOC - reg.

Sir,

With reference to the subject cited above, it is to inform you that Under Secretary, NMA, New Delhi vide letter no. 2-17/380/2015-NOC/NMA dated 18/02/2016 informed that the proposed construction work falls in the prohibited area at a distance of 40.00 meters from the "Branmhapuri" Karvir Kolhapur a Centrally Protected Monument and as per the provision of amended Act i.e. "The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, no construction or re-construction even for public utility works can be allowed in the prohibited area of any protected monument and protected area declared as of national importance.

Hence, I am to inform you that the permission has been refused.

Yours faithfully,

(M. Mahadevaiah)
Competent Authority,
For Maharashtra

Copy to :

1. Member Secretary, NMA 24, Tilak Marg, New Delhi - 110 001"

13. Despite the above Letters refusing permission, a fresh application dated 01.02.2018 is moved by the Executive Engineer, National Highway Division, Kolhapur, before the Competent Authority for seeking permission to complete construction of the New Bridge. On 28.05.2018, the Collector, Kolhapur, then issues a letter to the District Superintendent of Land Record and City Survey Officer, Kolhapur, directing the said officers to carry out measurement of lands bearing CTS Nos. 2331, 2332, 2355, 2356, 2357/A and 2357/B. By another letter dated 28.05.2018, the Collector, Kolhapur, calls upon the District Superintendent of Land Records and City Survey Officer, Kolhapur, to carry out the measurements and the sub-division of the aforesaid CTS numbers and also measure the area of the said site. On the same

date it is seen that a separate letter is also issued by the District Superintendent of Land Record, Kolhapur to ascertain the location of the said site and the proximity of Shivaji Bridge, whether it is 100 mtrs. or 40 mtrs. from the said site and indicate the same on the Survey Report and the Survey Map. The aforesaid exercise being a statutory exercise, it was incumbent upon the District Superintendent of Land Record, Kolhapur, to give the statutory notice to the land owners / kabjedars of the CTS No. 2331, 2332, 2355, 2366, 2357/A and 2357/B, considering the documentary evidence available, asserting their title in the aforesaid CTS numbers and only thereafter carry out the measurements in their presence, and thereafter prepare the Survey Report and Survey Map. This is the procedure prescribed under the provisions of the Maharashtra Land Revenue Code, 1966, wherein measurement and sub-division is required to be done and revenue records are required to be altered by following the due process of law. Without adhering to the said procedure prescribed by law, shockingly on the same date i.e. 28.05.2018, the City Survey Officer has submitted a premeditated report which is annexed at Exhibit "Y" on page 182 and a map at page 183 of the Petition. The Report states that the District Superintendent of Land Records has issued the prescribed advance notice to the land owners, carried out the survey on the appointed date and only after hearing adjacent land owners / occupiers and carrying out measurements in the presence of panchas / witnesses, has prepared the Survey Report and the Survey Map. *Prima facie*, on reading the Report dated

28.05.2018, it is impossible to believe and comprehend that the District Inspector of Land Record can undertake such an exercise as requested by the Collector, Kolhapur, vide his Letter dated 28.05.2018, within a span of one day and also prepare a Survey Report and Survey Map on that date itself. That apart, the subject reference stated in the Report dated 28.05.2018 is of an application dated 18.06.2018, which itself is an application made well after the date on which the Survey Report is prepared. This itself shows that the Survey Report is a premeditated document, which has been prepared only to show that the said site is at a distance of more than 100 mtrs. from the proposed construction site of the New Bridge, so as to overcome the restriction of the prohibited area and to complete construction of the bridge, when in fact the said site is actually situated in CTS No. 2355 at a distance of about 40 mtrs. from the proposed construction site.

14. In view of the above, we do not have the slightest hesitation to declare the impugned Report dated 28.05.2018 and Survey Map dated 28.05.2018 prepared by the District Superintendent of Land Records, Kolhapur, as completely illegal, as it has been prepared only to allow completion of the construction of the New Bridge, thereby jeopardizing the right of a private citizen like the Petitioner with respect to his land. This action on the part of the Respondent authorities, namely the Collector, the District Superintendent of Land Records, Kolhapur, and the City Survey Officer, in conjunction with the officials of the Archaeological Department of India, to show that

the said site is located on CTS No. 2357 so as to allow construction of the New Bridge and thereby prejudice the right of a private citizen, is not only shocking but deserves to be strictly reprimanded. There is ample material evidence on record to show that CTS No. 2357 is a private property / land which was owned by Mamulal Sadullakhan Hakim since 1939; CTS No. 2357 was free from any condition till 1953 and in the year 1954, the City Survey Officer imposed the condition of inalienability and impartibility; this condition was challenged by the owner and after hearing the owner and going through the records, the Collector, Kolhapur, re-directed the City Survey Officer to remove the condition and record that CTS No. 2357 / property was heritable and transferable. That apart, in 2010, a suit (Civil Suit No. 172 of 2010) was filed by one of the co-owners, i.e. Sugrabegam Manzil Hakim & others, in respect of CTS No. 2357. On 27.10.2016, the parties filed consent terms in the said suit. Accordingly, a Consent Decree was drawn. The Petitioner and his brother Mohan Digamber Jadhav were declared to be the owners of 4000 sq. mtrs. of land out of CTS No. 2357, whereas the remaining land was declared to be owned by the Hakim family. In November 2018, as per the said Consent Decree and with the consent of the co-owners, CTS No. 2357 was sub-divided into two parts viz; CTS No. 2357/A (area admeasuring 11369.4 sq. mtrs.) and CTS No. 2357/B (area admeasuring 4000 sq. mtrs.). We have perused the Property Card and the Map filed by the Petitioner in the additional Affidavit dated 01.12.2021 placed before us.

15. From the above discussion and findings, it is crystal clear that without ascertaining any facts the Respondents prepared the impugned Survey Report and Survey Map both dated 28.05.2018, by showing the location of the said site on CTS No. 2357 instead of CTS No. 2355, in order to complete the construction and development of the Shivaji Bridge on the Panchganga River.

16. We are constrained to note that despite the Letter dated 18.02.2016 by the Competent Authority exercising the powers under the provisions of the said Act, having clearly refused permission for construction of the New Bridge since it was at a distance of 40 mtrs. from the said site, without any change of circumstances and solely with a view to prepare a false record in order to show that the New Bridge was located beyond the distance of 100 mtrs. from the said site, a completely brazen act of fabrication and preparation of the Survey Report and Survey Map on the same date is done, by the answering Respondents. The entire exercise carried out by the District Superintendent of Land Records, Kolhapur, at the behest of the Collector, Kolhapur on 28.05.2018, is not only illegal on the face of the record, but also smacks of malafides and is a completely colourable exercise of power.

17. None of the contentions raised by the Petitioner have been answered by any of the Respondents on merits, either in the Affidavit-in-reply or even in the submissions made by the parties before us, including the Respondent Nos. 1 to 4. In fact in the Affidavit-in-Reply dated 27.10.2021, Respondent Nos. 1 to 4 have stated

that the dispute arises between the Petitioner and the Respondent Nos. 8 to 10 and is not related with Respondent Nos. 1 to 4. The statutory provisions of Chapter VII of the MLRC, 1966 and the Rules framed thereunder, *inter alia*, dealing with survey of land as well as the provisions of Chapter IX pertaining to boundary disputes and boundary marks and the power of the Collector to demarcate a boundary on a particular survey map or sub-division have been completely flouted by the statutory authorities. In exercise of powers conferred by Section 328 of the MLRC, 1966, the Government of Maharashtra has framed the Maharashtra Land Revenue (villages, town and city survey numbers) Rules 1969, which have been given a complete go-by by the statutory authorities. The provisions of Section 241 of the MLRC 1966, empowering the Revenue and Survey Officers to demarcate, sub divide, amalgamate and do such other acts connected with the lawful exercise of their office can only be done with the permission of the holder / occupier of the land and after following the prescribed procedure. This entire statutory exercise has been flouted with complete brazenness.

18. However, we would like to state that merely because the construction of the New Bridge is in public interest, it gives no right to the Government or the statutory authorities to declare the private land of a citizen as an ancient monument site, and thereby jeopardize the right of such private land holder. The statutory authorities have in the present case changed the location of the said site on paper from

CTS No. 2355 to CTS No. 2357 in order to complete construction of the New Bridge on the Panchgana River. However, this does not change the ground reality and the fact that the said site is in fact situated on CTS No. 2355.

19. We further note that the Respondent No. 11 has issued Notice dated 31.07.2021 to the Petitioner under the provisions of Section 20(C) of the said Act for carrying out construction in a prohibited / protected area and thereby invoked penal action under the provisions of Section 38 of the said Act. Perusal of the said Notice shows that the property on which the construction is carried out is not mentioned in the said Notice. The said Notice is devoid of the specific particulars of the property, i.e. whether the construction is on CTS No. 2355 or CTS No. 2357. The Notice on its very face is vague and insufficient. The Respondent No. 11 being involved in the present case could not have made such an omission whilst issuing the impugned Notice. All this goes to show that the said Notice has been issued by the Respondent No. 11 merely to protect and/or camouflage the ostensible illegality of showing the said site in CTS No. 2357. A further Notice dated 07.09.2021 is issued by the Respondent No. 12 - Municipal Corporation - under the provisions of Section 53(1) of the MRTP Act, *inter alia*, alleging illegal construction carried out by the Petitioner on CTS No. 2355. This notice once again is *prima facie* issued incorrectly because it is the case of the Respondents that the said site is located on CTS No. 2357. Therefore, the question of issuing any notice to the Petitioner for carrying out illegal construction

on CTS No. 2355, if true, goes to prove that the Petitioner is in possession of the ancient site in CTS No. 2355 and not concerned with CTS No. 2357. If the Petitioner has violated any of the statutory provisions of the MRTP Act, it is needless to state that the consequences will follow and the statutory authorities shall pursue the same in accordance with law. However, in so far as the present controversy is concerned, it is clear that the said site cannot be said to be located / situated in CTS No. 2357.

20. In view of the above findings and discussions, the impugned Survey Report and Survey Map, both dated 28.05.2018 and the impugned Notices dated 31.07.2021 and 07.09.2021, deserve to be interfered with. Hence, we pass the following Order :

(i) The Survey Report and Survey Map both dated 28.05.2018, prepared by Respondent Nos. 9 and 10, are hereby quashed and set aside;

(ii) The Respondent Nos. 9 and 10 are directed to conduct a fresh survey and take measurements of the said site after giving notice as prescribed by law to all holders of lands / occupiers and after following the due process of law, prepare a fresh Survey Report and Survey Map by showing the proximity of the ancient site of Brahmapuri, Shivaji Bridge and the New Bridge constructed on the Panchganga River, and more specifically with reference to CTS No. 2355 and CTS No. 2357/A and CTS No. 2357/B, and indicate the location of the said site on the Survey Map;

(iii) The above exercise shall be completed within a period of 4 weeks from

the date of this Order by following the due process of law;

(iv) The impugned Notice dated 31.07.2021 issued by the Respondent No. 11 - Jr. Conservator, Archaeological Survey of India and notice dated 07.09.2021 issued by the Respondent No. 12 - Kolhapur Municipal Corporation - are hereby quashed and set aside;

21. In view of the above directions, Writ Petition stands disposed of.

22. Liberty to apply.

(MILIND N. JADHAV, J.)

(S.J. KATHAWALLA, J.)