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REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8979 OF 2023**

INDUMATI BORSE,
Aged 90 years, Residing at Flat No. 4,
Gayatri Apartments, Opp. Jog High School,
Mayur Colony, Pune 411038.
Through her Power of Attorney Holder
Jitendra Harish Borse, Age 59 years,
Occupation Landlord, Residing at Flat No.
4, Gayatri Apartments, Opp. Jog High
School, Mayur Colony, Pune 411038.

...PETITIONER

~ VERSUS ~

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- 1. THE PUNE MUNICIPAL CORPORATION ,**
Having its office at PMC Building
Shivajinagar, Pune 411005.
Through the Municipal Commissioner,
Pune Municipal Corporation.
- 2. MADHAV JAGTAP,**
Deputy Municipal Commissioner,
Pune Municipal Corporation,
Having its office at PMC Building
Shivajinagar, Pune 411005.
- 3. NILESH GHOLAP,**

Inspector of Skysigns,
Pune Municipal Corporation,
having his office at PMC Building,
Shivajinagar, Pune 411005.

4. **KEDAR VAZE**,
Assistant Municipal Commissioner,
Pune Municipal Corporation,
having his office at PMC Building,
Shivajinagar, Pune 411005.
5. **SANTOSH WARULE**,
Dy. Commissioner of Zone 2,
Sky Sign Dept, PMC Building,
Shivajinagar, Pune 411005.
6. **STATE OF MAHARASHTRA**,
Through the office of the Government
Pleader, High Court, Appellate Side,
Mumbai.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Ms Chandana Salgaocar.
FOR RESPONDENTS NOS 1 TO 5-PMC.	Mr Abhijit Kulkarni , with Gaurav Shahane & Krushna Jaybhay.
FOR RESPONDENT-STATE	Mr AA Alaspurkar, AGP.

**CORAM : G.S.Patel &
Kamal Khata, JJ.**

DATED : 17th October 2023

ORAL JUDGMENT (Per GS Patel J):-

1. **Rule**, returnable forthwith. Respondents waive service. There is now a final Affidavit in Reply from the Pune Municipal Corporation (“**PMC**”) filed by one Abhijit P Dombé, presently Executive Engineer, Road Department.

2. The controversy in this matter, almost unbelievably, pertains to a statue. It is of Maharshi Dhondo Keshav Karve and it has been installed at Kothrud, Pune on the Kothrud Karve Road.

3. The three reliefs that the Petitioner seeks are the two prayers both numbered as (b) and the one prayer numbered as (c) at pages 22 and 23 of the paperbook. They read:

a. That this Hon’ble Court be pleased to issue a Writ of Mandamus or any writ order or direction in the nature of mandamus calling for the record and proceedings regarding the installation of the said statue at Kothrud Karve Road; and after examining the legality and propriety thereof, be pleased to direct the Respondent No 1 to remove the said statue from the triangular corner portion of the acquired property situated at Survey No. 1 Hissa No 4, CTS No.406 to 434, Kothrud Karve Road, Pune, admeasuring approximately 1500 sq metres and to utilize the triangular corner portion of the acquired property for the purpose of road widening;

in the alternative,

b. this Hon’ble Court be pleased to issue a Writ of Mandamus or any writ order or direction in the nature of mandamus directing the Respondent No 1 to remove the said statue from the triangular corner portion of the acquired property situated at Survey No. 4, CTS No.406 to 434, Kothrud Karve Road, Pune admeasuring

approximately 1500 sq metres. and to restore possession of the same to the Petitioner, upon payment by the Petitioner of the market value of the same;

c. That this Hon'ble Court be pleased to issue a Writ of Certiorari or any writ, order or direction in the nature of Certiorari, calling for the records and proceedings relating to the passing of the impugned order dated 10th April 2023, and after examining the legality, propriety and validity thereof, be pleased to quash and set aside the same;

4. Prayer (c), for a certiorari, ought to have been the first prayer; a mandamus prayer can never precede a prayer for a certiorari. The first prayer (b) is a peculiar hybrid that seeks a mandamus calling for the record (surely a prayer for a writ of certiorari) and bundles this with a prayer for a mandamus to remove the statue from the 'triangular corner portion of the acquired property'. This is partly replicated in the second prayer (b), but this goes further and seeks to reverse a closed acquisition of 1500 sq mts of land.

5. The reference in the last prayer to Exhibit 'K' (page 94), dated 10th April 2023, is an order by the PMC's officers to remove certain hoardings. That order came to be passed ostensibly because these hoardings, of which we will have something to say a little later, interfered with the 'purity and beauty' of the statue.

6. Three questions that present themselves to us: *First*, who is the Petitioner? *Second*, where is the statue that the Petitioner finds it so very objectionable? And *third*, *why* does the Petitioner want the statue gone?

7. The Petitioner owns a tract of land obviously in Kothrud. This is CTS Nos. 406 to 434 of the Kothrud Karve Road. Part of this, an area of about 1500 sq mts, was taken over by the PMC for road widening.

8. The Petitioner has given a license to one Ketki Ads to erect a display hoarding. The supporting structure of that hoarding is on the Petitioner's remaining land. The Petitioner derives an income from Ketki Ads for this license. This begins to answer the *who* and the *why*.

9. For it seems that the visibility of the Ketki Ads hoarding is somehow said to be impaired or impeded by the statue of Maharshi Karve (or, according to the PMC, vice versa).

10. But that statue itself has been on a bit of journey, as the Affidavit in Reply tells us. Paragraph 4 says that in 2006, although it may have been somewhat earlier, the statue of Maharshi Karve was installed at the centre of the junction of the 120-foot-wide Karve Road and the 100-foot-wide DP Road. There was a circular traffic island around it. Traffic increased. Land at the corner was being misused. In 2014, the Maharshi Karve statue was shifted from the road's central circle to a roughly triangular portion of the land — that which was acquired from the Petitioner's property. This was done to ease the flow of traffic.

11. But the peregrinations of this statue did not end there. It was relocated again to another corner of the triangular portion so as not

to interfere with traffic. There followed a later renovation and another relocation of the statue. Then the PMC asked the opinion of the traffic department. It said that if this peripatetic statue was reverted to its original place on the triangular acquired portion, that would ease traffic even further.

12. The Affidavit says now that because of this relocation, movement of traffic has eased and there is a sufficient turning radius even for larger vehicles.

13. The Affidavit points out that Ketki Ads had permission to put up its hoardings. This permission was cancelled. Ketki Ads filed a suit in the Pune Civil Court. Apparently, there was a status-quo order but there does not seem to have been a more positive order directing the re-issuance of the license.

14. It is thereafter that the Petitioner, Ketki Ads' licensor, filed this Petition.

15. The Affidavit also notes that a senior citizen, one Manisha Paranjape and another trust have been lobbying for a proper memorial to Maharshi Karve. Some newspaper articles are annexed. There is also the opinion of the State Archaeological Department of 6th December 2022.

16. The argument by Ms Salgaocar for the Petitioner is that the erection or installation of statues is not part of statutory municipal duties or functions. She says that statue building is not included in

the list of what she calls ‘permissible activities’ of a municipal corporation under Sections 63 and 66 of the Maharashtra Municipal Corporation Act, 1949 (“**the MMC Act**”). These two Sections are in Chapter VI of the MMC Act, “*Duties and Powers of the Municipal Authorities and Officers*”. That part separates *obligatory* and *discretionary* duties of the corporation. Section 63 sets out the obligatory duties. Section 66 lists the discretionary duties. Statues, Ms Salgaocar says, fall in neither of these. Therefore, the installation of a statue is neither obligatory nor discretionary. But surely Section 66 is not exhaustive, for it includes, at the very end, a residual provision in sub-clause (42) that permits a corporation to take any measure not specifically named earlier and ‘likely’ to promote public safety, health, convenience, or ‘instruction’. This is broadly worded. The relocation of the statue for traffic congestion reasons is a matter of public safety. As to the installation of the statue in the first place, it is at least arguable that while this may not be a civic *duty* or *responsibility*, it is certainly, having regard to public sentiment — of which there is ample evidence in the Affidavit in Reply — a matter of convenience or instruction. After all, why should later and successive generations not know of Maharshi Karve and his outstanding work in social reform and women’s welfare? He advocated the rights of widows, long oppressed and subjugated; in 1916, he founded the first women’s university in India, the SNDT Women’s University; and much more. He was awarded India’s highest civilian honour, the Bharat Ratna, in 1958 on his 100th birthday (he passed four years later, in November 1962). In the Petitioner’s pursuit of a very narrow, very private, and extremely income-oriented goal — the resurrection of the Ketki Ads hoardings from which she derives an income — should these wider concerns

be allowed to be eclipsed on a thoroughly doctrinaire and self-serving reading of the statute? Nothing is shown to us to indicate that the installation of statues by a public body is *forbidden*; and surely not everything needs specific permission, for there is no law that says that that which is not permitted is prohibited. If anything, it is the other way around: that which is not prohibited must be held to be permitted.

17. Ms Salgaocar refers the judgment of the Supreme Court in *Municipal Board, Manglaur v Mahadeoji Maharaj*.¹ That decision was in a discernibly distinct context. The issue before the Supreme Court related to a metalled road running through a plot of land that belonged to the original plaintiff. On either side of this road there were open spaces and on either side of these open spaces there was a municipal drain. The public had been using the road for decades. The municipality maintained the road and the drains. Now it sought to erect a structure on the vacant land between the drains and the roads and two rooms on either side. The plaintiff sued for a permanent injunction restraining the municipality from putting up a structure on the suit site. The Supreme Court held that the suit site was a part of public pathway. It was held to have been dedicated to the public. In paragraph 10, on which Ms Salgaocar relies, the Supreme Court held that the municipality could not put up structures on the vacant site because it could not be said that they were necessary for the maintenance or user of the road as a public highway.

1 (1965) 2 SCR 242 : AIR 1965 SC 1147.

18. Clearly, this decision is at a great remove from the case at hand. There are equally decisions of the Court that recognize that the installation of memorials and statues are matters of executive discretion. They cater to the sentiments and emotive needs of citizens and residents. They are to mark recognition of contributions to society at large. That honouring the persons is part of the power and authority of the State Government is well settled: *see: Bombay Municipal Corporation & Anr v Ramchandra Laxman Belosay, Bombay*,² *Kanaiyalal Maneklal Chinai & Anr v State of Gujarat & Ors*,³ and *Annarao Baloba Gaikwad v Solapur Municipal Corporation & Ors*.⁴

19. It is well settled that a memorial, a monument, or any other mark or built structure is sufficiently a public purpose. There is no law that states that a public purpose must only be a public utility, such as a dam or a bridge. The business of the Government concerns a wide range of activity. As stated already, every government also must deal — necessarily — with public and popular sentiment and the emotive needs or desires, expectations and demands of citizens.

20. It is also not as if the statue is proposed to be put up or has been put up on the Petitioner's private property. That portion of her land was validly acquired and there is no challenge to that acquisition. It is not for the Petitioner to dictate what the public

2 1959 SCC OnLine Bom 26 : AIR 1960 Bom 58 : (1959) 61 Bom LR 1129.

3 (1969) 3 SCC 456.

4 2004 SCC OnLine Bom 251 : (2004) 3 Mah LJ 101 : (2004) 6 Bom CR 456.

purpose should be. This is more so after the process of acquisition is complete. A public purpose may be changed at any time. In *Ashok Maruti Rawoot & Ors v The State of Maharashtra & Ors*,⁵ a Division Bench of this Court held that it is entirely in the discretion of the authority to decide the purpose of the acquisition and whether or not it should be used as a memorial.

21. The Affidavit in Reply demonstrates that the statue itself has been relocated as necessary to meet exigent traffic conditions.

22. On a closer reading of this Petition, we have no doubt whatsoever that the entire attempt is to get a removal of the statue to assist the Petitioner's licensee. This is obvious from the second prayer which seeks a removal of the statue altogether.

23. There is no substance to the challenge to the impugned order of 10th April 2023 either. Indeed, the Petitioner has no locus in that regard. The hoarding license was to Ketki Ads. That entity is not before us. It has filed its own proceedings but obtained no order against the PMC regarding the cancellation of its hoarding license. The Petitioner has no cause of action in that regard. The grant of a hoarding license is always subject to various conditions and considerations. There is no right in any person, least of all a licensor of a hoarding-owning advertiser, to demand that a hoarding license must be granted or that the municipal corporation in question has no discretion in that regard. If the statue is installed, it stands to reason that it cannot then be hidden behind a hoarding — and most

5 2013 SCC OnLine Bom 329; (2013) 3 Mah LJ 733.

certainly not because the Petitioner wants an income from her permission to the advertiser. That would defeat entirely the purpose of the statute. There is no merit in the Petition.

24. Just as there is no estoppel against a statute, there is also no estoppel against a statute.

25. Rule discharged. No costs.

(Kamal Khata, J)

(G. S. Patel, J)