

ITEM NO.16

COURT NO.8

SECTION IX

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Petition(s) for Special Leave to Appeal (C) No(s). 28596-28597/2017

(Arising out of impugned final judgment and order dated 13-10-2017 in WP No. 11949/2017 26-09-2017 in CP No. 258/2017 passed by the High Court Of Judicature At Bombay At Aurangabad)

SAYYED RATANBHAI SAYYED (SINCE DEAD) THROUGH LRS & ORS.  
Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS. Respondent(s)

(IA No.132274/2017-VACATING STAY )

Date : 25-07-2018 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA  
HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Petitioner(s) Mr. Ranjit Kumar, Sr. Adv.  
Mr. Nachiketa Joshi, AOR  
Mr. Sachin Kulkarni, Adv.  
Ms. Sucheta J., Adv.  
Mr. Ujjval Kumar, Adv.

For intervenor Mr. Arvind S. Avhad, Adv.  
Mr. Abhishek Krishna, Adv.

For Respondent(s) Mr. Atul Babasaheb Dakh, AOR  
  
Mr. Shekhar Naphade, Sr. Adv.  
Mr. Sanjay Kharde, Adv.  
Mr. Samrat Shinde, Adv.  
Mr. Sunil Kumar Verma, AOR  
  
Ms. Deepa M. Kulkarni, Adv.  
Mr. Nishant Ramakantrao Katneshwarkar, AOR  
  
Mr. Arun R. Pedneker, Adv.  
Ms. Chandan Ramamurthi, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Heard learned counsel for the parties at length. Firstly, we record our dissatisfaction that the order passed by this Court on 22.02.2016 has not been complied with so far. This Court has passed the order that the petitioners have to be uprooted from the place as the area was required for broadening the road for the palki procession by Shri Sai Baba Sansthan, Shirdi (for short, hereinafter to be referred to as "Sansthan")

This Court on 22.02.2016 has passed the following order:ss

60. As referred to hereinabove, inspite of the orders dated 18.10.2010 and 26.11.2015, requiring the State in particular to ascertain the availability of alternative sites of land to accommodate the appellants, no affirmative response has been laid before this Court. To the contrary, as would be discernible from the affidavit filed by the State dated March 21, 2014, no vacant parcel of land is said to be available for the purpose in the immediate vicinity of the land in occupation of the appellants. Though the appellants in their affidavit filed prior thereto had indicated five sites, in the face of the obdurate and rigid denial of the State about the feasibility thereof, any direction to adjust them thereat is uncalled for.

61. The consequence of the appellants being uprooted from their present sites of business, to reiterate would spell an overall dislocation in their lives. That many or all of them have buildings elsewhere in the locality, assessed to municipal tax, in our comprehension, cannot fully neutralize this fallout. The appellants

have been conducting their business at the present sites for over 45 years and understandably over the time, have built up the same with accompanying goodwill and reputation. Their eviction would assuredly eventuate a human problem. Nevertheless for the cause of paramount public interest, their eviction is unavoidable.

63. However, in case the endeavour to identify an alternative plot does not yield any result inspite of sincere efforts, the appellants would then be entitled to adequate monetary compensation as quantified herein.

64. It is a matter of record and as has been noted by the High Court, the appellants occupy two categories of plots i.e. 16' x 11' and 7' x 11', where trade/business is being carried on. Though monetary compensation, ipso facto, on a consideration of all attendant factors may not be an exact substitute of the benefits presently enjoyed with the future prospects, we are of the view that, having regard to the permissible ponderables and also the passage of time in between, a lump sum of Rs. 20 lakhs and Rs. 15 lakhs each respectively for the bigger and smaller shops/stalls, as noted hereinabove would be a reasonable palliative to the appellants. We order accordingly. It is reiterated that the compensation, as indicated hereinabove, would be payable to the appellants only if an alternative site is not feasible. The entire process on both counts, however should be completed within a period of six weeks herefrom. The State Government and the Sansthan would bear the amount of compensation, payable in equal shares and would deposit the same in the Bombay High Court within the period of six weeks aforementioned. The amount already deposited by the Sansthan in terms of the High Court's order, if not withdrawn, shall be adjusted against this amount. The allotment of the new site/deposit, as directed, would be a condition precedent for further action in terms of the impugned notice. It is also ordered that on the deposit being made with the High Court, the Registrar General of the High Court would make suitable arrangements for disbursement thereof to the appellants as due to them, as expeditiously as possible, however on proper identification."

Pursuant to the order dated 22.02.2016, no consensus could be reached for allotment of the alternative sites. The contempt petition bearing No.258 of 2017 was filed before the High Court of Judicature at Bombay Bench at Aurangabad, with respect to the non compliance of the order passed by the High Court in which it was noted that the shop keepers have not accepted the alternative sites which were offered for the purpose of rehabilitation; it was necessary to evict the shop keepers from palkhi road. The High Court directed to provide the police protection and to take action for ejection in the first week of October 22, 2017 and direction was issued to the Collector to provide police protection on the date on which respondent no.2 proposes to remove the encroachment in compliance of the order passed by the Court.

Thereafter another writ petition was filed by the petitioners in the High Court. The High Court has decided the same vide judgment dated 30.10.2017 wherein it has been noted by the High Court that since there was no consensus with respect to the alternative sites, the order passed by this court with respect to deposit of compensation was required to be complied with and in that

regard the Sansthan and the State both have deposited their respective shares of compensation for making payment to the incumbents occupying the shops. The High Court reiterated that there was necessity of eviction at an early date considering the fact that there was chance of stampede at Sai Baba Temple at Shirdi. It was also noted that petitioners had delayed the implementation of order and eviction by filing one or the other frivolous proceedings in the High Court and were responsible for delay in the process of eviction for the last several years. There was a direction issued to provide police protection in order to carry out the demolition.

After hearing learned counsel for the parties, we are of the considered opinion that the conduct of the petitioners cannot be said to be appropriate in delaying the execution of the order passed by this court. By the order dated 22.02.2016, this court intended that demolition should be carried out within six weeks. In case alternative site was taken that was to be done within six weeks only and if compensation was to be paid that also to be paid within the aforesaid period.

Regrettable situation is that there is no respect left to the orders passed by this Court by one way or the

other. The order has been flouted as rightly noted by the High Court. It is apparent that no consensus could be reached with respect to the alternative sites; as such rehabilitation was not possible. The alternative was to make payment of compensation that has been precisely ordered.

However, since Sh. Ranjit Kumar, learned senior counsel has submitted that the petitioners are ready to obtain any space which may be offered to them by the State Government/Municipal Council, Shirdi, as the shops of the petitioners were located at the prime place, compensation of Rupees fifteen lac or Rupees twenty lac is not going to be sufficient and shop keepers are going to suffer irretrievable lose. He has also furnished undertaking to vacate the premises even if no alternative site is offered, within a period of two weeks from today and it is prayed that this Court may direct if possible to allot alternative sites.

Though there was some reservation on the part of the State and Municipal Council with respect to the offering of alternative site, the difficulties were pointed out of the paucity of spaces etc. It was also pointed out that the petitioners have flouted the order

passed by this court as well as by the High Court; as such they are not entitled for any further indulgence.

After hearing learned counsel for the parties at length, we are of the considered opinion that the order ought to have been complied with within six weeks. Even if it was not possible to shift to the alternative sites, no interim order should have been granted in favour of the petitioners at all so as to violate the mandates of the peremptory order passed by this Court that the structures were required to be removed within six weeks.

Now, we direct that structures shall be removed, the petitioners would vacate, as undertaken on their behalf, by 11<sup>th</sup> August, 2018. We give time upto 11<sup>th</sup> August, 2018; failing which we direct that the demolition shall be made with the help of the adequate police force on 12<sup>th</sup> August, 2018 and report shall be submitted to this court. In case the premises are not vacated in spite of undertaking, it would be treated as contempt of the order passed by this Court and if demolition is not carried out as directed, the authorities would also be responsible for violating the mandates of this court and appropriate action shall be taken against the concerned individual who is responsible to violate the directions issued by

this court today.

Only after shops are vacated as stated upto 11<sup>th</sup> August, 2018, as undertaken in this court and demolition is made, in that event only, we direct the State Government, in collaboration with the Municipal Council, to offer the land of its choice to the persons who were earlier identified and who have vacated the premises pursuant to the undertaking furnished to this court today. It would not be open for the petitioners or any other incumbent to choose site and to raise objection as to suitability of place in any manner whatsoever. The offer shall be made upto 15<sup>th</sup> September, 2018. However, this would not mean that the shops have not to be vacated and area cleaned by 12<sup>th</sup> August, 2018 in the aforesaid manner. The issue would not be agitated any further. No petition in this regard shall be entertained and if offer is accepted the compensation shall not be paid to such incumbents and the incumbents who do not choose to go by the offer to be made, shall be free to collect the compensation deposited with the High Court of Bombay, Bench at Aurangabad, pursuant to the order passed by this court. There shall be no further stay granted in the matter in any court preventing implementation of order of

this Court.

It was submitted by Sh. Ranjit Kumar, learned senior counsel that the amount of compensation deposited with the High Court of Bombay, Bench at Aurangabad, has been invested in the Fixed deposit. It is agreed to that in case of disbursement of compensation, the same be paid alongwith accrued interest *pari passu* as per their shares.

Accordingly, the special leave petitions stand disposed of.

(NEELAM GULATI)  
COURT MASTER (SH)

(JAGDISH CHANDER)  
BRANCH OFFICER