

Exhibit - B 73

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. 140 OF 2006

Janhit Manch & Ors. ... Petitioners
Versus
State of Maharashtra & Ors. ... Respondents

None for the Petitioners.

Mr. A.Y. Sakhare, Senior Counsel with R.S. Apte, Senior Counsel
and Ms. Vandana Mahadik, Adv. for the Respondent – BMC.
Mr. L.T. Satelkar, AGP for Respondent – State.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATED: 26TH MARCH 2018.

PC:-

1. Perused the earlier orders and in particular order dated 16th February 2018. In terms of the said order the State Government has filed an Affidavit of Shri Sanjay Sharadchandra Gokhale, Joint Secretary of the Urban Development Department, which is dated 8th March 2018.
2. We have perused the earlier orders passed in this PIL and in particular the final order dated 14th October 2009 and the orders dated 23rd November 2017 and 16th February 2018. The order dated 23rd November 2017 refers to a chart tendered across the bar by learned Senior Counsel appearing for the Mumbai Municipal Corporation. In paragraph 9, this Court has



observed that total 16409 structures are required to be demolished for giving effect to the final order passed in PIL No. 140 of 2006 out of which 8783 have been demolished till 22nd November 2017. Paragraph 9 further records that out of 8783 structures, in case of 8290 structures, the holders are held eligible for rehabilitation. It is further recorded that rehabilitation has been completed only in 4643 cases. Paragraphs 10 to 12 of the order dated 16th February 2018 read thus:-

10. While we clarify the above position that the directions issued in the PIL and the action plan are in respect of the structures located within 10 meters on either side of all water trunk mains in Mumbai, it is necessary for us to remind both the State Government and the Municipal Corporation the object of passing the aforesaid directions. It is not necessary for us to mention it specifically but still we venture to do so for the sake of clarity that it is the responsibility of the State Government, the Municipal Corporation and other Government Agencies in the City of Mumbai to protect the water mains which supply water to the City. There cannot be any dispute in the aforesaid proposition. It is in this context that now we direct the Municipal Corporation to file a detailed affidavit as regards the steps taken till today for implementation of the directions issued by this Court under order dated 14th October, 2009, the action plan as well as the assurances in the affidavit of the Deputy Secretary. The affidavit will state the number of structures which have been demolished till today and the number of persons who have been rehabilitated. While doing so, the Municipal Corporation will have to set out in the affidavit as to what steps the Municipal Corporation has taken for implementation of what is mentioned in paragraphs 6 and 7 of the action plan of the Committee which record that the Mumbai Municipal Corporation will take steps to develop the



lands at Dindoshi, Marol and other similar places for rehabilitating encroachers. As narrated earlier, it was proposed that F.S.I. of 4.00 should be granted by amending D.C. Regulations. Affidavit of the Municipal Corporation shall state the steps taken in that behalf.

11. The action plan is prepared by the three Senior Officers of the State Government namely the Chief Secretary of the State, Principal Secretary (Finance) and the Director General of Police. The action plan was endorsed by the State Government by filing an affidavit of Shri K.V. Kurundkar. Therefore, it is also the responsibility of the State Government to tell the Court as to what steps were taken by the State Government to ensure that the Municipal Corporation constructs tenements at Marol, Dindoshi and other similar places for rehabilitating the encroachers and other people.

12. We direct the additional Government Pleader as well as the counsel representing the Municipal Corporation to supply a copy of this order, a copy of the action plan and a copy of the said affidavit of Shri K.V. Kurundkar, Deputy Secretary, Urban Development Department (dated 25th September, 2009) as well as the copies of all relevant orders of this Court to the Municipal Commissioner as well as to the Chief Secretary of the State so that both of them are made aware about the seriousness of the issue, the assurances given by the Municipal Corporation as well as the State Government to this Court which were accepted by this Court by order dated 14th October, 2009. We direct the State Government and the Municipal Corporation to file detailed affidavits on the aforesaid aspects at the earliest and in any event on or before 28th February, 2018. For considering the said affidavit, PIL No.140 of 2006 shall be listed under the caption of "Directions" on 1st March, 2018. We direct the Prothonotary and Senior Master to appoint an officer under whose supervision the photocopies of the pleadings and all documents on record of PIL No.140 of 2006 shall be supplied to the members of the Bar who are appearing in this PIL as well as in connected Petition subject to payment of copying charges. We make it very specifically clear that under no circumstances the Registry will hand over the original



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file to the Advocates or their registered clerks to prepare photocopies.

3. In the light of this order that an Affidavit filed by Shri Sanjay Sharadchandra Gokhale, Joint Secretary of the State Government will have to be considered. In terms of the said order, Shri A.S. Tavadia, Hydraulic Engineer of the Municipal Corporation has also filed Affidavit dated 1st March 2018.

4. We may note here that on 18th December 2015, an order was made by the National Green Tribunal (NGT), Western Zonal Bench Pune, in Application No. 40 of 2014, There is an observation made therein that there is a perceptible threat to the health of residents of village Mahul and Ambarpada due to prevailing air quality in the area. The NGT is monitoring the air quality in the area. It is brought on record in Writ Petition (L) No. 1158 of 2017 by the same officer Shri Sanjay Sharadchandra Gokhale by filing an Affidavit on behalf of the State Government that out of 10,504 tenements / quarters for project affected persons at Mahul, 5,862 have been allotted for rehabilitating those who are affected by implementation of the orders passed in this PIL.

5. The issue whether the prevailing air quality in Mahul causes



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perceptible threat to the health of the citizens is being considered by NGT. As of today, the observations made in order dated 18th December 2015 of NGT have not been modified.

6. Even assuming that all 5862 tenements at Mahul are allotted to persons affected by implementation of orders passed in this PIL, as per the stand taken by the Municipal Corporation which is noted in the order dated 23rd November 2017 even as of 22nd November 2017, total 8,290 persons were required to be rehabilitated. More than 7000 structures which are required to be demolished as per the order passed in the PIL are still not demolished. Therefore, it can be said that the premises reserved at Mahul can take care of the requirement of less than 50% of the affected persons and therefore, the State Government and the Mumbai Municipal Corporation will have to make available large number of tenements for the affected. As far as the Affidavit of Shri Sanjay Gokhale filed in this PIL is concerned, it notes that 1212 tenements in Lallubhai Compound, Mankhurdh were handed over Mumbai Municipal Corporation for accommodating the persons affected by implementation of the orders passed in this PIL. Affidavit of Shri Tavadia records that even the said tenements have been allotted to the persons affected by implementation of the order of this Court. Still the requirement is of more than 7,000



tenements for accommodating the affected persons. As noted in the earlier orders, the Committee appointed by this Court headed by the Chief Secretary of the State Government had suggested that the Municipal Corporation can be allowed FSI 4.00 for using the identified lands at Dindoshi and Marol for constructing tenements for project affected persons. From the Affidavit of Shri A.S. Tavadia, it is apparent that the two plots identified at Marol and Dindoshi for this purpose are reserved for cancer hospital and public housing respectively in the development plan sanctioned in the year 1991. On a query made by this Court, learned Senior Counsel appearing for the Mumbai Municipal Corporation states that in the revised draft development plan 2034 which is pending before the State Government for grant of sanction, the same reservations have been shown. On instructions, he further states that though the said two plots were under reservation from the year 1991, the same have not been developed for that purposes for which they are reserved.

7. Unless adequate number of tenements are made available to the Municipal Corporation for accommodating those who are affected by the implementation of orders passed by this Court in the present PIL, orders of this Court cannot be implemented. As can be seen from the final order passed in the PIL and the



subsequent orders including order dated 18th February 2018, the directions have been issued to remove structures situated within the distance of 10 meters from the main water pipelines supplying water to the city with a view to ensure health and security of the citizens of Mumbai. In fact, in the order dated 29th July 2009 passed by this Court, the Division Bench noted that removal of the structures is necessary to ensure that the water which is used by the citizens of Mumbai is safe and to ensure that these pipelines do not become a target to attack the citizens of Mumbai. In fact, the same order notes that the issue raised in the PIL concerns health and security of citizens, the security of the city of Mumbai and its environment. It must be noted here that pipelines subject matter of this PIL take care of water supply to more than 1.80 Crores citizens of Mumbai. It is in this context that the Committee appointed by this Court headed by the Chief Secretary of the State had suggested that the plots of land identified at Marol and Dindoshi can be allowed to be used for constructing tenements for accommodating persons affected by the implementation of the orders of this Court.

8. Coming back to the Affidavit of Shri Sanjay Gokhale, he has stated that in view of recommendations of the committee, a proposal suggesting modification to clause 3.11 of the



Development Control Regulation No. 33 (10) was submitted by the Mumbai Municipal Corporation on 14th October 2009 to enable the Municipal Corporation to redevelop any municipal encumbered plot by using FSI of 4.00. The said proposal has been approved by the State Government on 28th December 2010 subject to completing procedure under Section 37(1) of the Maharashtra Regional and Town Planning Act, 1966. A copy of the notification dated 30th December 2010 is annexed to the Affidavit which contains a direction to the Municipal Corporation to initiate action for modification of the Development Control Regulations in terms of the said order. However, in the said order, it is provided that the plot identified for redevelopment should not be reserved for any public purpose. Even in the Affidavit of Shri A.S. Tavadia, there is a reference to the said order passed by the State Government on 28th October 2018.

9. A letter dated 14th October 2009 addressed by the Municipal Corporation to the Principal Secretary of the Urban Development Department containing proposal for modification in clause 3.11 is annexed to the Affidavit of Shri Tavadia, in which total requirement of PAP tenements of the Municipal Corporation has been mentioned. As of that date, the requirement stated is of more than 62,000 tenements. This must have increased during



the last 9 years.

10. As we are informed that the revised draft development plan - 2034 is not yet sanctioned by the State Government, it will be appropriate if the State Government considers the issue whether the plots at Marol and Dindoshi which are shown reserved for the cancer hospital and public housing respectively can be reserved for construction of the tenements for the project affected persons. Considering the gravity of the situation, the State Government will have to either consider of imposing reservation as aforesaid or immediately make available required number of tenements to the Municipal Corporation.

11. Considering the reasons given by this Court for issuing a direction for demolition of structures within the distance of 10 meters of main pipelines, the implementation of orders passed by this Court cannot be delayed only on the ground that adequate number of tenements for project affected persons are not being made available. As observed in the orders passed by this Court which have become final, the demolition of the structures within the distance of 10 meters from the main pipelines is necessary for protecting citizens of Mumbai. We direct that the State Government will take into consideration this aspect before finalising revised draft development plan - 2034. We direct the



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State Government to file an Affidavit setting out the manner in which the State Government proposes to ensure that the adequate number of PAP tenements are made available to the Municipal Corporation for accommodating those who will be affected by the implementation of orders passed in this PIL. Such Affidavit shall be filed by the State Government on or before 20th April 2018.

12. Place this PIL under the caption of directions on 24th April 2018.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)



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ADVOCATE