

Amol

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 547 OF 2023**

WITH

INTERIM APPLICATION (L) NO. 6868 OF 2024

IN

WRIT PETITION NO. 547 OF 2023

WITH

INTERIM APPLICATION (L) NO. 9529 OF 2022

IN

WRIT PETITION NO. 547 OF 2023

WITH

INTERIM APPLICATION (L) NO. 30546 OF 2023

IN

WRIT PETITION NO. 547 OF 2023

AMOL
PREMNATH
JADHAV

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Sadanand Arjun Mohite & Ors

...Petitioners

Versus

Assistant Engineer & Ors

...Respondents

WITH

WRIT PETITION NO. 3869 OF 2021

WITH

INTERIM APPLICATION NO. 435 OF 2024

IN

WRIT PETITION NO. 3869 OF 2021
WITH
INTERIM APPLICATION (L) NO. 34851 OF 2023
IN
WRIT PETITION NO. 3869 OF 2021
WITH
INTERIM APPLICATION (L) NO. 9455 OF 2022
IN
WRIT PETITION NO. 3869 OF 2021

Prakash Gangaram Jadhav & Ors ...Petitioners
Versus
Assistant Engineer, Maintenance Department, ...Respondents
MCGM Office & Ors

WITH
WRIT PETITION NO. 549 OF 2023
WITH
INTERIM APPLICATION NO. 410 OF 2023
IN
WRIT PETITION NO. 549 OF 2023

Jitendra Damodar Jadhav & Ors ...Petitioners
Versus
Assistant Engineer, Maintenance Department, ...Respondents
MCGM Office & Ors

WITH
WRIT PETITION NO. 3284 OF 2021

WITH
INTERIM APPLICATION (L) NO. 9527 OF 2022
IN
WRIT PETITION NO. 3284 OF 2021

Jitendra Dharma Pandav & Ors ...Petitioners
Versus
Assistant Engineer, Maintenance Department, ...Respondents
MCGM Office & Ors

WITH
WRIT PETITION (L) NO. 30586 OF 2023

Sylvester Anthony Fernandes ...Petitioner
Versus
The State of Maharashtra ...Respondent

WITH
WRIT PETITION NO. 555 OF 2023
WITH
INTERIM APPLICATION NO. 1208 OF 2022
IN
WRIT PETITION NO. 555 OF 2023

Yussuf Gafar Sayyad & Ors ...Petitioners
Versus
Assistant Engineer & Ors ...Respondents

WITH
WRIT PETITION NO. 379 OF 2023

Shakuntala Gopal Ghag ...Petitioner
Versus
Assistant Engineer N-Ward & Ors ...Respondents

WITH
WRIT PETITION NO. 548 OF 2023

Chandra Baliram Bhadrake ...Petitioner
Versus
Assistant Engineer N-Ward ...Respondent

Mr Mayur Khandeparkar, *with Arun Panickar & Vinay Nair, i/b Milind Nar & Satish Modi, for the Applicant in IAL/30546/2023 & for the Developer-Sejal Siddha Realtors LLP.*

Ms Gayatri Singh, *Senior Advocate, with Kaustubh Gidh & Kranti LC in WP/547/2023.*

Ms Gayatri Singh, *Senior Advocate, i/b Ronita Bhattacharya Bector, for the Petitioner in WPL/38641/2021, WP/555/2023, WP/548/2023 & WP/374/2023.*

Ms Gayatri Singh, *Senior Advocate, i/b Kranti & Kaustubh Gidh, for the Petitioner in WP/549/2023 & WP/3284/2021.*

Mr Omkar Khaiyam Shaikh, *for the Petitioner in WPL/30586/2023.*

Mr Gautam Bhatia, *i/b Aarti Ranade, for the Intervenor in IAL/37451/2023 in WP/3869/2021.*

Mr GS Godbole, *Senior Advocate, with Anoop Patil & Pooja Yadav, i/b Sunil Sonawane, for the Respondent-MCGM.*

Mrs Ingle, *Assistant Engineer (WSP) Department, present in Court.*

Mr SB Gore, *AGP, for Respondent No. 1-State in WPL/30586/2023.*

Mr Mohit Jadhav, *Addl GP, with Himanshu Takke, AGP, for the Respondent-State in WP/547/2023.*

Ms Lavina Kriplani, *AGP, for the Respondent-State in WP/3869/2021.*

Mr Abhay L Patki, *Addl GP, for the Respondent-State in WP/549/2023.*

Mr Abhay L Patki, *Addl GP, for the Respondent-State in*

WP/555/2023.

Mr Manish Upadhye, AGP, for the Respondent-State in
WP/3284/2021.

Ms Rita Joshi, AGP, for the Respondent-State in WPL/30586/2023.

Mr Mohit Jadhav, Addl GP, for the Respondent-State in
WP/379/2023.

Mr Milland More, Addl GP, for the Respondent-State in
WP/548/2023.

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

DATED: 28th February 2024

PC:-

**WRIT PETITION NO 547 OF 2023 & CONNECTED IAS
(INCLUSION OF PETITIONERS IN A SLUM REHAB
SCHEME)**

1. Mr Khandeparkar appears for the Society in an IA in Writ Petition No 547 of 2023. He states that an Affidavit will be filed in regard to the 289 Petitioners and whether or not they are all covered by the slum rehabilitation scheme. If so, the Petitioners would be entitled to transit rent payable in advance and also to the allotment of Permanent Alternate Accommodation in the rehab building following the normal lottery process. He seeks a short adjournment to file an appropriate Affidavit with sufficient particulars. That Affidavit is to be filed and served by Tuesday, 5th March 2024.

WRIT PETITION NO. 3869 OF 2021, WRIT PETITION NO. 3284 OF 2021, WRIT PETITION NO. 549 OF 2023 & CONNECTED MATTERS (RELOCATION OF PETITIONERS TO VILLAGE ANIK DUE TO DIFFERENT PROJECTS)

2. In Writ Petition No. 3869 of 2021 (*Prakash Gangaram Jadhav & Ors v Assistant Engineer etc*), there are 28 Petitioners. Of these only 20 remain today. Further, 19 of these 20 Petitioners have declined to accept the offer made by the Municipal Corporation of Greater Mumbai (“**MCGM**”) for monetary compensation in lieu of their existing structures under the current policy. This policy was noted in our previous order.

3. We are told that the policy has been explained in detailed in a language that these 19 Petitioners understand, and they have all confirmed to the Advocates on record that they are unwilling to accept the monetary compensation. Their reasons are not important for our purposes today.

4. In Writ Petition No. 3869 of 2021, Petitioner No. 27 was one Ravindra Keshav Gamare. He has passed away. There is some difficulty in obtaining instructions from his heirs. It seems that there is some internal dispute within the members of that deceased Petitioner’s family. Ms Bhattacharya’s Vakalatnama cannot, she believes, and we think correctly, continue for Petitioner No. 27. There will be nobody from whom she can obtain instructions. At the same time, we do not see how the heirs of this Petitioner, he having

once been a Petitioner, can be disadvantaged by simply having his name deleted from the array of Petitioners. Instead, therefore, we exercise our inherent jurisdiction and direct that Petitioner No. 27's heirs be transposed as Respondent No. 5 onwards. A copy of this order is to be sent to the heirs of Ranvindra Keshav Gamare at their or his last known address along with the copy of the Petition and all papers. It is for them to thereafter obtain suitable representation. Ms Bhattacharya will ensure that notice is sent by hand delivery if possible. The heirs are at liberty to take appropriate steps once they are transposed.

5. As far as Writ Petition No. 3284 of 2021 is concerned (*Jitendra Dharma Pandav & Others v Assistant Engineer etc*), there are two remaining Petitioners. In Writ Petition No. 549 of 2023 (*Jitendra Damodar Jadhav v Kashiram Bighu Jangham & Others*), there are four Petitioners. All six of these too are unwilling to accept compensation, though explained the policy.

6. Thus, there are a total of 19+2+4 or 25 Petitioners in these three Petitions before us.

7. The issue is this. These Petitioners are all affected or so the MCGM claims, by a water supply infrastructure project. They are proposed to be shifted to an alternative site at village Anik (others are also sought to be shifted there, but because of other projects). In one voice, these Petitioners all say that the relocation site is entirely unsuitable. It is not habitable. There are serious issues of various

kinds of pollution that would be detrimental to health apart from the sheer distance from the present location.

8. Under the MCGM 2023 revised policy, the Petitioners have all been offered Rs. 25 Lakhs as compensation to vacate their structures. This is the offer they have declined. They have chosen to pursue the Petitions.

9. We leave open the question for the present and until the final disposal of whether the Petitioners will be entitled to seek, claim and receive compensation even if the Petitions otherwise fail, that is to say, whether the compensation policy of the MCGM will apply even if the Petitions do not succeed in the challenge to the suitability of the alternate location.

10. At various places in at least one Petition, there is a challenge raised to inadequacy of the compensation. This is not a question of how, according to the Petitioners or MCGM, the compensation should ideally be reckoned. What the Petitioners say in substance is that the compensation being offered by the MCGM is wholly inadequate and would not be sufficient to enable them to find proper accommodation anywhere in the vicinity.

11. The two sets of Petition, i.e., the slum rehab scheme group and the relocation group are therefore in regard to entirely distinct areas. While we retain them together presently, this is only for administrative convenience so that continuity is not lost.

12. In one of the Petitions in the second group (regarding relocation), Mr Gautam Bhatia has entered an Intervention Application. This Intervention Application is filed by one Dr Rishika Sehgal through Advocate Aarti Ranade. The Intervention Application is not, as we understand it, particularly addressed to the facts of a given project or a particular relocation. It addresses the larger issue of urban displacement and relocation and the principles that ought to be borne mind by a writ court when considering the competing equities and contestations especially those that arise under Part III of the Constitution of India. We will take Mr Bhatia's assistance in setting out the principles. So that he may direct his attention to it, we take the liberty of pointing out that the issue is not one of Article 21 or Article 14 rights vesting solely in the Petitioners. Indeed, there may well be a question of 'competing Article 21 rights', at least in the vital infrastructure/water supply project; for there are certainly others — not parties before us but rate-payers and citizens nonetheless — for whose benefit these infrastructure projects are being implanted. We foresee a direct conflict or contest between rival Article 21 issues: those of the Petitioners on the one hand, and those who, not being encroachers in their inception, are because of the illicit occupation of public lands being denied access to basic civic amenities and needs — especially water supply. We do not think it would be possible to accept that the answer to 'for whom is the city?' for instance is quite so neatly resolved by saying it is not only for the uber-rich. This dichotomy in urban areas between rich and poor appears to us *prima facie* to be a wholly artificial, superficial and false binary. For there are undoubtedly in every city large populations that are neither rich nor poor, but who also (unlike the Petitioners) use and occupy structures that are not illegal (nor

‘informal’). It is here that we will need Mr Bhatia’s assistance for we believe that this is a difficult and nuanced question, one that admits of no easy answer. It demands balancing, and that is always as delicate as it is difficult.

13. Consequently, on the *facts* of the second group of cases regarding relocation, it will be for the Petitioners to establish with sufficient objective material that their submission that the relocation site at Anik is unsuitable is not mere speculation but has a cogent basis of which a writ Court may legitimately take cognizance. We believe it is necessary to say this because independently of the principles that Mr Bhatia may canvass, we do not believe it is possible for a writ Court to proceed entirely on conjecture or surmise in regard to factual determinants at a given site. It is Mr Godbole’s case for the MCGM that an attempt is being made to confuse and even conflate the conditions at another site at Mahul with the conditions at Anik. We will consider these rival submissions at on the next date.

14. On the next date, we propose to first take a final decision in regard to Writ Petition No. 547 of 2023 (the slum scheme Petition) since there is a slum rehabilitation scheme and stands on a different footing.

15. We will then take up the second group of matters regarding relocation for final disposal.

16. In the meantime, the Advocates on record will coordinate with the Court Associate to ensure that the pagination is complete in all matters and that soft copies of all written submissions given in pen drive.

17. All Affidavits are to be filed in the Registry with correct paging.

18. List Writ Petition No. 547 of 2023 on 6th March 2023.

19. List Writ Petition No. 3869 of 2021 and Writ Petition No. 555 of 2023 along with other tagged Petitions and all interlocutory applications on 12th and 13th March 2024. Arguments must conclude by 13th March 2024. All counsel must restrict the time taken in oral arguments.

(Kamal Khata, J)

(G. S. Patel, J)