

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.5856/2007

Anandilal Hajarimal Bhutada and anr. .vs. Shegaon Municipal Council, Shegaon and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. F. T. Mirza, Amicus Curiae.
Mr. J. B. Gandhi, Advocate for petitioner.
Mr. N. S. Bhattad, Advocate for petitioner.
Mr. D. M. Kale, Advocate for respondent no.1.
Mrs. Bharti Dangre, Government Pleader for respondent nos. 2 to 5.
Mr. A. R. Patil, Advocate for respondent no.6.
Mr. N. P. Lambat, Advocate for respondent.
Mr. P. N. Kothari, Advocate for respondent no.8.

CORAM : B. R. GAVAI & V. M. DESHPANDE, JJ.

DATE : DECEMBER 21, 2016

Heard.

An affidavit has been filed by Mr. Jagdish Prasad Gupta, presently working as Divisional Commissioner, Amravati Division, Amravati and Nodal Officer to the Shegaon Pilgrimage Development Plan.

In the affidavit, it is stated that the deponent has conducted the review meeting on 26.11.2016 at Shegaon in presence of the concerned officers of the implementing agencies of the development plan and also the Government Pleader, the Additional Government Pleader, the learned Amicus Curiae and Mr. Arun Patil, Mr. N. P. Lambat, Mr. Prashant Kothari, Mr. D. M. Kale, Advocates.

From the perusal of the affidavit, it appears that following circumstances require consideration.

(i) It is stated in the affidavit that the deliberations are in process in relation to the determination of implementing agency for rehabilitation of the encroachers occupying the Khalwadi area. It is further stated that the implementing agency can be changed to the Public Works Department instead of the MHADA.

(ii) It is further stated that the land offered by Shree Gajanan Maharaj Sansthan, Shegaon for rehabilitation of the encroachers is an agricultural land which is located on Akot road. It is further stated that the land identified for the parking plaza known as Khalwadi is situated adjoining to the temple. It is further stated that the Tahsildar, Shegaon, in his report dated 07.12.2016 has stated that there is difference between the market value of both the lands. It is further stated that taking into consideration the present rules pertaining to the transfer of the Government lands, it is mandatory to pay cost difference to the Government before land allotment by the beneficiaries.

(iii) It is stated that the land offered by the Sansthan for rehabilitation is an agriculture land. In the development plan of 1994, it is reserved for 'No Development Zone'. It is further stated that for dereservation of the land, it is obligatory on the part of Municipal Council, Shegaon to submit a proposal to the Ministry of Urban Development as per procedure contemplated under the Maharashtra Regional

and Town Planning Act, 1966 (hereinafter referred to as the “MRTP Act”).

(iv) As there is no policy of Government of Maharashtra for rehabilitation of the encroachers on humanitarian ground, the rehabilitation project for the encroachers occupying Khalwadi area be declared as a special scheme.

(v) From the report and the map submitted by the Deputy Superintendent of Land Records, it appears that there are some private land holders within the Government land admeasuring 2.67 HR at Khalwadi.

Insofar as the first issue is concerned, we would not specify as to which agency should be appointed as an implementing agency for the purpose of rehabilitation. We leave it to the discretion of the authorities to determine the implementing agency. However, we may note that the figure of rehabilitation, which has been given to us by the learned Government Pleader on the last date, of Rs. 105 Crores appears to be highly disproportionate to the need. We are informed that there are in all 300 eligible persons for rehabilitation. Even if, average area of each house is considered to be 1000 square feet and expenditure of Rs.1000/- per square feet is considered for construction of each house, average cost of the house would not be more than Rs.10 Lacs. If 300 eligible persons are considered, the amount would come to roughly Rs.30 Crores.

A judicial notice can be taken of the fact that in the recent pasts, the trend of the tenders issued by Public Works Department is of quoting rates below the estimated rates. Even if some additional amount is spent by providing amenities like roads, etc., the total cost of rehabilitation should not exceed Rs.35 Crores. We, therefore, direct the respondents to consider this aspect and submit a report about the same on the next date.

We would also appreciate, if the authorities take assistance of Mr. Sanjay Indurkar, who is presently working as Executive Engineer, Public Works Department Division No.1, Nagpur under whose supervision, various works pertaining to the judiciary like construction of District Court building, residential bungalows for Judges and quarters for the staff are being undertaken and the said projects are being undertaken at a reasonable cost.

Insofar as the issue with regard to the land, which is being offered by the Sansthan for rehabilitation on Akot road, being the agricultural land and the same being shown as 'No Development Zone' is concerned, we direct the Municipal Council, Shegaon to submit a proposal to the State Government for minor modification under Section 37 of the MRTP Act within a period of one month from today. We further direct the State Government in the Department of Urban Development and Planning to finalize the proposal received from the Municipal Council, Shegaon and pass an appropriate order, in accordance with Section 37 of the MRTP Act, within a period of three

months from the date of receipt of the proposal from the Municipal Council.

Insofar as the issue regarding price of the land in Khalwadi area being much more than the price of the land which is offered by the Municipal Council is concerned, it will not be out of place to mention here that the parking plaza is not being developed by the Sansthan for any private purpose. As a matter of fact, it would be an obligation on the State to provide appropriate parking facilities for the pilgrims who are visiting the town of Shegaon. The work which is required to be undertaken by the State or the local authorities for the benefits of the pilgrims is being undertaken by the Sansthan.

In that view of the matter, we direct that the State Government shall not insist upon the payment of difference of costs by the Sansthan. It is further to be noted that the entire expenditure for creating facilities of the parking plaza are being borne by the Sansthan.

Insofar as the removal of the encroachers occupying Khalwadi area is concerned, the issue can be looked into and the removal of the encroachment can be ensured with the assistance of the concerned agencies once the houses, wherein the encroachers are to be shifted, are in place. We, therefore, do not find it appropriate to pass any orders in that regard at this stage.

Insofar as there being no policy of the Government of Maharashtra for rehabilitation of the encroachers is concerned, we direct that the said scheme for rehabilitation, in the peculiar

facts and circumstances of the case, be declared as a Special Scheme. We further direct that the State Government would be entitled to relax the provisions for the special amenities as are required under the Maharashtra Project Affected Persons Rehabilitation Act, 1999, while implementing the rehabilitation scheme for the encroachers in Khalwadi area.

Insofar as the inquiry with regard to the private parties being found in the Government land is concerned, we direct that at least a preliminary inquiry be completed within a period of four weeks and the report regarding the same be submitted to this Court by the next date.

Insofar as the works which are mentioned in the minutes and the period given in the minutes regarding the completion of the same, we direct that the works as mentioned in the minutes should be completed within a period specified in the minutes. We further clarify that the period for completion of the works as mentioned in the minutes is being treated as a undertaking to this Court on behalf of the respective implementing agencies.

The learned Amicus Curiae as well as the learned counsel for the Sansthan have submitted that since on account of reduction of the land from Khalwadi area, if the shops are to be relocated in that area, the area of the parking plaza would be substantially reduced. It is, therefore, suggested that since the Municipal Council is constructing a commercial complex in Gandhi Chowk area, the Sansthan would purchase 20 shops

from the Municipal Council in the said commercial complex.

The learned counsel for the Municipal Council to take instructions in that regard by the next date.

The matter to come up on 05.01.2017 insofar as the statement to be made by the Municipal Council is concerned and on 19.01.2017 insofar as the other aspects are concerned.

JUDGE

JUDGE

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