

Andreza

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**PUBLIC INTEREST LITIGATION NO. 119 OF 2021
AND
PUBLIC INTEREST LITIGATION NO. 20 OF 2025**

PUBLIC INTEREST LITIGATION NO. 119 OF 2021

1. Mr. Melwyn Isidore Fernandes, Adult,
An Indian Inhabitant, Having address at A-
5/302, Vedant Complex, Vartak Nagar,
Thane (W)-400606

Email: Divine.corporation@yahoo.com

2. Mr. Thomas Joseph Puthanvitil, Adult,
An Indian Inhabitant, Having address at
Flat No. 602/F, Orchid Unnathi Gardens,
Phase-2, Off Pokhran Road No. 1, P. K.
Marg, Thane (W)-400606.

Email : thomasjoseph9000@gmail.com.

3. Mr. Anil Joaquim D'Souza, Adult, An
Indian Inhabitant, Having address at Flar
No. C-201, Orchard CHS Ltd, Unnathi
Gardens, Devdaya Nagar, Thane(W)-
400606.

Email: anildsouza1972@yahoo.com

4. Mr. Lawrence Pushparaj Swamy, Adult,
An Indian Inhabitant, Having address at
701, Raunak Park, Near Neelkanth Heights,
Thane (W)-400 610

Email: Ipswamy68@gmail.com

5. Mr. Binu Varghese, Adult, An Indian
Inhabitant, Having address at 103, A-2,
Chhabhaiya Park, Balkum Rd. Opp. Big
Bazar Mall, Kapurbawdi, Thane (W)-

SHEPHALI
SANJAY
MORMARE

Digitally signed
by SHEPHALI
SANJAY
MORMARE
Date: 2026.02.21
12:42:22 +0530

400606.

... Petitioners

Email: binu100@rediffmail.com

V e r s u s

1. The State of Maharastra, through the Government Pleader

2. Health Department, Thane Municipal Corporation, Having address at Thane Mahanagarpalika Bhavan, Dr. Almeida Road, Chandanwadi Panchpakhadi, Thane West – 400 602.

3. The Thane Municipal Commissioner, Having address at Thane Mahanagarpalika Bhavan, Dr. Almeida Road, Chandanwadi, Panchpakhadi, Thane West – 400 602.

4. The Collector of Thane, Having address at Court Naka, Thane West – 400 602.

5. The Police Commissioner, Thane, Dep. Zone 5, Having address at Office of the Police Commissioner at Thane, Near Kalwa, Bridge, Thane West – 400 610.

6. The Vartak Nagar Police Station, Having Address at Vartak Nagar, Thane West – 400 602.

7. M/s. Vihang Group of Companies, through its Chairman Mr. Pratap Sarnaik, 12th Floor, Dev Corpora, Cadbury Junction, Thane (W) – 400 601.

... Respondents

AND

PUBLIC INTEREST LITIGATION NO. 20 OF 2025

Masjid Madarsa Anjuman Raza-E-Mustafa,
(Registered Trust vide Regn. No. F-4985)
Having its Regd. Office at M. I. Udhyog
Nagar, K.G.N. Road, Bhayander (East), Dist.-
Thane, Maharashtra PIN – 401 105 Mob. No.
7021851650, Email_ (Through its Trustee
Mr. Sadik Hasan Khan) Aged: 62 years,

Indian Inhabitant, Occ: Business, Residing at
102, Arjun Smruti, Cabin Cross Road,
Narmada Nagar, Bhayander East, Thane, ... Petitioners
Maharashtra – 401105.

V e r s u s

1. The State of Maharashtra, Through its
Principal Secretary (UD-2) Urban
Development ministry at 4th Floor, Main
Building, Mantralaya, Mumbai 400 032,
Maharashtra, Phone No. 022-22021444.

2. The Assistant Director, Town Planning,
Thane Branch, AND Designated Officer of
Mira-Bhayander Development Scheme
Having Office at Collector Office Building, 3rd
Floor Court Naka, Thane (West),
Maharashtra PIN – 400 601 Phone No. 022-
25342744 E-mail :
adtp1.thane@maharashtra.gov.in
adtphane@gmail.com.

3. Maharashtra Coastal Zone Management
Authority – MCZMA, Through the Principal
Secretary Environment & Forest Ministry,
Annexer Building, 2n Pradnya Dham,
Environment Department, Mumbai
Maharashtra PIN 400 032 Phone No. 022-
22873845/22825973 Email:
psec.env@maharashtra.gov.in.

4. The Collector, Thane District, The
Collectorate, Court Naka, Ad Prabhakar
Hegade Road, Thane (West), Thane
Maharashtra – 400 601 Phone : 022 – 022-
25344041 25347444 Email :
collector.thane@maharashtra.gov.in Service
all 1(a), 1(b) & 2 above through the Ld. AGP,
State of Maharashtra, PWD Bldg. High
Court, Bombay.

5. The Commissioner, Mira Bhayander
Municipal Corporation, Swargiya Indira
Gandhi Bhavan, Chatrapati Shivaji Maharaj
Marg, Bhayander (West) Teh & Dist.-Thane,
Maharashtra, Phone No. 022-
28192828/28193028 Email: it@mbmc.gov.in ...Respondents

Mr. Jagannath S. Pawar, a/w. Siddhi P. Mekde, Advocate for the Petitioner in PIL 20/2025.

Smt. Sunita Banis, Advocate for the Petitioner in PIL No. 119 of 2021.

Smt. Jaya Bagwe, Advocate for the Respondent no. 3 (MCZMA) in PIL No. 20 of 2025.

Mrs. Neha S. Bhide, G.P. a/w Mr. O. A. Chandurkar, Additional G.P., Mrs. G. R. Raghuwanshi, A.G.P. for Respondent-State.

CORAM: SHREE CHANDRASHEKHAR, CJ & SUMAN SHYAM, J.

RESERVED ON: 23rd JANUARY, 2026

PRONOUNCED ON: 20th FEBRUARY, 2026

JUDGMENT (*Per Suman Shyam, J.*)

1. The common grievance in both these Public Interest Litigations pertains to failure on the part of the Municipal Corporation of Thane and Mira-Bhayander to provide adequate burial ground facility for the members of the Christian Community as well as Muslim population living in and around Thane in Maharashtra. It is the case of the Petitioners that despite repeated requests made by them as well as reservation of land for construction of burial ground, the Municipal Corporations have failed to complete the construction of the burial ground. Since a common issue is involved in both these Public Interest Litigations, hence, we propose to dispose off the same by this common

order. It is, however, to be noted herein that although the grievance expressed in both the Petitions are identical, yet, we find that narration of facts as well as the stand taken by the Respondents in their respective replies, marginally differ in both the proceedings. Therefore, we deem it appropriate to briefly mention the factual background and circumstances giving rise to filing of these Public Interest Litigations as here under, for ready reference.

**A. FACTS INVOLVED IN PUBLIC INTEREST LITIGATION
NO. 119 OF 2021**

2. The Petitioner No 1 is an activist and parishioner of Our Lady of Mercy Church, Thane, Petitioner Nos. 2, 3 and 4 are active parishioners of the said church. Petitioner No 5 is an activist. All the Petitioners belong to the Christian community. The five Writ Petitioners have approached this Court by filing the Writ Petition espousing the cause of the public, alleging that the Respondents have failed to address the issue of shortage of burial ground for the Christian community in Thane city.

3. It appears from the material on record that by G.R. dated 22.11.2016 issued under section 37 of the MRTP Act, the Government had sanctioned reservation of 37,000 sq. meters of land at Bhayenderpada for “*Sayukta Smashanbhumi*” and “*Smruti Udyan*” out of which, 3000 sq. meters was specifically earmarked for Christian

burial. Accordingly, in reply to a query made under the Right to Information Act, 2005, the Information Officer, City Development Division of the Thane Municipal Corporation (TMC) had informed the Petitioner No 1 that some plot of land had been reserved for Christian Cemeteries in Thane City. The Petitioners have also alleged that the Respondent no. 2, through a communication dated 23.12.2016, addressed to the Thane Christian Welfare Association, Thane, had informed that a plot of land admeasuring 3000 square meters (approximately) was being reserved for the purpose of Cemetery for the Christian Community at Bhyanderpada, Thane. However, thereafter, no further step was taken in the matter. The Writ Petitioners along with the other members of the various denominations of the Christian Community, have been approaching the local Corporators and MLAs seeking handing over of the reserved plot of land for the purpose of setting up the Cemeteries for the members of the Christian Community living within Thane. The plight of the members of the Christian Community owing to shortage of adequate burial ground, has been repeatedly highlighted before the authorities. However, notwithstanding, the reservation of the land for setting up the Cemetery in that area, the Corporation has not completed the construction of the Cemetery till date.

4. In the Writ Petition, it has been mentioned that the population of Christians in and around Thane is more than 3 lakhs and the same is

increasing rapidly. The average death rate each year is 250 to 300 and each burial requires around 80 sq ft of land. However, due to the non-availability of adequate space, corpses are required to be exhumed before time and piled one upon another. On several occasions, the family members of the deceased were required to carry the corpse to far off places such as Sewri and Mahalaxmi for burial which requires Police clearance. It has further been stated that Churches having their private cemeteries are nearly full. Although the Respondent No 3 has allotted 2 burial grounds measuring 1,000 sq. mts and 900 sq mts in Mumbra/Kausa area, yet, those are insufficient. It has also been stated that in the list dated 06.05.2019 (Exh-A), the particulars of the total number of land reserved for Christian Cemeteries, coming under the jurisdiction of Thane Municipal Corporation, along with Survey numbers, Sectors and Area as well as the Survey numbers of Christian Reserved active cemeteries in TMC jurisdiction, have been provided. After the outbreak of Covid -19 pandemic leading to large number of deaths, request was made to the Respondent No 3 to expedite the process of providing adequate burial grounds but to no avail. Situated thus, the present Writ Petition has been filed *inter-alia* seeking a direction upon the Respondents to open all reserved plots of land which have been earmarked for Christian cemeteries under the Development Plan of Thane as per List at Exhibit-A.

5. In their reply dated 14.09.2022, filed by the Respondent nos. 2 and 3, i.e. the State of Maharashtra as well as the Thane Municipal Corporation, respectively, the list of total reservations for Smashanbhumi/Cremation Ground/Burial Ground in the sanctioned Development Plan of Thane Municipal Corporation (TMC) , has been provided. The list, as furnished in paragraph 6 of the reply, is reproduced herein below, for ready reference :-

“6. I say that the Petitioners have submitted the information obtained by them regarding the land reserved for Cremation/burial in the approved development plan of Thane city under RTI as per Exhibit A. List of total reservations for Smashanbhumi/Cremation Ground/Burial Ground in Sanctioned Development Plan is as below:

Sr. No.	Designation of Site/Sector No./ Res. No.	Area of the site in Ha.	Description of the land Name of Village/ S.No./ Gut No.	Acquired area in Ha.	Remarks
1	2	3	4		7
1	Cremation Ground / I/1	0.43	Kopari Gut No. 86 pt.	0.00	Land is under SEZ.
2	Extn. To Cremation Ground / I / 2	0.07	Naupada S. No. 144 pt. near Anand nagar Cremation Ground	0.00	Not in possession of TMC
3	Extn. To Cremation Ground / V / 1 Vide Plan	0.09	Chitalsar – Manpada Gut No. 3 pt.	0.00	Encumbered by Slum.
4	Sayukta Smashanbhumi & Smruti Udyan/VI/1A	3.70	Bhayendarpada S. No. 42pt., 45pt., 47pt., 109pt.	2.60	Under Development. 3000 Sq.Mt. is proposed for Christen Cemetery as per General Body Resolution No 03, Dt.20.03.2017
5	Burial Ground / VIII / I	0.36	Kalwa S. No. 17 pt.	Existing Cremation Ground.	Existing Cremation Ground.

6	Cremation Ground / VIII / 1	3.06	Kharegaon Gut No.184 pt.	0.00	Land is affected by CRZ-IA, CRZ-B & CRZ-II
7	Cremation Ground / VIII / 2	0.45	Kalwa S. No. 17 pt.	0.00	Land is in possession of Thane Gramin Police. Corporation demanded this land for Burial Ground, but yet land is not handover by them.
8	Cremation Ground / VIII/ 3	1.92	Kalwa S. No. 234 & 236 pt.	0.00	Encumbered by Slum area
9	Cremation Ground . VIII / 4	0.22	Kalwa S. No. 424 pt.	0.00	Encumbered by Structures
10	Cremation Ground /IX/1	0.45	Mumbra S. No. 107A Pt.	Existing Use.	Existing use.
11	Burial Ground /IX/1	0.45	Mumbra S. No. 107A Pt.	Existing use.	Existing use under muslim Burial ground.
12	Cremation Ground, Burial Ground for Muslims & Burial Ground for Christians	2.00	Mumbra S. No. 55pt., 56pt,57pt,58pt,	2.00	Developed 1000 Sq/mt. land is under Christen Cemetery.
13	Cremation Ground /IX	0.50	Kausa S. No. 123/1, 123/2 & 126/4	0.00	Application by land Owner trust for cremation ground maintenance.
14	Cremation Ground / X / 1	1.88	Diva S. No. 192 pt.	0.00	Land is affected by CRZ-IA
15	Cremation Ground / X / 2	0.50	Diva – Sabe S. No. 242A pt., 269pt, 231pt., 97pt & 74pt.	0.00	Land is affected by CRZ-IA
16	Cremation Ground / X / 3	0.78	Agasan S. No. 153 pt.	0.00	CRZ-I
17	Extn. To Cremation Ground / X / 4	0.62	Dativali S. No. 46pt., 59pt., 240A pt.	0.00	Partly CRZ-IA and CRZ-II
18	Cremation Ground / XI / 1	0.44	Dawale S. No. 127 pt.	0.00	Encumbered by structures.
19	Cremation Ground / XI / 2	0.79	Daighar S. No. 26 pt., 28 pt & 55 pt.	0.3950	Existing Hindu Smashanb humi.

6. In the aforesaid reply, it has further been *inter alia* stated that the Thane Municipal Corporation is already in the process of modification of the Development plan for Crematorium in Kavesar and Dawale on State Government land admeasuring 2.00 hectares and 1.00 hectares respectively, wherein all community facilities will be provided. These modification proposals are at the final stage of approval by the State Government. That apart, it has also been mentioned that “*Sayukta Smashanbhum*i” and “*Smruti Udyan*” reservation of land area for 3000 square metres has already been allocated for Christian Community *vide* General Body Resolution No. 03 dated 20.03.2017 and the work of setting up “*Sayukta Smashanbhum*i” is in progress on the said land. The same will be completed within a period of two years. Once the construction activities are completed, the Respondents shall be in a position to use the same as Cemetery.

7. In paragraph 19 of the reply, it has again been stated that in Sector no. 6, Mauje Bhayendarpada, there is reservation of approximately 37000 square metres for common cemetery out of which 3000 square metres is reserved for the Christian Community. The process of allotting the said plots is under process and the same shall be completed within a period of two years.

8. On 27.02.2023, an additional affidavit was filed on behalf of the Respondent nos. 2 and 3, wherein, it has been stated that the physical

possession of the land bearing Survey no. 17/1, shall be handed over to the Corporation. The statements made in paragraphs 3, 4 and 5 of the additional affidavit are relevant for the purpose of this case and, therefore, are being re-produced herein below for ready reference :-

“3. I say that the Petitioner has alleged that the entire part of piece of land intended for Sanyukta Smashanbhumi and Smruti Udyan is in possession of M/s. Vihang Group of Companies and a C.C. has been issued by the Corporation to the aforesaid project. I say that the said submission is completely misconceived. I say that the land reserved for Sanyukta Smashanbhumi has no concern with the land on which development permission is granted to M/s. Balaji Enterprises. I say that there is 12 Mtr. road in between two lands and thus the allegations of the Petitioner is misconceived. Hereto annexed and marked as EXHIBIT “B” is the copy of said Sketch indicating the land on which M/s. Balaji Enterprises has been granted permission.

4. I say that an area measuring 3000 Sq.Mtrs. is designated for Christian Cemetery. I say that the said designation was proposed in a General Body Meeting dated 20.03.2017 by Resolution No.3 in Sanyukta Smashanbhumi. I say that for development of said Sanyukta Smashanbhumi the Corporation has already started process and M/s. Balaji Enterprises has been issued Work Order dated 15.06.2021. I say that M/s. Balaji Enterprises has been assigned the work of levelling of the land in respect of the land reserved for Sanyukta Smashanbhumi. Hereto annexed and marked as EXHIBIT “C” is the copy of said Work Order dated 15.06.2021. I say that the contention raised by the Petitioner regarding M/s. Balaji Enterprises constructing on the reservation meant for Sanyukta Smashanbhumi is completely misconceived.

5. I say that the earlier affidavit filed by the Corporation indicates the list of lands which are reserved for crematorium/burial ground. I say that the said reservations are to be utilized for all communities. I say that the reservations meant in the development plan are for cemetery/burial ground/crematorium ground. I say that the contention of the Petitioner appears to be that the entire reservation as spelt out in the earlier affidavit is reserved for Christian community. I say that as stated earlier the said reservation of cemetery/burial ground/crematorium ground is reserved for all communities.

9. In the rejoinder to the reply filed by the Respondent nos. 2 and 3, the Petitioners have furnished facts and particulars to highlight the manner in which the long standing demand of burial ground made by the Christian Community has been ignored by the Corporation.

10. Not being satisfied with the remarks of the Corporation indicating the status of the earmarked land and the resultant delay in setting up the burial ground as well as the failure to disclose the source of the calculation in support of the averments made in paragraph 11 of the affidavit regarding availability of adequate burial grounds, a Division Bench of this Court (*Coram: Nitin Jamdar, ACJ & Arif S. Doctor, J.*) had passed order dated 19th July 2023, in the present proceeding, directing that the plots mentioned in the affidavit dated 14th September, 2022 which have been designated as Cremation Ground/Burial Ground/ Smashan Bhumi in the Development Plan, shall not be put to any other use other than one designated in the

Development Plan unless requisite procedure is followed for the change of user. The operative part of the Order dated 19.07.2023 is quoted here-in-below for ready reference :-

“7. In the meanwhile. We direct that the plots mentioned in paragraph-6 of the affidavit dated 14 September 2022, which have been designated as Cremation Ground/ Burial Ground/ Smasha Bhumi in the development plan will not be put to any other use other than the one designated in the development plan unless requisite procedure of law is followed for the change of user.

8. In light of this position, it is open to the Municipal Corporation to proceed to take requisite action in respect of the user of these plots contrary to the user designated in the Development Plan. The additional affidavit will also place on record the steps taken by the Municipal Corporation in this regard.”

11. In terms of the Order dated 19th July 2023 passed by this Court, the Respondent Nos 2 & 3 have filed an additional affidavit dated 26th September, 2023 indicating the basis of the calculation while maintaining their original stand that sufficient graves were available within the limits of TMC so as to cope up with the needs of the Christian Community. It was, however, stated that the Corporation was in the process of developing other sites which have been designated as burial grounds. Therefore, it was submitted that taking note of the facts narrated in the affidavit appropriate order be passed in accordance with law.

12. Thereafter, by the Order dated 8th January, 2025 (*Coram : Devendra Kumar Upadhyaya, CJ & Amit Borkar, J.*), this Court had restrained the authorities from using the 37,000 sq mtrs of land for any other use except the use for which it has been reserved. The relevant portion of the Order dated 8th January, 2025 is reproduced here-in-below for ready reference :-

“9. So far as the land reserved for Sanyukta Smashanbhumi and Smruti Udyan by Notification of the Government dated 22nd November, 2016 is concerned, we direct that the entire land admeasuring 37000 sq.mtrs. shall not be put to any use other than the use for which it has been reserved and for the said purpose, if there are any encroachments, the same shall be removed forthwith by the Thane Municipal Corporation. we further direct that to secure the land from illegal encroachments, Thane Municipal Corporation shall prepare a project for fencing the land on all corners throughout the entire periphery and present the said plan to the Court by the next date of listing.

10. As regards the lands described to have been reserved in the affidavit of the Corporation dated 14th September, 2022, we direct that an additional affidavit shall be filed giving details of the present status of the said lands/sites and also the steps which might have been taken for ensuring that the lands reserved for burial/cremation are put to the said use. We may, at this juncture, observe that the said reservation might have been done quite some years back and during this period the necessity of more area of land to be used as burial/cremation grounds cannot be ruled out; rather it would have definitely increased, as a result of which, in our opinion, there is a need to develop all the reserved plots as per the description of the sites

given in the affidavit filed by the Corporation, dated 14th September, 2022 for being put to use for burial/cremation and other ancillary purposes, forthwith. Keeping the aforesaid need of the residents of Thane, we direct that the additional affidavit shall be filed giving details as observed above and before filing the said additional affidavit, the same shall be vetted personally by the Municipal Commissioner himself. The affidavit Shall be filed within a period of four weeks after serving a copy thereof upon learned counsel for the Petitioner as also learned counsel representing the developer (Balaji Enterprises).”

13. In terms of the Order dated 8th of January 2025, the Respondent Nos 2 & 3 have filed another additional affidavit dated 11th February, 2025. The statements made in paragraphs 4 and 5 of the said additional affidavit read as follows :-

“4. I say that the reservations in the list at Serial nos. 6, 14, 15, 16 and 17 are concerned; the said land is affected by CRZ. I say that the reservations in the list at Serial Nos. 3, 8, 9 and 18 are concerned; the same are occupied by slums. I say that in respect of Serial No.13, the land situated on Survey No.123/1, 123/2 and 126/4 at Kausa is concerned, the Corporation is in process of acquiring the said land under TDR policy. I say that the reservation in the list at Serial No.4 is concerned, the total area of the reservations for Sayukta Smashanbhumi and Smruti Udyan to be developed is 37000 Sq.Mtrs. I say that the land in possession of the Corporation is to the extent of 26551 Sq.Mtrs. on which the development work has already been started. I say that out of the acquired land, an area admeasuring 13500 Sq. Mtrs. has been leveled and balance work of leveling is in progress. I say that out of total 1593 Sq.Mtrs., 800 Sq.Mtrs. of the pavement work for parking is

completed and balance work is in progress, whereas out of 1578 Mtrs. of Retaining & Compound Wall, 376 Mtrs. work is completed and balance work is in progress. I say that the out of the development work started as mentioned above, approximately 50% of the area designated for Christian Burial Ground shall be completed within a period of 6 months and after acquiring the remaining area of the reservation the balance development of Christian Burial Ground shall be completed as early as possible. I say that in respect of reservations in the list at Serial nos.1, 2 and 7 are concerned, the said lands are not yet in possession of the Corporation. I say that in respect of the has already issued communications to the State Government for handing over possession of the said land. I say that thus the Corporation is taking steps for getting possession of the lands which are reserved under the development plan for burial grounds. Hereto annexed and marked as Exhibit A is a copy of the list of sites reserved for cremation.

5. I say that taking into consideration the facts narrated hereinabove, appropriate orders and directions may kindly be passed.”

14. Taking note of the fact that the Respondents have failed to comply with the directions issued by the Order dated 8th January, 2025, this Court had passed Order dated 28th November, 2025, directing the Respondents to file another reply within three weeks. Accordingly, the Respondent Nos 2 & 3 have filed additional affidavit dated 18th December, 2025, once again reiterating that there were sufficient burial grounds and therefore, the plea of the Petitioners was refuted. It was however, stated that the land reserved for the “*Sayukta*

Smashanbhumī” is reserved for the said purpose only and has denied that the land is in the possession of Vihang Group & Co.

**B. FACTS INVOLVED IN PUBLIC INTEREST LITIGATION
NO. 20 OF 2025**

15. The Petitioner in this Public Interest Litigation, is a registered Trust. The main prayer in the Petition is for issuance of appropriate direction upon the Respondents to take immediate steps to properly earmark, develop and hand over possession of a plot of land, Reservation No. 122-D admeasuring 3 hectares reserved for ‘*Daphanbhumī*’ (Kabrasthan) for the purpose of burial of the deceased belonging to Muslim Community, Bohra Muslim Community and Christian Community. The Petitioners have also projected that the Government of Maharashtra had made reservation of a plot of land at Mira-Bhayander Municipal Corporation sanctioning DCR (Development Control Regulations) Reservation No. 122-D for “*Daphanbhumī*” admeasuring a total of 3 hectares. It was a plot of Government land which was required to be handed over to the Municipal Corporation of Mira-Bhayander. However, despite repeated requests and efforts of several public representatives, the possession of the land has not yet been handed over to the Corporation. As such, a direction has been sought from this Court *inter-alia* requiring the Respondents to take immediate steps to properly earmark, develop and hand over possession of the plot of land, Reservation No 122-D

admeasuring 3 hectares reserved for '*Daphanbhum*' (Kabarsthan) for use and up-keep of burial ground.

16. The Respondent no. 5-Corporation, has filed reply stating that out of the area of land admeasuring 3 hectares reserved for burial ground, only 0.3% of the land was available for the purpose of reservation as the remaining part of the land was affected by CRZ-I(i) and CRZ-II(ii) buffer zone as well as construction of Nala. In the reply, it has further been stated that after a meeting with the leaders of the Muslim Community, local residents, local Councillors and Police Officials, held on 26.09.2018, it was agreed to provide/allot sufficient place in the existing burial ground to the Muslim Community. Thereafter, in the revised Development Plan of Respondent no.5-Corporation, reservation no. 38 at Bhayandar (W) and reservation no. 253 (new reservation No. 353A) at Penkarpada, were proposed for the burial ground and reservation no. 122D at Survey no. 209 was not continued. As such, there was no scope for developing reservation 122D for construction of burial ground. It has further been stated that there were sufficient burial grounds/space available in the locality and therefore, the Corporation was taking steps to augment the availability of land considering future requirements.

17. The Respondent no. 2, i.e. the Assistant Director of Town Planning, Thane Branch, has filed a separate reply dated 25.11.2025.

The statements made in paragraphs 10, 11, 12 and 13 of the reply are reproduced herein below :-

“10. I say and submit that, Respondent No. 5, vide letter No. 3932 dated 5th March 2024 addressed to the Urban Development Department has proposed modifications to Reservation No. 122-D over Survey No. 209 at Village Navghar. The proposed modification sought the alteration of 13,114.00 sq. mt. out of the total 36,400.00 sq. mt., designating it as ‘Public Utility’ under Section 37 of the said Act.

11. I say and submit that, in pursuance of the proposal of Respondent No. 5 for modification it was noted that as per CZMP-2019 plan the said land falls under the CRZ-II along with being affected by the Mangrove buffer area. Consequently, prior approval from the Competent Authority under the CZMP is a mandatory prerequisite for the proposed modification. I further say and submit that, taking into consideration the fact that the area being affected by the Mangrove Forest, the said officer redefined the boundaries and accordingly, Reservation No. 122-D has been reorganised.

12. I say and submit that the State Government, upon conducting the requisite enquiries and after consulting the Director of Town Planning, Maharashtra State, Pune, has sanctioned the proposed modification vide Notification No. TPS-1296/847/CR-162/96/UD-12 dated 20th March 2025, under Section 37(2) of the said Act. I crave leave of this Hon'ble Court to rely upon the said Notification at the appropriate stage of the hearing.

13. In view of the foregoing facts and circumstances, it is most humbly and respectfully prayed that this Hon'ble Court be pleased to graciously consider the replies submitted by Respondent No. 1, 4, and 5 before being pleased to pass any orders in the present petition.”

18. From a brief survey of the pleadings brought on record by the parties in both the above proceedings, it is apparent on the face of the record that the members of the Muslim Community, Bohra Community and Christian Community, living within the limits of Thane City have been making repeated requests before the concerned authorities for augmenting the burial ground facilities for the deceased belonging to those communities. In the Writ Petitions certain assertions regarding availability/ non-availability of adequate alternative burial grounds, proportionate to the existing population of the communities, restrictions on the earmarked land and the land being in possession of private entities, besides encroachment issues, have been highlighted, which are, however, denied in the replies. These are disputed questions of facts which cannot be entertained in a Writ Petition. However, the fact that the Government of Maharashtra has already allotted land for setting up new burial grounds/“*Daphanbhumi*” is sufficient to indicate that the State Government is also conscious of the plight of the members of these communities in those areas due to the lack of adequate burial ground. As such, by accepting their request, land has already been earmarked for burial grounds. However, as would be evident from the observations made here-in-above, notwithstanding the RTI Reply, GR, Reservation of plots in the DP as well as the directions issued by this Court from time to time, by citing one reason

or the other, the construction of the burial ground(s) has not been completed till today.

19. Since availability of adequate burial ground is the need of the entire community, once land has been earmarked and reservation of the plot is included in the Development Plan for burial ground, it would be the joint responsibility of the State Government as well as the Municipal Corporation to allocate land, carry the work forward and complete the same in a time bound manner so as to redress the grievance of the different communities. As a matter of fact, it is apparent from the reply brought on record that the work of fencing and levelling of land had also commenced in the land under Reservation 122-D but apparently due to want of CRZ permission the work could not progress.

20. In the above context, it would be pertinent to mention herein that taking note of the projection made by the Petitioners in Public Interest Litigation No. 119 of 2021, that the entire land earmarked for the purpose of “*Sayukta Smashanbhum*i” and “*Smruti Udyan*” situated at Bhayenderpada, is under the possession of a private developer and, therefore, the area earmarked for use of burial ground is not been permitted for the said purpose, this Court had passed Order dated 04.12.2023 requiring the concerned Sub-Divisional Officer to conduct measurement of the land as shown in the sketch map and submit his

report to this Court, after ascertaining as to whether, the area earmarked for burial ground is in the possession of the private developer and also whether the area is free to be used as burial ground.

21. In terms of the Order passed by this Court, measurement of the land was taken by Tehsildar, Thane, where-after, report dated 03.01.2023 was submitted under the signature of Deputy Superintendent of Land Records, Thane. Although the copy of the report is not readily available on record, yet, the affidavit in reply to the report dated 03.01.2024 is available on record. A perusal of the reply of Petitioner no.1 goes to show that the Petitioner in Public Interest Litigation No. 119 of 2021, has disputed the correctness of the report. Be that as it may, a perusal of the reply also goes to show that the issues raised therein involve disputed questions of fact which cannot be adjudicated in a Writ Petition.

22. The Respondents have also time and again, projected in their reply that the work would be completed in a time bound manner. However, despite such assurance, the fact remains that the grievance of the Muslim Community, Bohra Muslim Community and Christian Community, insofar as lack of adequate burial ground is concerned, is far from being redressed.

23. As such, in view of the facts and circumstances narrated herein above and the question of general public interest involved in the

matter, we are of the view that ends of justice would be met if both these Writ Petitions (PILs) are disposed of with the directions upon the Respondents Authorities to look into the grievance of the Petitioners and take appropriate steps for providing adequate burial ground, as per the sanctioned Development Plan, at the earliest.

24. Since land has already been designated in the Development Plan, the possession of the same be handed over to the concerned Municipal Corporation, as expeditiously as possible, if not already done and thereafter, the work of construction of the burial grounds on the earmarked land be carried out and completed within a period of two years. In doing so, the Respondents would be at liberty to re-organize the Reservation if public interest so demands.

25. We also provide that if the designated plots are not readily available for any *bonafide* reason such as encroachment, want of Statutory or CRZ clearance, then in that event, as a stop gap arrangement, suitable alternative land be earmarked in the vicinity, by the Corporation, for burial grounds, by following the due process of law. Accordingly, possession of such land be also handed over to the concerned Municipal Corporation so as to make provisions of alternative/adequate burial ground. The aforesaid process may be completed as expeditiously as possible but not later than three months from the date of receipt of a copy of this Order.

26. We further make it clear that while taking any decision in the matter, the Respondents shall bear in mind, the basic grievance of the Petitioners, the projections made by the Respondent Authorities in the successive affidavits, as noted above, as well as the Orders passed by this Court in these proceedings from time to time.

27. To the above extent, the Orders dated 19th July 2023 and 8th January, 2025 passed by this Court would stand modified/ clarified.

28. With the above observations and directions, both the Public Interest Litigations stand disposed of.

SUMAN SHYAM, J

CHIEF JUSTICE

ANDREZA

RODRIGUES EPEREIRA

Digitally signed by ANDREZA
RODRIGUES EPEREIRA
Date: 2026.02.21 10:18:12 +05'30'