



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO.6112 OF 2019

PETITIONER : New Ramdaspath Kachipura Nagarik Mandal, Nagpur having its Registration No.Nagpur/0000613/2018/F00036296 (NGP) Kachipura Open Ground, New Ramdaspath, Kachipura, Nagpur Through its Joint Secretary, Santosh Pardhi.

..VERSUS..

RESPONDENTS : 1 Nagpur Municipal Corporation, Civil Lines, Nagpur. Through its Commissioner.

2 Nagpur Improvement Trust, Civil Lines, Nagpur. Through its Chairman

INTERVENER 3 Badadev Mahadev Charitable Trust, Nagpur, Off: C/o Shri Vijay D. Kokarde, 81, Kachipura, Ramdaspath, Lingo Maidan, Nagpur. Through it's Secretary- Shri Ashok Bhaiyyalaji Maraskolhe.

(Amended as per
Court's Order
dated .23.11.2022)

Mr S. T. Harkare, Advocate for Petitioner.
Mr S. M. Puranik, Advocate for Respondent No.1.
Mr G. A. Kunte, Advocate for Respondent No.2.
Mr S. V. Deshmukh, Advocate for Intervenor.

CORAM : **AVINASH G. GHAROTE AND**
SMT. M. S. JAWALKAR, JJ.

DATE : **20th FEBRUARY, 2024.**

ORAL JUDGMENT (PER : AVINASH G. GHAROTE)

. Heard. Rule. Rule returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

2. Heard Mr. Harkare, learned counsel for the petitioner, Mr. Sudhir Puranik, learned counsel for the respondent No.1, Mr. Girish Kunte, learned counsel for the respondent No.2 and Mr. S.V. Deshmukh, learned counsel for the Intervenor.

3. The petition questions inaction on the part of the respondent No.1, in respect of a claim by the petitioner, for removal of a so called illegal structure erected by the intervenor on a portion of the area, in the sanctioned layout namely South Dharampeth Precinct Civil Station Extension Scheme, which was reserved as an open space in the layout.

4. It is contended by Mr Harkare, learned counsel for the petitioner, that the respondent No.3 had erected an OTTA admeasuring approximately 1000 Sq.Ft., on which there is a lingam and a trident erected, which is being used by the public at large as a temple. It is further contended, that this construction is totally illegal and therefore the respondent No.1, in exercise of the powers conferred upon it under the Maharashtra Municipal Corporation Act, 1949, is liable to be removed. It is not disputed, that the land of the open space vests in the Planning Authority.

5. Mr Harkare, learned counsel for the petitioner, relies upon C. R. Dalvi and Ors. vs. Municipal Corporation of Greater Bombay and Ors., reported in 1987 Mh.L.J. 373 and Anjuman E. Shiate Ali and Anr. vs. Gulmohar Area Societies Welfare Group and Ors., reported in (2020) 20

SCC 698 and so also Virender Gaur and Ors. vs. State of Haryana and Ors., reported in (1995) 2 SCC 577, in support of his contentions that the structure indicated above needs to be removed.

6. Mr Puranik, learned counsel for the respondent No.1, does not dispute the existence of this structure as indicated above, he, however, has today tendered across the Bar an affidavit, which is taken on record and marked as “X” for the purpose of identification.

7. Mr. Puranik, learned counsel for the respondent No.1, contends, that in pursuance to the judgment by the learned Division Bench of this Court in the case of Shri Manohar Bapurao Khorgade and Anr. vs. The State of Maharashtra and Ors., Writ Petition No.6177 of 2006 decided on 19.09.2018 along with connected petitions, and specifically in view of the directions issued therein, and considering the Government Resolution dated 05.05.2011, the structure which is erected has been included in Category A, which now stands regularized and therefore, cannot be directed to be demolished. He therefore submits, that there is no merit in the petition and the same is required to be rejected.

8. Mr Kunte, learned counsel appearing for the respondent No.2, supports the contention of Mr Puranik, learned counsel for the respondent No.1 and so is the

position in respect of the learned counsel appearing for Intervenor.

9. It is not in dispute, that the open space in question vests in the Planning Authority. In **Manohar Bapurao Khorgade** (supra), while considering a similar position, where claims were raised for demolition of various structures on open public spaces, the learned Division Bench of this Court, had issued certain directions, in view of the GR dated 05.05.2011. It would be material to note these directions, which are as under :

“32. In that view of the matter, while disposing of the bunch of the Writ Petition Nos. 3446/2007, 3951/2018, 4480/2018, 4497/2018, 4507/2018, 4769/2018, 6121/2018, 6122/2018, 6123/2018, 6124/2018, 6125/2018 and while allowing Civil Application No.1809 of 2018 in Writ Petition No.6177 of 2006 of the respondent Municipal Corporation, we pass the following order :-

(i) The Municipal Corporation Level Committee under the Chairmanship of the Commissioner of the Municipal Corporation and consisting of the other Members as provided in sub-clause (iii) of Clause (1) of the G.R., shall categorize the unauthorized religious structures constructed prior to 29.09.2009 into Category A i.e. all the structures which can be regularized, Category B of the structures which are liable for demolition within a period of one month from today. We clarify that classification as directed shall be done only by the Committee which is required to be constituted as per the said G.R. No doubt that the Committee would be entitled to take assistance of the subordinate officers, but the decision with regard to the categorization will have to be taken by the Committee constituted under the said G.R.

(ii) After the categorization is completed within the aforesaid period, the Committee shall publish a list of such unauthorized religious structures which have

been categorized in Category A and B along with the proposed plan for regularization/demolition of such structures within a period of one week from the finalization thereof. The publication shall be made in at least one English, one Hindi, one Marathi and one Urdu newspaper having a wide circulation in the city of Nagpur. While publishing the list, the Committee shall also notify that, such of the persons/institutions who have any objection either to the categorization or proposed draft plan for regularization/demolition, would be entitled to raise their objections within a period of one month from the date of the publication of the said notice.

(iii) Upon receipt of such objections to the categorization/regularization/demolition, the objectors would be given an opportunity to submit the evidence in support of their claim and they should also be given an opportunity of being heard, wherever the Committee finds it necessary or such a demand is made by the objectors. The said exercise shall be completed within a period of three months from the last date of the receipt of the objections.

(iv) We further direct that while considering the objections and where it is found that the structures are liable to be demolished but their relocation is possible, the Committee shall also consider the said issue and prepare a list of Category C i.e. list of the structures which are entitled for relocation.

(v) After the exercise of giving hearing as contemplated hereinabove is completed, the Committee also prepare a final categorization of three lists. List A shall be of the structures which are entitled to be regularized. List B shall be of the structures which are found liable for demolition. List C shall be of the structures which are found to be entitled to be relocated.

(vi) Insofar as the structures in List A i.e. of the structures which are found entitled to be regularized, the steps will be taken by the Municipal Corporation Level Committee for the regularization of the said structures.

(vii) Insofar as the structures which are found liable to be demolished and which are constructed prior to 01.05.1960, the District Level Committee shall forward the list of such structures to the State Level Committee within the period of one month after final lists are prepared. The State Level Committee shall take the decision with regard to the aforementioned structures erected prior to 01.05.1960 within a period of one month from the date of the receipt of the list. After the decision is communicated to the Municipal Corporation Level Committee by the State Government with regard to aforesaid structures erected prior to 01.05.1960, the Municipal Corporation Level Committee shall give effect to and implement such a decision within a period of one month from the date of decision of the State Level Committee.

(viii) Insofar as the structures which are constructed after 01.05.1960 and which are found to be included in Category B, the steps for demolition of such structures shall be taken within a period of one month from the date of final categorization. Needless to state that as provided in the G.R. dated 05.05.2011, the Municipal Corporation Level Committee shall affix a notice of proposed demolition prior to 15 days of taking the action for demolition.

(ix) Insofar as the list C i.e. the list of the structures which are found eligible for relocation is concerned, the period of three months shall be given for relocation to the persons/institutions who are interested in relocating such structures. Such structures which are found entitled to be relocated, the persons concerned should be directed to relocate the said structures to the place where its relocation is approved, within the period of three months from the date of final categorization and demolish the old structures within the aforesaid period.

(x) In case such of the structures which are found eligible for relocation in category C, are not demolished and relocated within the aforesaid period of three months, the Municipal Corporation Level Committee shall take steps for demolition of such

structures within a period of one month after lapsing of the aforesaid period of three months.

(xi) We further clarify that insofar as the unauthorized religious structures or for that matter any unauthorized structure standing on the footpath, public streets/roads are concerned, they will not be covered by the aforesaid order. All such unauthorized structures standing on the public streets/roads and footpath will have to be demolished by the Municipal Corporation and N.I.T. The Municipal Corporation and the N.I.T. shall file an affidavit within a period of one week from today with regard to the steps taken for demolition of structures on public streets/roads and footpath.

(xii) We further clarify that the aforesaid order would also not be applicable to such of the structures which are erected after 29.09.2009 and all such structures will have to be demolished by the respondent- Municipal Corporation and the N.I.T. The affidavit which is required to be filed by the Municipal Corporation shall also indicate the steps taken by it with regard to demolition of such structures which are erected after 29.09.2009.”

10. It is in light of these directions, that an exercise was conducted by the respondent No.1, in which the structure in question in the present petition came to be included in Category A, which was in spite of the objections being raised by the petitioner.

11. The effect of the structure, being included in Category A, has been stated by the respondent No.1 in its affidavit dated 20.02.2024 at “X” in the following words.

“2. It is submitted that as per GR dated 05.05.2011 in sub clause (vi) of Clause (3) it stated for Category A structure is concerned, the District Level/Municipal Corporation Level Committee should decide the issue with

regard to regularization at its level and send a report to the State Level Committee by way of information only.

3. Thus it can be seen that as per the said GR the decision taken by the Municipal Corporation Level Committee as regards placing a structure in Category A is final and only the State Level Committee is to be informed about the decision. The structure stands regularised once it is placed in category A by Municipal Corporation Level Committee.”

12. It would thus be apparent, that the combined effect of what has been held and directed in **Manohar Bapurao Khorgade** (supra), read with the GR dated 05.05.2011 and the stand of the respondent No.1, which is the Planning Authority, as enumerated above would be that the structure erected, stands regularized on account of it being included in Category A, on account of which the petitioner would not be entitled to the reliefs claimed, considering what is the effect of a structure being included in Category A.

13. **C. R. Dalvi and Ors.** (supra), which is by a learned Single Judge, relied upon by Mr. Harkare, learned counsel for the petitioner lays down a proposition that a plot reserved as a play ground in the DP plan cannot be utilized for any purpose other than for what it has been reserved and similar recreational activities. **Anjuman E. Shiate Ali and Anr.** (supra), is also on the above proposition. **Virender Gaur and Ors.** (supra), holds that Municipal land earmarked for open space for public use would not be permissible to be granted on lease by the Municipality.

14. It is, however, material to note that a peculiar situation, which had arisen in the city of Nagpur has been specifically addressed by the learned Division Bench of this Court, in view of its directions contained in **Manohar Bapurao Khorgade** (supra), in light of the GR dated 05.05.2011 and the inclusion of the structure in question in Category A, is a result of those directions, in view of which, though there cannot be any dispute in respect of the proposition laid down in the aforesaid judgments, however, since the matter stands covered by the directions in **Manohar Bapurao Khorgade** (supra), and consequential actions, take in consequent thereto, as indicated above we do not see any reason to entertain the present petition. For the same reason, the contention of Mr Harkare, learned counsel for the petitioner, that the GR dated 05.05.2011 is not applicable cannot be sustained. The petition is, therefore, **dismissed**. Rule is discharged. In the circumstances, no order as to costs.

15. It is, however, made clear that the respondent No.1 shall ensure that there is no further addition in the structure as it exists now.

(M. S. JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)