

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.813 OF 2024

- | | | | |
|----|------------------------------------|---|-----------------|
| 1. | Lakhani's Blue Waves Co-operative |] | |
| | Housing Society Ltd. |] | |
| | Through its Authorized Signatory |] | |
| | Having its Office at Plot No. 161, |] | |
| | Sector 9, Ulwe Taluka Panvel, |] | |
| | Dist. Raigad. |] | |
| 2. | Ami's Planet Mercury Co-operative |] | |
| | Housing Society Ltd. |] | |
| | Through its Authorized Signatory |] | |
| | Having its Office at Plot No. 163, |] | |
| | Sector 9, Ulwe Taluka Panvel, |] | |
| | Dist. Raigad, |] | |
| | Navi Mumbai 410 206 |] | ...Petitioners. |

V/s

- | | | | |
|----|--|---|-----------------|
| 1. | The Chairman, CIDCO, |] | |
| | CIDCO Bhavan CBD-Belapur |] | |
| | Navi Mumbai – 400 614. |] | |
| 2. | Executive Engineer (Ulwe-II) |] | |
| | CIDCO Nodal Office, 1 st Floor, Commercials |] | |
| | Complex, Sector 19A, Ulwe Navi Mumbai |] | |
| 3. | Chief, CIDCO CUC (Controller of |] | |
| | Unauthorized Constructions) |] | |
| | CIDCO Nodal Office, 1 st floor, Commercials |] | |
| | Complex, Sector 19A, Ulwe Navi Mumbai. |] | |
| 4. | The State of Maharashtra |] | |
| | Through Deputy Commissioner of Police |] | |
| | Zone 2 Navi Mumbai. |] | |
| 5. | The Senior Inspector of Police |] | |
| | Nhava Sheva Police Station |] | |
| | Navi Mumbai. |] | ...Respondents. |

**WITH
INTERIM APPLICATION NO.3040 OF 2025
WITH
WRIT PETITION NO.813 OF 2024**

- | | | | |
|----|--------------------------------|---|----------------|
| | Residents of Village Kopar |] | |
| | Through |] | |
| 1. | Vaibhav Tulshidas Gharat |] | |
| | Age:- 36 years, Occ. |] | |
| 2. | Sudhir Tusiram Thakur |] | |
| | Age:- 52 years, Occ. |] | |
| 3. | Suhas Madhukar Deshmukh |] | |
| | Age:- 55 years, Occ. |] | |
| | Residing at Kopar Post Gavhan, |] | |
| | Tal. Panvel, Dist. Raigad |] | ...Applicants. |

IN THE MATTER BETWEEN

- | | | | |
|----|------------------------------------|---|-----------------|
| 1. | Lakhani's Blue Waves Co-operative |] | |
| | Housing Society Ltd. |] | |
| | Through its Authorized Signatory |] | |
| | Having its Office at Plot No. 161, |] | |
| | Sector 9, Ulwe, Taluka Panvel, |] | |
| | District Raigad - 410206. |] | |
| 2. | Ami's Planet Mercury Co-operative |] | |
| | Housing Society Ltd. |] | |
| | Through its Authorized Signatory |] | |
| | Having its Office at Plot No. 163, |] | |
| | Sector 9, Ulwe, Taluka Panvel, |] | |
| | District Raigad - 410206 |] | ...Petitioners. |

V/s

- | | | |
|----|--|---|
| 1. | The Chairman, CIDCO, |] |
| | CIDCO Bhavan CBD-Belapur |] |
| | Navi Mumbai – 400 614. |] |
| 2. | Executive Engineer (Ulwe-II) |] |
| | CIDCO Nodal Office, 1 st Floor, |] |
| | Commercials Complex, Sector 19A, |] |

- | | | | |
|----|--|-----------------------|-----------------|
| | Ulwe, Navi Mumbai |] | |
| 3. | Chief, CIDCO CUC (Controller of
Unauthorized Constructions)
CIDCO Nodal Office, 1 st floor,
Commercials Complex, Sector 19A,
Ulwe, Navi Mumbai. |]
]
]
]
] | |
| 4. | The State of Maharashtra
Through Deputy Commissioner of
Police Nhava Sheva Police Station
Navi Mumbai |]
]
]
] | |
| 5. | The Senior Inspector of Police
Nhava Sheva Police Station,
Navi Mumbai. |]
]
] | ...Respondents. |

**INTERIM APPLICATION NO.13795 OF 2024
WITH
WRIT PETITION NO.813 OF 2024**

- | | | | |
|----|---|----------------------------|----------------|
| 1. | N.D. Garden Co-operative Housing
Society Ltd.
Through its authorized signatory
Having its Office at Plot No. 171,
Sector, 9, Ulwe Tal. Panvel, Dist. Raigad.
Navi Mumbai – 410206. |]
]
]
]
]
] | |
| 2. | Sai Fortune Co-operative Housing
Society Ltd.
Through its authorized signatory
Having its Office at Plot No. 15,
Sector 8, Ulwe, Tal. Panvel Dist. Raigad,
Navi Mumbai – 410206. |]
]
]
]
]
] | ...Applicants. |

IN THE MATTER BETWEEN

- | | | |
|----|---|-----------------------|
| 1. | Lakhani's Blue Waves Co-operative
Housing Society Ltd.
Through its Authorized Signatory
Having its Office at Plot No. 161,
Sector 9, Ulwe, Taluka Panvel, |]
]
]
]
] |
|----|---|-----------------------|

- | | | | |
|----|--|---|-----------------|
| | Dist. Raigad. |] | |
| 2. | Ami's Planet Mercury Co-operative Housing Society Ltd. |] | |
| | Through its Authorized Signatory |] | |
| | Having its Office at Plot No. 161, |] | |
| | Sector 9, Ulwe, Taluka Panvel, |] | |
| | Dist. Raigad , Navi Mumbai – 410206. |] | ...Petitioners. |

V/s

- | | | | |
|----|--|---|-----------------|
| 1. | The Chairman, CIDCO, |] | |
| | CIDCO Bhavan CBD-Belapur |] | |
| | Navi Mumbai – 400 614. |] | |
| 2. | Executive Engineer (Ulwe-II) |] | |
| | CIDCO Nodal Office, 1 st Floor, |] | |
| | Commercials Complex, Sector 19A, |] | |
| | Ulwe, Navi Mumbai |] | |
| 3. | Chief, CIDCO CUC (Controller of |] | |
| | Unauthorized Constructions) |] | |
| | CIDCO Nodal Office, 1 st floor, |] | |
| | Commercials Complex, Sector 19A, |] | |
| | Ulwe, Navi Mumbai. |] | |
| 4. | The State of Maharashtra |] | |
| | Through Deputy Commissioner of |] | |
| | Police Nhava Sheva Police Station |] | |
| | Navi Mumbai |] | |
| 5. | The Senior Inspector of Police |] | |
| | Nhava Sheva Police Station, |] | |
| | Navi Mumbai. |] | ...Respondents. |

Mr. Ashok T. Gade a/w. Adv. Riya John for the Petitioners.

Mr. Nitin Gangal a/w. Adv. Prapti Karkeja for the Applicants in IA/13795/2024.

Mr. Sachindra B. Shetye for the Applicants in IA/3040/2025.

Mr. Sameer Patil for Respondent Nos.1 to 3 in WP/813/2024.

Mr. A.A. Alaspurkar, AGP, for Respondent Nos.4 & 5-State.

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

RESERVED ON : 5th March, 2025.

PRONOUNCED ON : 28th March, 2025.

JUDGMENT (Per Kamal Khata, J.):

1) By this Petition under Article 226 of the Constitution of India, the Petitioners seek directions against CIDCO from granting any approval, sanction, permission for construction of crematorium on plot number 176, 176A and 176B of Sector 9, Ulwe.

2) The Petitioners are two co-operative societies that are situated on plot No. 161 and 163 of Sector 9, Ulwe, Taluka Panvel, District Raigad, Navi Mumbai-410206. According to the Petitioners, as per the Development Plan of CIDCO, the plot Nos. 176, 176A and 176B of Sector 9, Ulwe (subject plot) are reserved as petrol pump. However, at some point in the recent past, some highly influential person appointed a contractor and initiated a construction of crematorium instead of a petrol pump. The two societies are situated around these plots and hence are severely affected.

3) The Petitioners and two other adjoining societies viz. Delta Tower Co-operative Housing Society and Hari Darshan Co-operative Housing Society Ltd., made Representations dated 27th August 2023 and 11th September 2023 to CIDCO to take steps to remove the unauthorized

structure from the plot. The Respondent No.2, Nodal Executive Engineer, after verifying the facts at site, issued a letter dated 12th October 2023 to Respondent No.3 - Chief Controller of Unauthorized Constructions (CCUC), to take appropriate action against the unauthorized structure on the subject plot. When the Respondent No.3-CCUC proceeded to take action, pursuant to the said directions, on 9th November 2023, the villagers of Kharkopar, by coming in huge numbers, not only foiled their attempt to demolish the unauthorized crematorium but launched a massive protest and objected to the demolition. It is in these circumstances that, the Petitioners have filed the present Petition.

4) Mr. Gade, learned Advocate for the Petitioners asserts that, the crematorium is not only in the middle of residential societies and commercial shops but also in close proximity to a school area and its playground which create mental impact on the kids. According to him, the use of wood, in cremation generating fire and smoke results in emanating of foul smell, air pollution, which impacts the mental and physical health of residents. He contends that, there is already a crematorium which is situated around 15-20 minutes away from these affected societies. He submits that, the construction commenced on the subject plots is absolutely illegal and carried out under the directions of some highly influential persons. In these circumstances, despite representations, the CIDCO and the

Police Authorities have failed to demolish the unauthorized construction. He further submits that the Petitioners are also supported by two other societies viz. N.D. Garden Co-operative Housing Society Ltd. and Sai Fortune Co-operative Housing Society Ltd. through an Interim Application for intervention.

5) *Per Contra* Mr. Shetye representing the residents of village Kharkopar opposed the Petition and demolition of this crematorium through an Interim Application No.3040 of 2025 for intervention and impleadment as affected party. He submits that, this application is by 78 villagers who are authorized to file this Application in the present Petition. The village Kharkopar also known as Kopar village is a part of Gavhan's Grampanchayats, which consists of Gavhan, Kopar, Shelghar, Shivaji Nagar and Belpada villages having around 18,000 residents. The main contention of Mr. Shetye is that, the Petition is based on a false premise. He submits that, the village Kopar had and has only one crematorium that is in existence for more than 250 years since the establishment of village Kopar situated on plot No. 176 and 176A. He submits that, the statement that, this plot was reserved for petrol pump and the crematorium is unauthorised, is palpably false. According to him, after CIDCO became the Planning Authority in 2006, it had sanctioned a sum of Rs. 3,05,973/- to develop this plot as a cremation ground. In 2007, the work of reclaiming the ground to

around 60% was also completed followed by grant of an administrative approval by the Executive Engineer, CIDCO on 26th November 2007. On 3rd December 2007, CIDCO had informed the Sarpanch, Group Grampanchayat Gavhan that, funds for the work of construction of the wall around the crematorium was also sanctioned. On 17th June 2008, the construction of the compound wall and the sitting arrangement in Kopar village at Ulwe was completed.

5.1) Mr. Shetye asserts that the existence of the crematorium is substantiated by the fact that there was a tender for construction of the crematorium on the plot. He points out that, one M/s. B.R. Thakur and Company who participated in the tender was also granted the Work Order on 17th August 2020. It was CIDCO who changed the location subsequently and asked the contractor to construct the crematorium on plot No. 1 sector 14 at Ulwe. He contends that, for several years the villagers have been requesting the CIDCO Authorities for improving the crematorium, since it had become old. He draws our attention to the letters annexed to the Application in this regard. He thus submits that, the crematorium is not unauthorized as alleged but was being used for several years by the villagers of Kopar. That, these societies are recently developed and from the photographs, the Petitioners Societies and the Applicants Societies, appear to be at a considerable distance from the crematorium and they will

not be affected by the upgrading of this crematorium. According to him CIDCO Authorities have been unfair by calling this crematorium unauthorized and using police force to remove the same. He also submits that, there is nothing on record to show that this crematorium is offensive or dangerous to the health of persons residing in the neighborhood. He submits that the new crematorium is far away and would cause the villagers of Kopar great hardship to travel the distance for cremation. He vehemently contends that, merely because the Petitioners society have started residing in the vicinity, it cannot be a ground to shift the crematorium.

5.2) In support of his contention, he refers to the judgment of the Supreme Court in the case of *South Delhi Municipal Corporation v/s. Federation of Residents Welfare Association, Vasant Kunj and others* reported in (2022) 14 SCC 443. Relying on the judgment, he submitted that, merely because there are residents residing in the vicinity, the crematoriums cannot be shifted.

6) Mr. Patil representing the CIDCO submits that, CIDCO is the new Town Planning Development Authority constituted under the Maharashtra Regional and Town Planning Act 1966, for the purpose of development of the township of Navi Mumbai and is the Special Planning authority for the planned development of the new township and its infrastructure. He submits that the Government of Maharashtra has constituted the new Town

Planning Development Authority and has for that purpose acquired lands in the notified areas for its planned development. He relies on the Affidavit of Mr. Bharat Thakur, Controller of Unauthorized Construction Department of CIDCO dated 9th September 2024 to submit that, at the request of the local villagers to CIDCO, a crematorium was planned to be constructed on Plot No.176 sector 9, Ulwe. He also admits that, necessary work orders for construction was also issued. However, on account of certain technical issues including the wet lands issue that came to light that, the said proposed work was cancelled. In view of the cancellation of this work, a new proposal was moved for construction of a crematorium that was then relocated to plot No.1 sector 14 Ulwe. The crematorium at the new plot is now functional. He submits that upon receiving a complaints from some Societies in the vicinity, they did inspect the site and had proceeded to demolish the structure with the help of the police department. The same was resisted by the villagers and therefore they could not carry out the demolition. He submits that since the new crematorium is in the vicinity, there is no reason to construct or even continue this crematorium on these plots. He accordingly submits that, no prejudice would be caused to the villagers, if the Petition is allowed.

7) We have heard the learned counsel and perused the record before us.

8) It is the Planning Authorities (in this case the CIDCO) who are tasked with these responsibilities for providing crematoriums. A citizen or group of citizens would not have any fundamental right in seeking a particular place for cremation or burial. CIDCO – the Planning Authority has provided a fully functional crematorium at plot no 1 sector 14 which is at a distance of about three and half kilometers away from this plot. In this backdrop, we find the request of Mr. Shetye to maintain the crematorium at the present place, quite unusual despite being informed that a functional crematorium is provided in the vicinity.

9) The reliance on the judgment in the case of *South Delhi Municipal Corporation (supra)* is also of no avail to the interveners. In that case, the Municipal Corporation, who was the Planning Authority, had taken a conscious decision to keep the crematorium and found no desire or requirement to shift it. The Hon'ble Supreme Court affirmed the conscious decision of the Municipal Corporation's Standing Committee and rejected the requests of certain residents in the vicinity to shift the same after considering the findings of the Standing Committee and larger public interest.

10) In this case, Planning authority has exercised its lawful power consciously to change the location of the crematorium and we find no reason to interfere with this decision. The Societies are situated in close

proximity to the cremation ground, as evidenced by the photographs presented. We are unable to agree with Mr. Shetye's request to keep this crematorium as the villagers will have to travel a greater distance to use the new crematorium. This cannot justify the continuation of the current crematorium. As previously stated, citizens do not have the right to cremate or bury at a specific location. It is the duty of the Authorities to meet the needs of the people. In this instance, CIDCO has already provided a fully functional cremation ground. Given these circumstances, we find that the Petitioners are correct, especially considering the presence of schools, open playgrounds and several societies that are being affected by the fire and smoke. Therefore, we are not inclined to agree with Mr. Shetye's request to maintain the current cremation ground, especially since the Development Authority, CIDCO, has already provided a fully functional alternative crematorium.

11) The Petition is therefore allowed in terms of prayer clauses (a) and (b). We direct the Respondents to use said land as per Sanctioned Development Plans in accordance with law.

12) In view of the disposal of the Petition, Interim Applications do not survive and the same are accordingly disposed off.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)