

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13413 OF 2017

- | | | | |
|-----|---|---|-----------------|
| 1. | Shantaram Sakharam Ghadi, |] | |
| | (Since deceased through his legal heir) |] | |
| 1A. | Smt. Anita Shantaram Ghadi, |] | |
| | Age: 58 years, Occ.: Household |] | |
| | Residing at Property No.821, |] | |
| | Behind Sharneshwar Mandir, |] | |
| | Panvel Tapal Naka, Panvel |] | |
| | District Raigad. | | |
| 2. | Madhukar Baburao Jagnade, |] | |
| | Age: 65 years, Occ.: Business |] | |
| 3. | Vasant Sakharam Ghadi, |] | |
| | Age: 65 years, Occ.: Business |] | |
| 4. | Parvtibai Dagadu Angre, |] | |
| | (Since deceased through her legal heir) |] | |
| 4A. | Suresh Dagadu Angre, |] | |
| | Age: 58 years, Occ.: Business |] | |
| 5. | Ramesh Gajanan Aarte, |] | |
| | (Since deceased through his legal heir) |] | |
| 5A. | Kavita Ramesh Aarte, |] | |
| | Age: 29 years, Occ.: Business |] | |
| | Nos.2 to 5 are Shop at Property No.821, |] | |
| | Behind Sharneshwar Mandir, |] | |
| | Panvel Tapal Naka, Panvel |] | |
| | District Raigad. |] | ... Petitioners |

V/s.

**ASHWINI H
GAJAKOSH**

Digitally signed by
ASHWINI H
GAJAKOSH
Date: 2025.02.06
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- | | | |
|----|----------------------------------|---|
| 1. | The State of Maharashtra, |] |
| | Through, Secretary Town Planning |] |
| | Department, Mantralaya, Mumbai |] |

- | | | | |
|----|--------------------------------|---|-----------------|
| 2. | Panvel Municipal Corporation |] | |
| | Through Commissioner, |] | |
| | Taluka Panvel, District Raigad |] | |
| 3. | Ranchodji Devasthan Trust, |] | |
| | Through the Chief Trustee |] | |
| | Mr. Mahendra Yashwant Phake, |] | |
| | Adult Indian Inhabitant |] | |
| | Residing at House No.1679, |] | |
| | Takkagaon, Panvel |] | ...Respondents. |

**WITH
INTERIM APPLICATION NO.11643 OF 2024
IN
WRIT PETITION NO.13413 OF 2017**

- | | | | |
|-----|---|---|----------------|
| 1. | Suresh Dagadu Angre, |] | |
| | (Since deceased through legal heirs) |] | |
| 1a) | Swati Suresh Angre |] | |
| | Age : 54 years, Occ: Household |] | |
| 1b) | Sushant Suresh Angre |] | |
| | Age : 30 years, Occ.: Service |] | |
| 1c) | Pratik Suresh Angre |] | |
| | Age : 25 years, Occ.: education |] | |
| | All R/at: Flat no. 102, B-wing, Gulmarg |] | |
| | Apartment, Plot no.270/4, |] | |
| | Near Bharat Gas, Uran Road, |] | |
| | Panvel - 410206 |] | ... Applicants |

IN THE MATTER BETWEEN

- | | | |
|-----|---|---|
| 1. | Shantaram Sakaram Ghadi |] |
| | (since deceased through his legal heir) |] |
| 1A. | Anita Shantaram Ghadi |] |
| | Age: 58 years, Occ: Household |] |

	R/at. Property no. 821,	]	
	B/h. Sharneshwar Mandir, Panvel	]	
	Tapal Naka, Panvel, Dist. Raigad.	]	
2.	Madhukar Baburao Jagnade	]	
	Age: 65 Years, Occ: Business	]	
3.	Vasant Sakharam Ghadi	]	
	Age: 65 years, Occ: Business	]	
4.	Parvati Dagadu Angre	]	
	(since deceased through her legal heir)	]	
4A.	Suresh Dagadu Angre	]	
	Age: 58 years, Occ : Business	]	
5.	Ramesh Gajanan Aarte	]	
	(since deceased through his legal heir)	]	
5A.	Kavita Ramesh Aarte	]	
	Age: 29 years, Occ: Business	]	
	Nos. 2 to 5 are shop at Property no.821,	]	
	B/h. Sharneshwar Mandir, Panvel	]	
	Tapal Naka, Panvel, Dist. Raigad.	]	... Petitioners
Versus			
1.	The Stat of Maharashtra	]	
	Through Secretary Town Planning	]	
	Department, Mantralaya, Mumbai	]	
2.	Panvel Municipal Corporation	]	
	Through Commissioner	]	
	Taluka Panvel. Dist. Raigad	]	
3.	Ranchodji Devochan Trust	]	
	Through the Chief Trustee	]	
	Mr. Mahendra Yashwant Phake	]	

Adult Indian Inhabitant	]	
R/at. House no. 1679, Takkagaon,	]	
Panvel.	]	... Respondents

WITH
WRIT PETITION NO.10094 OF 2019

- | | | | |
|----|--|---|-----------------|
| 1. | Kisan Baburao Jagnade, |] | |
| | Age: 85 years, Occ: Business, |] | |
| | R/o. Sahakar Nagar Market Yard, |] | |
| | 103, Sai Pratik Building, |] | |
| | Panvel, Dist. Raigad |] | |
| 2. | Tarachand Ratansi Bheda |] | |
| | Age: 85 years, Occ: Business, |] | |
| | R/o. Flat No.3, 3 rd Floor, |] | |
| | Bundar Road, Panvel, Dist. Raigad |] | |
| 3. | Vilas Anant Shedge |] | |
| | Age: 67, Occ: Business |] | |
| | R/o. 101, Yasho Anu Anant CHS, |] | |
| | Tilak Road, Panvel, Dist. Raigad |] | ... Petitioners |

Versus

- | | | |
|----|---------------------------------|---|
| 1. | The State of Maharashtra, |] |
| | Through Secretary Town Planning |] |
| | Department, Mantralaya, Mumbai |] |
| 2. | Panvel Municipal Corporation |] |
| | Through Commissioner, |] |
| | Tal. Panvel, Dist. Raigad |] |
| 3. | Ranchodji Devasthan Trust |] |
| | Through the Chief Trustee |] |
| | Mr. Mahendra Yashwant Phake, |] |
| | Age: Adult, Occ: | |
| | R/o. House No.1679, Takkagaon, |] |

Panvel, Dist. Raigad

] ...Respondents

Mr. Shriram Kulkarni, i/by Mr. Swapnil Mhatre for the Petitioners.

Ms. Tanu N. Bhatia, AGP for Respondent No.1-State.

Mr. S.V. Gavand for Respondent No.2.

Ms. Sangeeta Salvi for Respondent No.3.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 31st January, 2025.

PRONOUNCED ON : 6th February, 2025.

JUDGMENT (Per Kamal Khata, J.):

1) Before us there are two interconnected Writ Petitions.

WRIT PETITION NO.13413 OF 2017

2) This Writ Petition filed under Articles 14, 19 and 26 of the Constitution of India seeks the following relief.

“a) this Hon’ble Court be pleased to issue writ of mandamus and/or any other appropriate writ or direction in the name of mandamus directing the Respondent No.2 to allot the alternate plot No.232(A) at Panvel to the Petitioners and they should be rehabilitated on the plot No. 232(A) at Panvel.”

3) The Petitioners are tenants of Respondent No. 3 - Trust and claim to be in the occupation of a commercial premises located at City Survey Numbers 821, 821/1 to 821/8 since more than 90 years. The Petitioners received Notice dated 13th July, 2016, issued by the Panvel Municipal Council under the provisions of Sections 88, 89 and 90 of the Maharashtra Regional Town Planning Act, 1966 (MRTP Act) read with Rule No.19 of the

Maharashtra Town Planning Scheme, 1974. The impugned Notice stated that Respondent Nos.1 and 2 had decided to widen the existing road from Karnala Circle to Tapal Naka admeasuring 18.30 mtrs. and in view of such proposal, the structures occupied by the Petitioners on the writ property and the plot were acquired by Respondent No.2. The Notice further required them to vacate the premises within 30 days of the receipt of the Notice and on failure to vacate, they would be evicted and the construction would be demolished in accordance with the law.

4) The Petitioners learnt that the Respondent No.3 had given an alternate plot number 232 (A) in lieu of the acquisition of the present plot. The Petitioners therefore demanded that they be given possession of the alternate plot which was given to the Respondent No.3 as tenants. The Petitioners seek not only to get vacant and peaceful possession of the alternate plot allotted to Respondent No.3 but proposed to construct premises on the same in lieu of their tenancy rights.

5) Mr. Shriram Kulkarni representing the Petitioners submitted that the Petitioners rights as tenants ought to be protected. He drew our attention to Sub-Section (4)(ii) and (iii) of Section 72 as well as Section 101 of the MRTP Act to submit that the rights of the tenants ought to be transferred to the alternate plot.

6) Ms. Salvi representing Respondent No.3, argues that the Petitioners are not tenants but trespassers. She contends that the Petitioners

have not only encroached upon the property but have also constructed structures and rented it out to some third persons. They are collecting rents ranging from 25,000 to 30,000 per month from the occupants and thus causing huge monetary losses to the Trust. She asserts that the Petitioners have neither taken any NOC from the Trust nor taken any construction permission from the concerned authorities. The Petitioners have neither resided on the said plot as alleged nor paid any rent to the Trust. Moreover, the implementation of the notice of 2nd Respondent is thwarted by this Writ Petition. She thus urges the Petition be dismissed with costs.

7) Mr. Gavand representing Respondent No.2 contends that the Petitioners appear to be encroachers on the land which is covered by the final Town Planning Scheme under Section 88 of the MRTP Act. He asserts that the land in question now vests in the corporation. He further asserts that once the final scheme is sanctioned, all the rights of the persons occupying the same cease to exist in view of the vesting of the land under the law and the Petitioner is liable to be summarily evicted. He informs that the alternate plot has already been given to Respondent No.3. Thus, it would now be a matter between the Petitioner and Respondent No.3 and the Respondent No.2 has every right to evict the Petitioner summarily under the provisions of the MRTP Act. He denied that the Petitioners had paid any property tax to the Respondent. He submits that the 18.30 mtrs wide road shown in the sanctioned TPS scheme has come into force since 15th

September, 2009. He argued that in view of traffic congestion on this road, the Petitioners are required to be immediately evicted by immediately implementing the notice. He submits that the disputes are inter se between the Petitioners and Respondent No.3 and cannot in any event prevent the implementation of these notices. Therefore, the Petition deserves to be dismissed and the injunction Order granted on 15th November, 2019 should be immediately set aside.

8) We have heard all the counsels and perused all the documents.

9) We are unable to accept the contentions of Mr. Kulkarni for the following reasons:

1) We have held in the case of *Vivek Krushna Dode V/s. State of Maharashtra in Writ Petition No. 13254 of 2022 reported in 2025: BHC-AS:2854-DB* that a tenant of a structure cannot challenge Notices under the MRTP Act, only the landlord can challenge the same. The Petitioners right, if any, is only against his landlord and tenants' rights, if any, are protected by statute.

2) Referring to the coordinate bench decisions in the case of *Anandrao G. Pawar V/s. Municipal Corporation of Greater Mumbai and Others reported in 2023 SCC OnLine Bom 2534 and Shaha Ratansi Khimji and Sons V/s. Kumbhar Sons Hotel Private Limited and Others reported in (2014) 14 SCC page 1*, we reiterate that, merely because a tenanted building is brought

down does not necessarily mean that the tenancy is extinguished or comes to an end.

10) In this case it appears that there are disputes between the Respondent No.3- landlord and the Petitioners. The Petition does not annex a single document proving tenancy and merely bald statements are made. There is also no documentary evidence proving that these structures are authorised. We wonder how on a “Devsthan Trust” plot which is under the Charity Commissioner, the Petitioners would have been permitted to occupy and conduct the business of running a lottery shop, mobile repairing, watch repairing and manufacturing mattresses. If the Trust is a Temple Trust, then certainly, these activities would not be a part of the object of the Trust. Consequently, the Charity Commissioner would most unlikely given any permission for conducting the aforesaid businesses.

11) In our writ jurisdiction, we are unable to decide on these issues. The Petitioners will have to get their rights asserted in jurisdictional Courts. We are also unable to determine and protect the rights of the Petitioners assuming that they are tenants. They have no right to object to the 2nd Respondent’s notice more so as it is under Sections 88, 89 and 90 of the MRTP Act.

12) The Petitioners have thwarted the entire implementation of the Town Planning Scheme successfully since last 7 years by misleading and misrepresenting. They had no right. They have caused immense trouble not

only to the landlords but after issuance of notices also to the public at large, by thwarting the Town Planning Scheme sought to be implemented in the interest of the Public. The Petitioners have no right to stall the entire scheme in this manner.

13) The notices issued under Sections 88, 89 and 90 are amply clear and give full rights to the concerned authority for summary eviction.

14) The Petition is thus dismissed.

15) In view of the dismissal of Writ Petition No.13413 of 2017, the Interim Application No. 11643 of 2024 does not survive and is accordingly disposed off.

WRIT PETITION NO.10094 OF 2019

16) The Petitioners-Tenants seek the following substantive reliefs:

“(a) This Hon’ble Court be pleased to issue appropriate Writ or directions, directing the Respondents to allot and to rehabilitate the Petitioners on the alternate site provided by the Respondent No. 2 and till then the Respondents their agents, servants and/ or any person acting on their behalf be restrained from disturbing the peaceful possession of the Petitioners on the suit plot being plot no. 253;

(b) This Hon’ble Court be further pleased to quash and set aside the notices dated 13/07/2016 and 15/04/2019 issued by the Respondent No. 2.”

17) Mr. Kulkarni for the Petitioners fairly submits that the facts and contentions in this Petition are similar to Writ Petition No.13413 of 2017

and thus the same Order may be passed.

18) Thus, Writ Petition No.10094 of 2019 too stands dismissed in terms of the above Order.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)