IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.54 OF 2023

PETITIONER : Pawan Sukhlal Jain
Aged about Major, Opp. Railway Station,
Shop No.84 and 85, below Flyover, Nagpur.

...VERSUS...

RESPONDENT : The Deputy Municipal Commissioner
(Revenue), Nagpur Municipal Commissioner,
Nagpur.

WITH

WRIT PETITION NO.57 OF 2023

PETITIONER : Shri. Bharat Champatrao Khorgade
Aged about Major,
R/o. Opp. Railway Station, Shop No.105,
Below Flyover, Nagpur.

...VERSUS...

RESPONDENT : Deputy Municipal Commissioner, Revenue,
Nagpur Municipal Corporation, Nagpur.

WITH

WRIT PETITION NO. 58 OF 2023

PETITIONER : Shri. Raju Rambhau Sadhankar,
Aged about Major,
R/o. Opp. Railway Station, Shop No.103,
Below Flyover, Nagpur.

...VERSUS...

RESPONDENT: Deputy Municipal Commissioner, Revenue, Nagpur Municipal Corporation, Nagpur.

WITH

WRIT PETITION NO. 59 OF 2023

PETITIONER : Shri. Sanjay H. Gupta,
Aged about Major,
R/o. Opp. Railway Station, Shop No.112,
Below Flyover, Nagpur.

...VERSUS...

RESPONDENT : Deputy Municipal Commissioner, Revenue, Nagpur Municipal Corporation, Nagpur

WITH

WRIT PETITION NO. 60 OF 2023

PETITIONER : Shri. Sumitlal Suryakant Chourasiya,
Aged about Major,
R/o. Opp. Railway Station, Shop No.81,
Below Flyover, Nagpur.

...VERSUS...

RESPONDENT: Deputy Municipal Commissioner, Revenue, Nagpur Municipal Corporation, Nagpur

WITH

WRIT PETITION NO. 61 OF 2023

PETITIONER : Shri. Manish Mohanlal Toravat,
Aged about Major,
R/o. Opp. Railway Station, Shop No.83,
Below Flyover, Nagpur.

...VERSUS...

RESPONDENT : Deputy Municipal Commissioner, Revenue,
Nagpur Municipal Corporation, Nagpur.

WITH

WRIT PETITION NO. 62 OF 2023

PETITIONER : Smt. Kanta Pawan Jain,
Aged about Major,
R/o. Opp. Railway Station, Shop No.86,
Below Flyover, Nagpur.

...VERSUS...

RESPONDENT : Deputy Municipal Commissioner, Revenue,
Nagpur Municipal Corporation, Nagpur.

Mr. Anjan De, Advocate for petitioner in all petitions
Mr. J.B. Kasat, Advocate for respondent in all petitions

CORAM : AVINASH G. GHAROTE, J.

Date of reserving the judgment : 03/05/2023
Date of pronouncing the judgment : 05/06/2023

1. Heard Mr. Anjan De, learned counsel for the petitioner and Mr. J.B. Kasat, learned counsel for the respondent. Rule. Rule made returnable forthwith with the consent of the learned counsel for the rival parties. Advocate Mr. J.B. Kasat waives service of notice for the respondent on merits.

2. These petitions are by the occupants of various shops under the flyover opposite the Main Railway Station Nagpur, which question the impugned judgments dated 23/12/2022, passed by the learned Judge in appeals under Section 81-F of the Maharashtra Municipal Corporation Act ("MMC Act" for short hereinafter) whereby the appeals filed by the petitioners challenging the order of the Competent Authority under Section 81-B of the MMC Act directing eviction of the petitioners from their respective shops on the ground that the shops are required by the Nagpur Municipal Corporation ("NMC" for short hereinafter) for the construction of a six lane road in front of the Railway Station which is proposed to be constructed by demolishing the flyover and the shops constructed underneath, which is claimed to be in public interest, have been dismissed.

3. All these petitions raise common grounds and are based upon common facts and therefore are being decided by this common judgment.

4. The facts are being taken from Writ Petition No.54/2023, and are as under :

a) The petitioners were originally occupants of various shops opposite the Main Railway Station, Nagpur. When the proposal to construct a flyover was mooted, after a number of litigations, the petitioners were promised to be allocated shops to be constructed below the flyover, as a matter of rehabilitation upon an undertaking given by the NMC which is recorded in the order dated 29/11/2018 passed by the learned Division Bench of this Court in Writ Petition No.4331/2002, which is as under :

"The respondent no.1-Nagpur Municipal Corporation (NMC) has filed affidavit today before the Court. The same is taken on record. The contents of which are reproduced below. Thisaffidavit is sworn by Shri Shrikant Dinkar Vaidya, the Market Superintendent, Nagpur Municipal Corporation(NMC).

"I Shrikant Dinkar Vaidya, the Market Superintendent, Nagpur Municipal Corporation, the deponent herein states as under :

1. That by this petition, the petitioners had prayed to declare that the action of the respondents in removing the structure/shop blocks of the petitioners on 05.06.2002 to their respective staff, opposite railway station, Nagpur, is fully illegal and in violation of Article14,19and21 of the Constitution of India. The petitioners have also made other prayers.

2. That the grievance of the petitioners no longer survives as the petitioners were rehabilitated by giving them shop blocks below the Flyover which was constructed from Manas Chowk to Jaisthamb Chowk in the year 2008. That around 175 Shop blocks were allotted.

3. That it has been decided that the Flyover from Manas Chowk to Jaisthamb Chowk is to be demolished and a six lane road is to be constructed.

4. That in meeting dated 29.09.2018 a resolution bearing 285 was passed by Nagpur Municipal Corporation which mentions that the Central Government has provided an amount of Rs.234.21 Crore to the State Public Works Department. Further the State Public Works Department has handed over the work of construction of the said road to the Maha Metro.

5. The resolution was passed with "upsuchna(instructions/guidelines)" that unless the rehabilitation of Shop block holders is done, the work of demolition would not be started. The rehabilitation of shop block holders is to be done by the Maha Metro in consultation with NMC. A copy of this resolution dated 29.09.2018 is annexed herewith as Annexure R-H.

6. That since the work is to be executed by Maha Metro, the said authority would be in position to tell as to when the work would be started and what would be the future course of action.

Hence this affidavit".

In view of the aforesaid stand taken by the respondent no.1- NMC, the petition has become infructuous. The same is disposed of as infructuous."

(b) After completing the construction of the flyover and shops thereunder, the petitioners were allocated various shops under various documents, which were styled as documents of lease with condition of renewal, of which they are in possession since long, in which they have been doing their business. One such document is at record page no.260. It is contended that since this document envisages a lease with a renewal clause, the petitioners were assured of their occupation for a long term and thus had made according investments and therefore the plea of public interest as contained in Section 81-B of the MMC Act would not be available to the NMC for eviction.

(c) It was found that the frequent traffic congestion on the approach way to the railway station was causing serious inconvenience and therefore need was felt to create a six lane two-way carriage way in front of the Railway Station so that the issue of traffic congestion could be ameliorated. With this intent the General Body of the NMC on 29/09/2018, (pg 205) passed a resolution, resolving to demolish the existing flyover and the shops constructed thereunder, opposite the main Railway Station, for the construction of a six lane road in its place, which construction was to be done by the Maha Metro, from the funds already received and all powers in this regard were conferred upon the Municipal Commissioner, NMC. The resolution contained a condition that the shop allottees would be rehabilitated. The need for such demolition was the consistent congestion in front of the main Railway Station, which was causing great inconvenience to the railway passengers and the public at large. The resolution was passed by a majority of 92 in favour and 23 against.

(d) On 08/09/2021, the General Body of the NMC passed a resolution no.156 (sub. no.75), resolving that since there is also a demand by the allottees of the shops for monetary compensation instead of rehabilitation, those shop allottees, who are not interested in rehabilitation should be given monetary compensation, in place of rehabilitation and those interested in rehabilitation their case should be considered separately (pg.209).

(e) It is stated at the bar by Mr. Kasat, learned counsel for the NMC that in pursuance to the above, Maha Metro has constructed temporary accommodation for the shop allottees and as many as 111 allottees have opted either for rehabilitation and have shifted to the temporary shops built for them or have received monetary compensation and have vacated the shops allotted to them.

(f) Since some of the allottees did not opt for the rehabilitation, show-cause notices were issued to them for eviction under Section 81-B of the MMC Act on 25/08/2020 (pg.193), to which, a reply was given by the petitioner on 11/9/2020 (pg.109), contending that they would be requiring hefty compensation, as their livelihood was being adversely affected.

(g) A hearing took place on 07/12/2020, in which the petitioners were heard. On 13/04/2022 (pg.112), the petitioners were issued a communication, asking them to choose either of the two options (i) to shift to the temporary shops erected and vacate the existing shop or (ii) to receive compensation equivalent to balance of the amount received by the NMC on account of the earlier allotment with interest @ 8% p.a. as per the resolution no.153 dated 08/09/2021 passed by the General Body of the NMC. The option was to be exercised within a period of 15 days of the receipt of this communication, failing which it was stated that further action under Section 81-B of the MMC Act would be taken.

(h) An appeal under Section 81-F of the MMC Act, came to be filed against the communication dated 13/04/2022, before the learned Appellate Officer/ District Judge, Nagpur, which is stated to be pending.

(i) On 11/11/2022 (pg.55), an order came to be passed by the Dy. Commissioner, (Revenue) NMC holding that since the petitioner had not agreed to the proposal given in the communication dated 13/4/2022 and since a demand was made for grant of compensation of 2.5 times the ready-recokner value, which was contrary to the amount of compensation approved by the General Body of the NMC by its resolution for refund of the advance rental amount received with 8% interest, and the shops were required in public interest, the claim of the petitioner was rejected.

(j) By a communication dated 11/11/2022 (pg.54) it was intimated to the petitioner that in exercise of the powers under Section 81-B (1) (c) of the MMC Act, an order had been passed on 02/11/2022 holding that the premises were required by the NMC in public interest and therefore the petitioner was required to deliver vacant possession thereof within one month of the receipt of the notice, failing which action for eviction would be taken.

(k) The petitioner, filed an appeal under Section 81-F (1) of the MMC Act, to the Appellate Officer who was the District Judge.

(l) By the impugned judgment dated 23/12/2022 (pg.45) the appeal has been rejected by the learned District Judge (Appellate Officer) which is how the present matters are before this Court.

5. Mr. De, learned counsel for the petitioners makes the following submissions :

(i) Since the petitioners were granted a lease, whose period was yet to expire, the question of any public interest, does not arise and Section 81-B of the MMC Act could not be taken recourse to.

(ii) In case it so arose, the NMC would be required to acquire the leasehold rights of the petitioners by granting appropriate compensation at the market rate.

(iii) There was no public interest involved at all as the existing flyover was constructed in the year 2008 at considerable expense of more than 16 crores and the petitioners having been granted leasehold rights, could not be displaced and deprived of their livelihood.

(iv) The funds which were claimed to have been received from the Central Government as CRF (Central Road Fund) and claimed to have been available were diverted to another project (Futala beautification) which is reflected from the MOU dated 09/12/2022 (pg.281) and therefore there were no funds available and thus even if the demolition took place there would be no construction of the six-lane road in absence of funds.

(v) There was no technical evaluation as regards the necessity for the construction of a six-lane road, rather the resolution dated 29/09/2018 itself stated that the matter could be considered after completion of the Ram-Jhula, the over-bridge across the railway line, which according to him demonstrates the lack of public interest.

(vi) The project was not of the NMC but of the PWD/State Government and Maha-Metro was appointed as the implementing agency and therefore also the provisions of Section 81-B of the MMC Act, could not have been invoked.

(vii) The land where the rehabilitation was to take place, namely City Survey nos.2406, 2407, 2408 was owned by the Defence Department and other lands owned by the Railways and MSRTC, were not as yet acquired and the temporary structures which were constructed as a transitory accommodation, were mere pigeon holes, not suitable for business being conducted from and therefore the plea of rehabilitation was illusory.

(viii) There was no effective delegation of powers by the Municipal Commissioner to the Dy. Municipal Commissioner

(Revenue) and therefore the action taken in this regard by the Dy. Municipal Commissioner was legally infirm (pg.191).

(ix) Though documents were asked for they were not supplied and the petitioners were therefore deprived of the right to effectively represent their case in absence of documents on account of which the matter was required to be remanded.

(x) Civil Application (W) No.401/2023 was filed seeking remand of the matter to the Appellate Officer (District Judge) as documents sought for were not supplied resulting in a miscarriage of justice. Civil Application (W) No.1061/2023 also has been filed seeking restitution and remand on the ground that the order of delegation was not produced before the learned District Judge and there was suppression. Reliance is placed upon ***S.P. Chengalvaraya Naidu Vs. Jagganath AIR 1994 SC 853***.

(xi) Since earlier there was already an action of construction of the flyover in the year 2008, in which the occupants were rehabilitated, on account of an undertaking given to the High Court in Writ Petition. No.4331/2002, there could not be a rehabilitation again, under the garb of six-laneing of the road by demolition of the existing flyover and the shops constructed thereunder and the present proposal of rehabilitation was in contempt of the order passed in Writ Petition No.4331/2002.

6. Mr. Kasat, learned counsel for the respondent/NMC submits as under :

(i) The public interest was manifest from the fact that there were continuous traffic jams in front of the main Railway Station, which had resulted in the General Body of the NMC by a majority of 92 : 23 having passed a resolution on 29/09/2018, (pg.205) for demolition of the existing flyover and the shops thereunder and construction of a six-lane motorway in its place.

(ii) The transfer of funds could not be a ground to infer absence of public interest and the funds could be made available at any time.

(iii) The project was that of the NMC as the land over which the shops and flyover were constructed belonged to the NMC and it was permissible for the NMC to get the six-laneing done with the assistance of agencies which were willing to do the work.

(iv) What was granted to the petitioners at the time of the earlier rehabilitation was not a lease but a licence and even otherwise Section 81-B of the MMC Act, did not make any distinction in its applicability on the ground whether there was a licence or a lease.

(v) By the resolution dated 08/09/2021, an option was granted to the allottees to be rehabilitated or to have compensation with interest, which having not been exercised by the petitioners they were not now entitled for any rehabilitation.

(vi) The order under Section 81-B was the one dated 11/11/2022 (pg.55), which recorded satisfaction that public interest was the basis for six-laneing, though the subsequent communication also dated 11/11/2022 mentioned it as 2/11/2022, incorrectly on account of a typographical error.

(vii) Chapter VIII-A of the MMC Act did not provide of any rehabilitation and therefore the petitioners were legally not entitled for the same.

(viii) The petitioners in their reply dated 11/9/2020 (pg.109) to the show-cause under Section 81-B of the MMC Act, had not disputed the existence of public interest but had merely asked for substantial monies, as a result of which, they were estopped from now contending that there was absence of public interest.

(ix) Reliance is placed upon ***Omprakash Sawalram Agrawal and others Vs. Nagpur Municipal Corporation and others 2010 (6)***

Mh.L.J. 700, which was under the *pari materia* provisions as contained in Section 76-B of the NMC Act, in support of the contention that public interest prevails.

(x) There were 175 shops constructed below the flyover opposite the main Railway Station, out of which 160 were allotted. Out of these 160 allottees 111 allottees have either accepted rehabilitation and have shifted to the temporary alternate premises provided to them or have accepted the refund of the advance paid under the agreement of licence with 8% interest and the internal walls of these shops have since been demolished. The project therefore has now already commenced and reached a stage where it has become irreversible and therefore the petitions need to be dismissed on this count also.

(xi) There is proper delegation of the powers to the Dy. Municipal Commissioner (revenue) who has rightly considered the public interest and has passed the order dated 11/11/2022, which has correctly been upheld by the learned District Judge.

7. The parties have proceeded ahead on the basis that the order dated 11/11/2022, is one passed under Section 81-B(1)(c) of the MMC Act, on which basis challenge was raised to it, before the

learned District Judge/Appellate Officer under Section 81-F(1) of the MMC Act. Mr. Kasat learned counsel for the respondent also contends that the above is the position. I, am therefore proceeding to decide these petitions on the above basis.

8. Section 81-B (1) of the Maharashtra Municipal Corporation Act reads as under :

> *"**81-B. Power to evict persons from Corporation premises.***
>
> *(1) Where the Commissioner is satisfied,—*
>
> *(a) that the person authorised to occupy any Corporation premises has, whether before or after the commencement of the Bombay Provincial Municipal Corporations (Second Amendment) Act, 1969,—*
>
> *(i) not paid for a period of more than two months, the rent or taxes lawfully due from him in respect of such premises ; or*
>
> *(ii) sub-let, contrary to the terms and conditions of his occupation, the whole or any part of such premises ; or*
>
> *(iii) committed, or is committing, such acts of waste as are likely to diminish materially the value of impair substantially the utility, of the premises ; or*
>
> *(iv) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises ;*
>
> *(b) that any person is in unauthorised occupation of any Corporation premises ;*
>
> *(c) that any Corporation premises in the occupation of any person are required by the Corporation in the public interest,*

> *the <u>Commissioner may, by notice served by post</u>, or by affixing a copy of it on the outer door or some other conspicuous part of such premises, or in such other manner as may be provided, for by regulations, <u>order that person, as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice</u>."*
>
> *(emphasis supplied)*

The language of Section 81-B(1)(c) of the MMC Act, would indicate that it does not make any distinction, as to the manner in which or the right under which, the corporation premises is occupied by any person, be it a licence or a lease or any other mode permissible in law. It is equally not in dispute that the premises in occupation of the petitioners belong to the NMC. The petitioners claim their occupation under a lease whereas the NMC claims the same to be as a licensee. Be that as may, when Section 81-B(1)(c) of the MMC Act does not make any distinction as to the nature and manner in which the corporation premises are occupied, it would not be permissible for the petitioners, even considering their claim of being lessees, to contend that the provisions of Section 81-B(1) (c) of the MMC Act are not attracted on the ground that they are lessees of the respondent. It therefore becomes immaterial whether the lease or licence is yet to expire. The requirement as is spelt out from Section 81-B(1) of the MMC Act is the satisfaction of the Commissioner that the premises are required in public interest.

9. Insofar as public interest is concerned, the resolution dated 29/09/2018 (pg.205) of the General Body of the NMC, was passed by a majority of 92 : 23 and records the need for constructing a six-lane road in front of the main Railway Station on account of the frequent traffic congestions and jams. It is equally a matter of fact that the road in front of the Railway Station is a single lane road, a major portion having been taken up by the flyover and shops constructed thereunder. Thus when the General Body of the NMC has by a majority resolution resolved that public interest is involved and there is need for widening of the road, which position has been considered and accepted by the delegate of the Commissioner under the order dated 11/11/2022, passed in exercise of powers under Section 81-B(1)(c) of the MMC Act, by rejecting the objections of the petitioners for compensation @ 2.5 times the market value, the challenge by the petitioners on the plea that there is no public interest involved, has to dispel the need on account of public

interest. The argument in this regard by Mr. De, learned counsel for the petitioners, is three fold. First: that there is no need for road widening on account of there being an absence of a technical evaluation, second : the funds earmarked for such road widening have been transferred to some other project (Futala beautification) and third : the project was not of the NMC but of the State Government.

Insofar as the first contention is concerned, it is nobody's case that there are no traffic congestions or jams on the approach road to the main Railway Station. It is also an admitted position that the road in front of the main Railway Station is a single lane road. Even the reply of the petitioners dated 11/09/2020 (pg.109) to the show-cause notice does not dispute this position nor does it dispute that there are frequent traffic congestions/jams on this road. Considering the construction of Ram-Jhula, which is a two-way, two lane hanging bridge across the railway line; the increase in vehicular traffic from 2008 till now; the existence of a single lane road in front of the railway station, the need for widening of the single lane road in front of the railway station, to address the traffic congestion, cannot be said not to be in public interest. A technical evaluation has already been conducted as indicated hereinafter.

As regards the second contention that the funds earmarked for this project have been transferred to some other project, namely, the Futala beautification project and therefore there is no availability of funds, for the present project which position is argued on the basis of the MOU dated 09/12/2022 contending that thus it is now no longer financially viable, it is necessary to note that merely because the funds, which at one point of time were available, were transferred to another project, due to the delay in the implementation of the present project, cannot be said to be a situation which would render the present project financially unviable as the responsibility of arranging for the funds for the project appears to be that of the Central Government, which had at the initial stage itself not only sanctioned a sum of Rs.234.21 crores for the present project but had also made the funds available for the implementation of the project which was to be implemented through Maha Metro. The same can be done again or the funds which may have been sanctioned for the beautification of the Futala Project can be used for the present project by way of reimbursement of the funds of the present project being utilized for it. Thus, this cannot be a ground to hold that there is absence of public interest.

The third contention that the project was not of the NMC but of the State Government also does not hold any water for the reason that the State Government has overall control over the NMC, and therefore merely because the Central Funds have been made available to the Public Works Department (PWD) and have been permitted to be used for the present project, to be implemented by Maha Metro, that also cannot be a ground to infer absence of public interest.

It is also necessary to note that the petitioners in their reply dated 11/09/2020 (pg.109) to the show-cause notice do not dispute the existence of public interest. They therein question the need for the road widening on the ground that the life of the flyover and the shops constructed thereunder is yet to be over. Rather on the contrary they make a demand for compensation @ 2.5 time the market rate, for vacating the premises, which would indicate that they were not interested in any rehabilitation but were interested in compensation only.

Thus, the existence of public interest in the matter of proposed construction of a six-lane road in front of the main Railway

Station, in order to address the issue of traffic congestions and jams, cannot be a position which can be contested by the petitioners. In fact along with the Pursis Stamp No.9/23, a communication dated 14/12/2018, addressed by the Project Director, Maharashtra Metro Rail Corporation (Maha Metro) to the Divisional Rail Manager, Central Railway, Nagpur, has been filed, a perusal of which will indicate that M/s Enia Architects appointed by Maha Metro as consultant had carried out a traffic survey and prepared evaluation study vis-a-vis traffic flows 2041 and had inferred that to make Jaisthamb signal free, a flyover from Ram Jhula Cable Stayed Bridge ramp to Kingsway Hospital was necessary and the existing flyover be replaced with a six-lane road. It also states that the report of M/s Enia Architects was also vetted by VNIT, Nagpur and thus works of a multilevel parking, food court, toilet blocks, waste management, landscaping etc. were proposed along with road widening and junction improvement in front of the heritage building of Railway Station and DRM office. It is thus apparent that there has been a technical evaluation and survey of the project by M/s Enia Architects as well as by VNIT. The contentions regarding absence of technical evaluation and public interest, as advanced by Mr. De, learned counsel for the petitioners are therefore rejected.

10. The plea that the land in which rehabilitation was proposed was not yet acquired and the therefore the rehabilitation was illusory, is one which has to be considered in light of the reply of the petitioners dated 11/09/2020 (pg.105) to the show cause under Section 81-B (2) of the MMC Act, in which the petitioners have shown no interest whatsoever in rehabilitation, but on the contrary have demanded compensation @ 2.5 times the market value as per the ready-recokner of the land. That apart, even though an option was given to the petitioners by the NMC under the letter dated 13/04/2022 (pg.112) to choose between rehabilitation and compensation, the petitioners have not replied to the same, exercising any option at all. The petitioners cannot be allowed to approbate and reprobate in the same breath as this plea would only be available to them in case they choose to opt for rehabilitation, which they have not done so far. Even otherwise, the NMC once having resolved to grant rehabilitation, the responsibility of securing the land and ensuring the construction to be made thereupon for the purpose of rehabilitation would be that of the NMC.

11. Though it is correct as argued by Mr. Kasat, learned counsel for the NMC that the provisions of Sections 81-A to 81-H as contained in Chapter VIII-A of the MMC Act, do not provide for any rehabilitation on account of eviction being ordered under it, it is equally an admitted position by the NMC that the resolution dated 29/09/2018 contemplates and provides for rehabilitation and in case the petitioners are not willing to accept the compensation as per the resolution dated 08/09/2021, they would be entitled to rehabilitation, as that is a condition of the resolution dated 29/09/2018, by which the NMC is bound.

12. The question of acquiring the land at 2.5 times the market rate as per the ready-recokner, does not arise at all, as the NMC is the owner of the land in question as well as the construction and the petitioners have a limited right of occupancy for a certain period of time, whether under the lease according to them or licence according to the NMC. That apart, the provisions of Chapter VIII-A of the MMC Act and specifically Section 81-B(1) (c) thereof permitting eviction do not depend upon any compensation being required to be determined and paid for such eviction.

13. Section 68(2) of the MMC Act empowers the Commissioner to delegate his powers and functions, to any Municipal Officer, however, subject to the approval of the Standing Committee. Section 69 of the MMC Act, permits the empowerment of Municipal Officers to exercise certain powers of the Commissioner and is a general power or authority of the Commissioner to delegate his powers. Thus, the provisions of the MMC Act, clearly permit delegation of powers, duties and functions of the Commissioner to the Municipal Officers. In the instant matter in exercise of the powers under Section 69 of the MMC Act, the powers under Section 81-B of the MMC Act have been delegated to the Dy. Municipal Commissioner, as is indicated from the communication dated 17/11/2020 (pg.352). That apart, under a general delegation, in exercise of the powers under Section 69(1) of the MMC Act, dated 11/03/2013, the powers of the Commissioner have been delegated to his sub-ordinate officers for performing the functions and duties of the Commissioner. It is, thus, evident that the delegation is duly authorised in terms of Section 69(1) of the MMC Act and thus no fault can be found with the delegation. It is also material to note that under the communication dated 15/03/2022 (pg.191) specific

powers under Section 81-B of the MMC Act, have been delegated to the Dy. Municipal Commissioner (Revenue), who is the officer who has passed the order dated 11/11/2022, which was challenged by the petitioners in an appeal under Section 81-F(1) of the MMC Act, considering which, also the delegation of powers cannot be faulted with.

14. It is also contended by Mr. De, learned counsel for the petitioners that since the MOU dated 09/12/2022, between the PWD, Maha Metro and NMC was not placed before the learned District Judge, in appeal, the same could not have been placed on record and that has caused prejudice to the petitioners on account of which the matter needs to be remanded. In fact, the placing of this MOU on record, appears only for the purpose of asserting the position regarding rehabilitation, which was in existence in the original resolution dated 29/09/2018 (pg.205). Thus MOU in fact has been extensively made use of by Mr. De, learned counsel for the petitioners to contend that it discloses that the funds which were earlier claimed to have been available for the present project have been transferred to the Futala beautification. Thus once reliance is placed upon this document by the petitioners, themselves in support

of their contentions, they cannot he heard to say that the placing of this document on record has caused prejudice to them. Civil Application (W) No.401/2023, filed by the petitioners for remand, therefore cannot be entertained, as the petitioners cannot be permitted to approbate and reprobate.

15. Civil Application (W) No.1061/2023, seeks remand on the ground that the learned District Judge, in the proceedings before him, ought to have granted an opportunity to lead evidence. It also takes exception to the filing of the MOU dated 09/12/2022, as well as the document of delegation, in this Court and thus seeks remand. Insofar as the MOU dated 09/12/2022, is concerned its position has already been discussed in the preceding para and need not be repeated. Insofar as the plea of lack of opportunity to lead evidence is concerned, it is necessary to state that the proceedings under Section 81-F(1) of the MMC Act, is an appeal, and there is no provision in law for evidence to be led in appeal. Even if the Code of Civil Procedure is held to be applicable, unless so permitted by the Court for reasons to be recorded, evidence cannot be permitted to be led as a matter of course. The plea therefore is clearly misconceived. The contention that there was suppression of the MOU dated

09/12/2022, which has caused prejudice, is also misconceived for the reasons already stated above, as mere transfer of funds to another project would not mean that the project fizzles out and it is permissible for the project components to garner and procure funds again from any sources. So also, the place of permanent rehabilitation of those interested, is the job of the project components and merely on a plea that the place has not been identified and acquired, does not do away with the public interest. The plea of absence of delegation, ought to have been raised by the petitioners, before the Deputy Municipal Commissioner (Revenue) before whom they participated without demur. The document was permitted to be placed on record by this Court vide its order dated 03/03/2023 on Civil Application (W) No.621/2023 and Civil Application (W) No.659/2023 for recall of the same also came to be rejected by the order dated 29/03/2023, which has remained unchallenged, therefore it is not now permissible for the petitioners to seek remand on the ground of the document having been permitted to be filed, more so, as on the basis of the document of delegation itself arguments have been addressed by the petitioners. Civil Application (W) No.1061/23 thus stands rejected. As I have held that noting turns on the MOU dated 09/12/2022, ***S.P. Chengalvaraya Naidu*** (supra) does not come to the assistance of the petitioners.

16. What is also material to note is that, as per the statement of Mr. Kasat, learned counsel for the NMC, which is not disputed by Mr. De, learned counsel for the petitioners, there were 175 shops constructed under the flyover, out of which 160 were allotted. Out of these 160 allottees as many as 111 allottees have opted either for rehabilitation and have shifted to the temporary shops built for them or have received monetary compensation and have vacated the shops allotted to them, which would indicate that the project has advanced to a stage where it has become irreversible, as the NMC maybe through the aegis of Maha Metro, has already constructed temporary accommodation where the persons who have opted for rehabilitation, have already been accommodated.

17. In ***Omprakash Sawalram Agrawal*** (supra) a learned Single of this Court, as he then was, while considering the provisions of Section 76-B of the City of Nagpur Corporation Act, 1948, which are similar to Section 81-B of the MMC Act to quite an extent, and identical insofar as Section 81-B(1)(c) of the MMC Act is concerned, has held as under :

"13. ------. Thus a special procedure not till then in existence has been made available to NMC and that is with particular purpose. That object and purpose permits eviction of authorized occupants in public interest. It is therefore apparent that once public interest is available, the power under Section 76-B can be resorted to. Satisfaction of Commissioner under Section 76-B(1) is required to be reached after hearing the occupant as per Sub-section (2) thereof. The speedy remedy is deliberately provided as public interest in such matters is found paramount by State Legislature.

24. Loss of a source of earning livelihood not only for themselves and families but also to several others indulging in incidental or co-lateral businesses can also not be relevant when scheme of Chapter VIA of NMC Act is taken note of. The petitioners cannot here try to demonstrate any more right than available to them under that Chapter. Article 21 also permits deprivation of life and liberty in accordance with the procedure established by law. (1985) 3 SCC 545 : AIR 1986 SC 180, Olga Tellis v. Bombay Municipal Corporation relied upon by the petitioners does not consider a relationship regulated by contract or statutory provisions. Hon'ble Apex Court has stated while summing up the petitioners' case before it, that the main plank of their argument was that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. Thus right to reside in slums on footpath was co-related with livelihood earned. The observations and findings that right to life include right to earn livelihood there are therefore not relevant in case of present petitioners as they

> *do not reside there and their right is being terminated as per law. Later Constitution Bench judgment of Hon'ble Apex Court in (2006) 4 SCC 1 : AIR 2006 SC 1806, Secretary, State of Karnataka v. Umadevi has rejected the argument that right to employment is part of right to life. The consideration there clearly shows that primacy needs to be given to Rule of Law and to general public good. Here NMC has proposed a project for benefit of not only traders or businessmen but also for members of general public visiting the shops or establishments and also required to use the public roads or facilities in vicinity. The project therefore is aimed at making better provisions for customers, for commuters etc. At the same time it also attempts to accommodate petitioners. It cannot be viewed as violating Article 21 in any manner."*

In the instant case also, the occupants/allottees of the shops have been given an option of rehabilitation and with this intent those who have opted for the same, have been shifted to temporary accommodation in the same locality. It is, thus, apparent that the question of loss of livelihood, is not one which can come to the assistance of the petitioners.

18. It is a settled position of law, that a larger public interest has to outweigh an individual interest. Thus, when the widening of the road before the Railway Station by six-laneing it, is clearly an action which is in larger public interest, and would benefit the general populace, the interest of the petitioners, ought to give way

to the larger public interest, more so, when the resolution speaks of rehabilitation of those who opt for the same.

19. Considering the overall position, I, do not see any merits in the petitions, as the easing of traffic congestion by six-laneing the road in front of the main railway station can definitely be said to be in larger public interest. Once public interest is found to exist, the individual interest of the petitioners, in light of the option of rehabilitation available to them, ought to give way to such larger public interest. I, therefore, do not find any reason to interfere in the impugned judgments, passed by the learned District Judge. The petitions are thus devoid of merits and are dismissed. Rule stands discharged. In the circumstances there shall be no order as to costs.

(AVINASH G. GHAROTE, J.)

At this stage, Mr. De, learned counsel for the petitioners seeks continuation of the interim orders passed by this Court in order to enable the petitioners to approach the Hon'ble Apex Court.

In view of the fact that I have already held that the project is in public interest and has already progressed to the stage where it has become irreversible, I am not inclined to accept the request. The same is therefore rejected.

(AVINASH G. GHAROTE, J.)

Wadkar

Digitally signed bySHAILENDRA
SUKHADEORAO WADKAR
Signing Date:05.06.2023 18:28