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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 162 OF 2013

Shri Pradeep Vithal Girme .. Petitioner
Vs.
State of Maharashtra and ors. .. Respondents

**WITH
INTERIM APPLICATION NO. 4188 OF 2021
IN
PUBLIC INTEREST LITIGATION NO. 162 OF 2013**

M/s. S. B. Associates Promoters Builders
and Developers and anr. .. Applicants
Vs.
Shri Pradeep Vithal Girme and ors. .. Respondents

**WITH
PUBLIC INTEREST LITIGATION NO. 20 OF 2011
WITH
INTERIM APPLICATION NO. 831 OF 2022**

Shri Pradeep Vithal Girme .. Petitioner
Vs.
Saswad Municipal Council and ors. .. Respondents

**WITH
INTERIM APPLICATION NO. 3115 OF 2021
IN
PUBLIC INTEREST LITIGATION NO. 20 OF 2011**

M/s. S. B. Associates Promoters Builders
and Developers and anr. .. Applicants
Vs.
Shri Pradeep Vithal Girme and ors. .. Respondents

**WITH
PUBLIC INTEREST LITIGATION NO. 181 OF 2010
WITH
INTERIM APPLICATION NO. 835 OF 2022
WITH
CIVIL APPLICATION NO. 4 OF 2021
WITH
CIVIL APPLICATION NO. 47 OF 2014**

Subhash Dattatraya Saste and ors. .. Petitioners
Vs.
State of Maharashtra and ors. .. Respondents

**WITH
INTERIM APPLICATION NO. 3137 OF 2021
IN
PUBLIC INTEREST LITIGATION NO. 181 OF 2010**

Mr. Vasant Assalchand Solanki .. Applicant
Vs.
Subhash Dattatraya Saste and ors. .. Respondents

Mr. Drupad S. Patil for petitioner in PIL/162/2013 and
PIL/20/2011 and for applicant in IA/831/2022.

Dr. Uday Warunjikar a/w Mr. Siddhesh Pilankar a/w Mr.
Sumit Kate for petitioner in PIL/181/2010 and for applicant
in IA/835/2022, CAI/4/2021 and CAI/47/2014.

Mr. P. B. Shah i/b. Mr. K. P. Shah for applicant in
IA/4188/2021, IA/3115/2021 and IA/3137/2021.

Mr. Shriram S. Kulkarni a/w Mr. Sujay Palshikar and Pranjay
Khatavkar for Saswad Municipal Council/respondent no. 2

Mr. P. P. Kakade, Government Pleader a/w Mr. B. V. Samant,
AGP for State.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE : JULY 11, 2022

P.C. : (M. S. Karnik, J.)

1. In this batch of Public Interest Litigation (hereafter "PIL", for short), the petitioners have raised common challenges and hence the same were heard together from time to time. In this view of the matter, the PIL petitions are being disposed of by a common order.
2. We have heard learned advocates appearing on behalf of the concerned parties.
3. The petitioner in PIL Petition No. 20 of 2011 has prayed for the following substantive reliefs :-

"[A] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950, directing Respondent No. 1 Saswad Municipal Council to forthwith start to issued the notice, for demolishing, the illegal construction made on the Suit property by the Respondent No. 7 viz. M/s. S.B. Associates and be pleased to direct, to demolish the said structure within such time as the Honourable Court may deem fit.

[B] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950, directing the Secretary Urban Development Department of the Government of Maharashtra and the District Collector, Pune to initiate and complete the departmental enquiry, against Shri Prakash Patil the Chief Officer of Rajapur Municipal Council, Rajapur, District:- Ratnagiri

as well as, Shri Bhalchandra Behre the Chief Officer of Saswad Municipal Council Saswad Tal;- Purandar District:-Pune within such time as the Honourable Court may deem fit."

4. The petitioners in PIL Petition No. 181 of 2010 have prayed for the following substantive reliefs :-

"c) issue writ of mandamus or any other appropriate writ, order or directions thereby directing respondents to demolish forthwith illegal construction carried on Survey No. 617/1/1A/2 and Survey No.617/1/2A at Saswad, Tahsil Purandhar, District Pune, Maharashtra immediately in the interest of justice;

d) issue writ of quo warranto or any other appropriate writ, order or direction asking respondent No.2 to 6 to show how the permission for illegal construction on Survey No.617/1/1A/2 and Survey No.617/1/2A at Saswad, Tahsil Purandhar, District Pune, Maharashtra is given in the present case;

e) issue appropriate writ, order or direction thereby cancelling all N.A. permissions, development permissions, construction permissions, sanctioned plan for Survey No.617/1/1A/2 and Survey No.617/1/2A at Saswad, Tahsil Purandhar, District Pune, Maharashtra in the interest of justice;

f) issue appropriate writ, order or direction directing necessary actions against respondent Nos.5, 6, 7 & 8 for collusively sanctioning and carrying illegal construction on Survey No.617/1/1A/2 and Survey No.617/1/2A at Saswad, Tahsil Purandhar, District Pune, Maharashtra and also impose heavy exemplary cost on them."

5. The petitioner in PIL Petition No. 162 of 2013 has prayed for the following substantive reliefs :-

"[A] That this Honourable Court be pleased to issue a

writ certiorari or writ in the nature of certiorari or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, quashing and setting aside the order passed by the Director of Town Planning and purported to be under section 47 of the MRTP Act, in respect of survey No.617/1/1/A/2 and in respect of the property bearing survey No.617/1/1/2/A/3 situated within the jurisdiction of Saswad Municipal Council Saswad, Tal :- Purandar, Dist:- Pune dated 16th August 2013.

[B] That this Honourable Court be pleased to direct the Chief Officer of the Saswad Municipal Council to take the steps, to demolish the illegal constructions which have been made on the two properties viz. property bearing survey No.617/1/1/A/2 and the property bearing survey No.617/1/1/2/A/3 situate within the jurisdiction of Saswad Municipal Council Saswad, Tal :- Purandar, Dist :- Pune."

6. Briefly stated, the controversy pertains to land situated at Saswad, District Pune bearing Survey No.617/1/1/2/A/3 [Old Survey No.617/1/1/A/2 (part)] admeasuring 0 H 90 R reserved for the public purpose of Post and Telegraph Office (Reservation No. 39) in the Development Plan (hereafter "DP", for short) of 1988; and bearing Survey No.617/1/1/2, admeasuring 1 H 14 R which falls in the Industrial Zone of DP of 1988. The DP of Saswad Municipal Council came into force on March 1, 1989. On May 26, 1994, the said DP was modified under Section 37 of the Maharashtra Regional and Town Planning Act, 1966 (hereafter "MRTP Act", for short) so as to include 1 H 20 R from Survey No.617/1/2A in residential zone, whereas, remaining 1 H 14 R land was continued in industrial zone.

The remaining land was numbered as Survey No.617/1/1/2 admeasuring 1 H 14 R. It is the petitioners' case that the partners of M/s. S. B. Associates and M/s. S. P. Associates (hereafter "developers", for short) purchased Survey No.617/1/1/2 admeasuring 1 H 14 R from its erstwhile owners Smt. Badambai Duggad and others. It is then urged that on September 30, 2005, without verifying the fact that the Survey No.617/1/1/2 is in the industrial zone, the Sub Divisional Officer, Bhore, Pune, granted NA permission for residential user. Further, on December 19, 2005, without verifying the fact that Survey No.617/1/1/A/2 area admeasuring 0 H 90.05 R is reserved for Post and Telegraph office in DP, the Sub Divisional Officer, Bhore, Pune granted NA permission for residential user. On January 31, 2006, the developers applied for amalgamation of the aforesaid lands and approval of layout of the total land admeasuring 2 H 04 R (20400 sq.mtrs.). The Chief Officer granted approval to the "Amalgamated Layout" in respect of Survey No.617/1/1/2 admeasuring 1 H 14 R and Survey No.617/1/1/A/2 admeasuring 0 H 90.05 R on January 31, 2006. The Chief Officer of the Municipal Council, on January 31, 2006 itself cancelled the sanction till further orders. However, on February 4, 2006, as the Chief Officer found all the documents in order, the earlier permission for amalgamation of the land and approval of layout was found to be proper. On March 26, 2006, the owners of land Survey No.617/1/1/A/2 area admeasuring 0 H 90.05 R executed

development agreement in favour of the developers. Thereafter, a revised layout was submitted for approval on August 8, 2006. The said layout was approved vide permission dated August 8, 2006. The above referred two lands were amalgamated to form a larger property which was further divided into different parts. On March 22, 2007, building permission to construct 7 (seven) buildings bearing Nos. A, B, C, D, E, F and G on CTS No. 4501/2 was granted. On March 29, 2007, building permission to construct 9 (nine) buildings bearing Nos. H, I, J, K, L, M, N, P and Q on CTS No. 4501/1 and 4501/3 was granted. The occupation certificate for 7 (seven) buildings constructed on CTS No. 4501/2 was granted on December 24, 2009. In December 2009, the occupation certificate for 7 (seven) buildings constructed on CTS No. 4501/1 and 4501/3 also came to be granted. RTI information revealed that the buildings were constructed on land which is affected by industrial zone and reservation. A detailed report was submitted by the Chief Officer of the Municipal Council on June 28, 2010 to the Secretary, Urban Development Department (hereafter "UDD", for short) bringing to his notice the fraud played by the developers and the then Chief Officers of Municipal Council in granting building permissions in contravention of the DP. The learned counsel for petitioners pointed out that in a separate writ petition No.4791 of 2010 filed by the developer (M/s. S. B. Associates) in this Court, the Chief Officer of Municipal Council has taken a stand that the

buildings have been constructed and occupation certificates are granted in respect of 14 buildings in industrial zone and comprising reservation of Post and Telegraph, which is contrary to DP. The Collector vide letter dated January 1, 2011, thereupon, directed the Chief Officer to submit his report regarding illegal permissions granted by the Municipal Council in respect of lands under reservation. Thereafter, a proposal made to the State Government for approval of modification to bye laws/DC Rules was favourably considered by the State Government on July 12, 2012. The State Government approved modification to bye laws/DC Rules, thereby stipulating that residential/commercial user on lands zoned for industrial purpose can be permitted subject to conditions mentioned in Appendix A. In the affidavit dated October 31, 2012 in PIL Petition No.20 of 2011, the Deputy Director of Town Planning stated that the act of granting residential permission in industrial zone and in reserved site of post and telegraph office is in contravention to provisions of the MRTP Act.

7. At this juncture, it is pertinent to refer to the order dated January 21, 2013 passed by this Court in the course of hearing of these PILs. The same reads thus :-

"1. These petitions relate to construction of building as per the plans approved by the Municipal Council on plots which are stated to be reserved for Industrial use and Post and Telegraph Department respectively.

2. As regards the plots reserved for Industrial use, the amended bye-laws submitted by the Municipal

Council have since been approved in terms of the notification published in the official Gazette on 12th July, 2012. The petitioners, however, submits that this amendment of bye-laws will be of no use to the contractor or the occupants of the building constructed on the plot which were reserved for Industrial use, inasmuch as it will have prospective application. This amendment cannot be invoked for regularization of building which is constructed on plot shown as reserved for Industrial use in the development plan.

3. The question as to whether the construction already put up on the land which was originally reserved for the Industrial use and now by virtue of amendment, it is possible to put the said land to residential/commercial use as well, can be regularized or otherwise, is an issue which can be redressed even by the Chief Officer of the Municipal Council.

4. All questions in that behalf will have to be examined after occupants/builder of the building, constructed on the land, originally reserved for Industrial use, apply for such regularization. If no formal application for regularization is made within two weeks from today, we have no manner of doubt that the Chief Officer shall proceed against those structures in accordance with law soon thereafter.

5. However, if formal regularization application is filed, Municipal Council shall not precipitate the action with regard to those structures until the regularization application is finally disposed of, which however, shall be done within six weeks from the receipt of regularization application after following due process and give opportunity to all concerned. All questions with regard to issue of regularization will have to be considered on its own merits which may include the contention canvassed before us that no structure having built up area in excess of 50 sq.mtrs. intended for residential use, can be regularized by virtue of clause (iv) in Appendix 'A' note appended to the

notification in official Gazette dt.12.07.2012.

6. As regards the structures constructed on the plot reserved for Post and Telegraph Department, it is a common ground that reservation has not been lifted so far. If the plot has been reserved for Post and Telegraph Department, no structure, much less, residential building could have been constructed thereon irrespective of whether such permission has been granted by the Municipal Council. The fact as to whether the approval granted in favour of the petitioners is actionable, is already being inquired into departmentally, pursuant to the directions issued by the Under Secretary, Urban Development Department, Government of Maharashtra. Collector is expected to and is inquiring into those aspects as is stated across the Bar by the learned Addl.G.P. The question is whether the building already constructed on the said plot which is originally reserved for Post and Telegraph Department in the Development Plan can be regularized or otherwise, is also a matter to be considered by the Chief Officer in the same manner as indicated with regard to the above mentioned plots reserved for industrial use. The record indicates that out of 14 buildings approved by the Municipal Council, 12 buildings have already been constructed and even Occupation Certificate has been issued in respect of the said buildings. 2 buildings in respect of which Occupation Certificate is yet to be issued, we are informed, have been fully constructed and ready for residential use. However, till the regularization application is finally decided by the Chief Officer of the Municipal Council in terms of this order, no Occupation Certificate be issued in respect of the 2 buildings and the respondent nos.7 and 8 shall ensure that status quo as of today with regard to the said two buildings is maintained till then.

7. In the event, the decision of the Chief Officer of the regularization application is adverse to any party, it will be open to the said party to challenge the same by way of appropriate proceeding which can be

considered on its own merits.

8. Matter is deferred till 25th March, 2013. To be listed under the caption for reporting compliance.

(emphasis supplied by us)

8. A proposal submitted by the developers for regularisation of the construction carried out on reserved land for Post and Telegraph was rejected by the Chief Officer on April 15, 2013. On the same day viz. April 15, 2013, the Chief Officer rejected regularisation proposal submitted for regularising construction carried out on industrial reservation land. An Appeal filed before the Director of Town Planning for regularisation of construction carried out on reserved land for Post and Telegraph was rejected by the Director of Town Planning. However, the Director of Town Planning allowed the Appeal for regularising construction carried out on reserved land for industrial purpose. This is a subject matter of challenge in PIL Petition No.163 of 2013.

9. Then, on June 17, 2013 this Court passed the following order while hearing these PILs. The same reads thus :-

“In pursuance of the previous order passed by the Division Bench on 21 January 2013, the Chief Officer of Saswad Municipal Council, the second Respondent, has passed orders on 15 April 2013 rejecting the application for regularisation submitted by the seventh and eighth Respondents. Learned Counsel appearing on behalf of the seventh and eighth Respondents states that appeals have been filed before the State

Government under Section 47 of the Maharashtra Regional and Town Planning Act, 1966. In the circumstances, we are of the view that it will be necessary to direct the Appellate Authority to determine in the first instance as to whether any case for grant of interim relief has been made out. In the event that no interim relief is granted, the Municipal Council would have to take necessary steps, in accordance with law, in respect of the unauthorised structures. We accordingly direct the State Government to take up the application for interim relief, if any, filed under Section 47. We clarify that if no application for interim relief has been filed and if such an application is filed within a period of two weeks from today, the application, in any event, shall be taken up by the State Government and disposed of within a period of eight weeks. We direct that further hearing of the petitions shall stand over to 26 August 2013. In the event that the application for interim relief is declined by the State Government, the Municipal Council shall take necessary steps, in accordance with law, after the expiry of a period of two weeks from the date of passing of the order.

2. Stand over to 26 August 2013.”

10. Thereafter, on July 24, 2015, the State Government granted its approval under Section 31 of the MRTP Act to Draft Revised DP of Saswad after excluding proposals involving substantial modifications. On July 24, 2015, suggestions and objections were called for from the general public to the substantial modifications. The petitioners submitted objections before the Director of Town Planning. The Director of Town Planning submitted its report before the State Government on May 4, 2016. The State Government granted approval to the said modifications on

June 23, 2017 thereby including the part of land under construction in residential zone, whereas, remaining land was retained for Post and Telegraph office. The modifications were approved subject to the approval of this Court. The petitioners in PIL Petition No.20 of 2011 have filed Writ Petition No.10436 of 2018 in this Court challenging the Government Notification granting approval to the modifications.

11. On July 12, 2021, the Municipal Council regularised the structures and issued occupation certificates. We find that there are several subsequent developments and various orders passed by the authorities during the pendency of these PILs and pursuant to the interim directions of this Court aforementioned.

12. As noticed hereinbefore, the main challenge in these PILs is to illegal constructions carried on by the developers on the suit property situated in the industrial zone and reserved for Post and Telegraph office in the DP. The position as it stands today is that the State Government on June 23, 2017 has granted approval to the proposals involving substantial modifications under Section 31 of the MRTP Act thereby including the part of land under construction which belongs to the developers in residential zone, whereas remaining land was retained for Post and Telegraph office. No doubt, the modifications are approved subject to approval of this Court, but now, these modifications are already a subject matter of challenge in

Writ Petition No.10436 of 2018 filed by the petitioners in PIL Petition No.20 of 2011. The buildings have been constructed and the structures have been regularised pursuant to the approval granted by the State Government to the modifications in the DP. The fate of the approval to the modifications would now depend upon the outcome of Writ Petition No.10436 of 2018.

13. As indicated earlier, pursuant to the directions of this Court, authorities have passed orders regularising the structures on the basis of the approval granted by the State Government to the modifications of the DP, thereby including the part of land under construction in residential zone. In this view of the matter, we are not inclined to proceed with these PILs any further. Suffice it to observe that it is for the petitioners to challenge the Government Notification granting approval to the modifications and also the orders passed by the Municipal Council regularising the structures. The petitioners in PIL Petition No.20 of 2011 have already filed Writ Petition No.10436 of 2018 challenging the Government Notification granting approval to the modifications. It is for the petitioners to pursue the writ petition which they have already instituted.

14. So far as the relief claimed in the PIL as regards action to be taken against the then Chief Officer Mr. Prakash Patil and Mr. Bhalchandra Behre, it is informed that the departmental enquiry conducted against Mr. Bhalchandra Behre has culminated in issuing a strict warning that in

future he will strictly abide by the provisions of law. So far as Mr. Prakash Patil is concerned, learned AGP informs that the disciplinary proceedings initiated against him will be taken to its logical conclusion at the earliest. Statement is accepted.

15. Keeping the liberty of the petitioners open to challenge the Government Notification approving modifications of the DP and orders of regularisation of the structures, these PILs are dismissed.

16. In view of the disposal of these PILs, the interim applications and civil applications do not survive and are accordingly disposed of.

17. There shall be no order as to costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)