
(2019) 02 BOM CK 0075

In the Bombay High Court

Case No : Writ Petition (PIL) No. 1515 Of 2008, In Contempt Petition No. 168 Of 2014, Writ Petition No. 123 Of 2019

Madhukar Sampatrao Patil

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-02-2019

Acts Referred:

Maharashtra Regional and Town Planning Act, 1966 — Section 2(7), 37, 42, 43, 52, 53, 53(1)(a), 53(1)(b), 156
Maharashtra Land Revenue Code, 1966 — Section 40, 50, 50(1), 50(3), 50(4), 51
Maharashtra Gunthewari Developments (Regulation, Upgradation and Control) Act, 2001 — Section 2(a), 3(1)
Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 — Rule 26, 35, 43, 43(1), 44, 45
Constitution of India, 1950 — Article 21, 226

Citation : (2019) 02 BOM CK 0075

Hon'ble Judges : Vinay Joshi, J; R.K. Deshpande, J

Bench : Division Bench

Advocate : S.P. Bhandarkar, S.P. Dharmadhikari, S.M. Ukey

Final Decision : Disposed Off

Judgement

R.K. Deshpande, J

1. This petition is filed in public interest to command the respondents to immediately remove the encroachments made on the lands reserved for public utility, garden, dispensary and educational purposes from the Bezanbag area in the Nagpur Municipal Corporation. It further prays to command the respondents to take care that the encroachments do not occur again after their removal. The petition has been filed by five persons, amongst which the petitioner No.1 claims to be the social worker, however his name is deleted as per the order passed by this Court on 6-5-2014.

2. By an administrative order dated 1-4-2008 passed by the then Senior Administrative Judge at the Nagpur Bench of the Bombay High Court, the petition

was directed to be treated as Public Interest Litigation, as it highlights the apathy and inaction on the part of the respondents to remove the encroachments on the public utility land and espouse the cause of the Bezanbag residents. Notice was issued on 3-4-2008 to the respondents.

3. The respondent No.1 is the Urban Development Department, whereas the respondent No.2 is the Revenue Department of the State Government, the respondent No.3 is the Commissioner, Nagpur Municipal Corporation, the respondent No.4 is the District Collector, the respondent No.5 is the Commissioner of Police, the respondent No.6 is the Bezanbag Sangharsh Samiti, and the intervenor is the Bezanbag Pragatisheel Kamgar Gruh Nirman Sahakari Sanstha Maryadit. About 29 persons have filed an application for intervention, which has been allowed by this Court on 2-11-2012.

4. The land admeasuring 80.09 acres, situated at Mouza Jaripatka, Indora and Hansapuri was initially owned by the Empress Mills. However, by the Government Resolution dated 24-6-1977, the Revenue and Forest Department of the State Government decided to take over the land from the Empress Mills and allot it to the Bezanbag Pragatisheel Kamgar Gruh Nirman Sanstha Maryadit [Called as "the Society"] in consultation with the Empress Mills. This Society claims to be an association of past workers of the Empress Mills or their legal heirs. It prepared a layout plan on 24-6-1978, which was approved by the City Engineer of Nagpur Municipal Corporation on 22-6-1979.

5. There was an agreement executed on 23-7-1979 between the said Society and the Nagpur Municipal Corporation for development of land by providing roads, surface water drains, internal water supply- main and distributing lines, sewer line for drainage sullage sewage, street lights, and open space for parks, gardens and public utility, to create residential and other plots for building purposes in accordance with the plans, specifications and regulations, including building bye-laws framed under the City of Nagpur Corporation Act, 1948 as per the approval of the Development Engineer granted on 22-6-1979. The lease was granted for a period of 30 years as per the agreement dated 27-9-1982, registered on 5-10-1982. The period of lease expired on 31-3-2002 after lapse of 30 years.

6. The developmental activities were completed, but the said Society started selling plots from the portions earmarked and reserved for the purposes of garden, dispensary, public utility land, roads, open space and for the educational purposes, to certain individuals, who started carrying out the construction activities for various purposes, including residential, hotel/restaurant and other business activities. It seems that the representation was made on 2-1-2008 and thereafter also, to various authorities to prohibit such sale of land and construction thereon, but no notice of it was taken by those authorities and, therefore, this writ petition was filed on 13-3-2008.

7. The controversy involved in all these cases pertain to removal of

encroachments and demolition of unauthorized and illegal constructions on the land admeasuring 54,437.19 square meters in the layout of the said Society, reserved for public utility, open space and public roads. We, therefore, proceed to see the extent of encroachments and the number of encroachers, the stand of the authorities, the orders passed by this Court from time to time and the steps taken to remove or regularize the encroachments.

Extent of encroachment and the number of encroacher :

8. The last affidavit dated 11-7-2018 filed by the Divisional Commissioner, Nagpur, shows that the Society was granted 80.09 acres of land, which is equivalent to 3,20,962.51 square meters. In terms of the sanctioned plan, the land reserved for various purposes was as under :

Sr.No.

Particulars

Area (Sq.Mtr.)

1.

Plorable and roads

2,20,007.92

2.

For Flats

22,738.00

3.

Public Utility (School, Hospital, Sanskrutik Bhavan, Buddha Vihar, etc.)

10,763.12

4.

Open space (playgrounds and gardens, etc.)

67,453.17

Total :

3,20,962.51

8.1 In the affidavit dated 19-7-2012 filed by the Additional Chief Secretary, Revenue Department, it is stated that the affidavit dated 19-6-2010 filed by the Divisional Commissioner, Nagpur, shows that the land admeasuring 54,437.19 square meters out of 67,453.17 square meters for open space was encroached upon either for residential purpose or for commercial purpose and only the land admeasuring 14,660.77 square meters remained available from the open space

and it was handed over to the Nagpur Municipal Corporation on 9-12-2009.

8.2 In the affidavit of the Additional Chief Secretary, Revenue, filed on 19-7-2012, it is stated that the District Deputy Registrar, Co-operative Societies, carried out a fresh enquiry and submitted his report on 14-5-2012 to the Divisional Commissioner. It is not in dispute that there are 369 encroachers. For residential purpose, the area of 3795.47 square meters is encroached upon by 34 original Mill workers, and the area of 45,162.04 square meters is encroached upon by 308 persons, who claim to be the legal heirs of the Mill workers. There are 28 other persons/encroachers, who have occupied the area of 3,595.65 square meters for residential purpose, and they are said to be illegal transferees from the original Mill workers or their legal heirs. One plot of 280 square meters is occupied by Buddha Vihar. The area of 816.00 square meters is encroached by the original Mill workers for commercial purpose, whereas the area of 676.37 square meters is by the legal heirs of Mill workers for the same purpose. The area of 114.66 is occupied by the transferee for godown. Thus, the encroachment is over 54,437.19 square meters.

8.3 There was a complaint made in Paragraph 4 of Civil Application No.1923 of 2011, which is reproduced below :

"4) That perusal of the survey report reveals that at Sr.No.2 of Mouza Indora, Sr.Nos.1, 2, 3, 4, 7, 8 of Mouza Hansapuri, Sr.No.8, 9, 10, 12, 14, 18, 24, 31, 34, 38, 40, 47, 57 & 92 of Mouza Jaripatka Block 'C', Sr.Nos.13, 45, 50, 61, 67, 102, 104, 108, 111, 112, 128, 131 of Mouza Jaripatka of 'B' layout, Sr.Nos.8, 16, 17, 37, 38, 43, 44, 48, 51, 53, 54, 57, 58, 59, 60, 62, 64, 65, 67, 70, 73, 80, 83, 84, 89, 92, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111 & 112 in Khadan layout 'A' are open plots out of which to some there is compound wall. This is sufficient to demonstrate that it is the land under encroachment available as open space and not used as dwelling houses by anybody and therefore is required to be handed over to the Municipal Corporation immediately in compliance with the order dated 19.12.2008 of this Hon'ble Court."

In the affidavit dated 4-12-2014 filed by the Divisional Commissioner, Nagpur, it is stated that 51 plots out of the aforesaid 77 plots were handed over by the Divisional Commissioner to the Nagpur Municipal Commissioner on 4-8-2014 and 18-11-2014. The constructions on three more plots were demolished and the same were also handed over to the Nagpur Municipal Corporation and thus the total 54 plots out of 77 plots were handed over to the Nagpur Municipal Corporation. Out of remaining 23 plots, Plot No.27 was found to be in the sanctioned layout and, therefore, the possession of it was not taken. The remaining 22 plot holders/encroachers have made the constructions during the period from 2009 to 2014. The notices have been issued to all these 22 plot holders/encroachers for demolition of their structures, which are the subject-matter of Writ Petition No.123 of 2019 filed before this Court, in which the further action of demolition has been stayed.

Stand of the State Government, the Nagpur Municipal Corporation and the Divisional Commissioner on encroachment :

9. A reference is made to the Government Resolutions dated 7-9-2006, 7-10-2006 and 18-9-2010 issued by the Revenue and Forest Department, and the Circular dated 30-6-2010 issued by the Urban Development Department, to urge that there cannot be encroachments on public utility land and open spaces and such encroachments have to be removed. This Court has made a reference in the order dated 25-10-2010 to another Government Resolution dated 4-4-2002, relied upon by the respondents, to hold that in terms of Clause 7 therein, the encroachments on public utility and semi-public utility lands cannot be regularized. Thus, the State Government and the Nagpur Municipal Corporation, the Planning Authority, have in fact opposed the claim for regularization, but no steps were taken in the present matter to remove such encroachments.

Orders passed by this Court :

10. In order to ascertain if there is any policy of the State Government to regularize the encroachments and whether such question is under consideration of the State Government. While passing a detailed speaking order on 19-12-2008, it was made absolutely clear that such policy cannot regularize the encroachments for commercial purpose or bungalows. In the another detailed speaking order passed on 9-12-2009, the Court directed filing of affidavit stating that - (i) under which Government Resolution, the policy of regularization is reflected, whether there is any statutory provision providing for regularization, and (iii) whether the policy of regularization, if any, under the Government Resolution can be contrary to the provisions of the Nagpur Municipal Corporation Act or the Maharashtra Regional and Town Planning Act, which casts a statutory duty to remove encroachments.

11. The Court made it clear in the detailed speaking order dated 18-3-2011 that even if the encroachments are for residential purpose by the Mill workers or their legal representatives or transferees, the same shall be subject to the result of this petition. In order to prevent further encroachments, the directions were also issued to the authorities concerned to hand over the open spaces to the Nagpur Municipal Corporation in the light of the agreement dated 23-7-1979. In the order dated 6-5-2014, this Court directed the Divisional Commissioner to hand over 77 plots mentioned in Paragraph 4 of Civil Application No.1923 of 2011 to the Nagpur Municipal Corporation within six weeks. On 24-6-2014, this Court rejected Civil Application No.1687 of 2014 for the modification of order dated 6-5-2014. Steps to allot additional land to the Society so as to regularize the encroachments :

12. In order to explore the possibility of regularization of encroachments in question, certain steps are taken. To compensate the area already encroached upon, it is proposed in the affidavit dated 19-7-2012 filed by the Additional Chief Secretary, Revenue Department, that if the adjoining Government land of

51,620.00 square meters is allotted to the Society, it can be clubbed with the land of the Society and the new layout can be considered for sanction so as to regularize the encroachment. It is further stated that pursuant to the directions issued by Hon'ble the Chief Minister, the Divisional Commissioner submitted a proposal that if the adjoining Government land of 30,732.94 square meters is clubbed with the present land of the Society, the total land of the Society would be 3,51,695.15 square meters and as per the Development Control Regulations, the open space in the new layout would be 52,754.27 square meters (i.e. 15%); and for public utility, it would be 17,584.75 square meters (i.e. 5%). For this purpose, it is stated that the procedure under Section 37 of the Maharashtra Regional and Town Planning Act for conversion of reservation for residential purpose will have to be followed.

13. In the affidavit dated 11-7-2018 filed by the Divisional Commissioner, it is stated that as per the opinion of the Deputy Director of Town Planning Department, the actual area is 70,339.00 square meters and that the land admeasuring 27,164.08 square meters need to be given to make out the deficit as under :

Particulars

Required area

As per N.M.C. proposal

Remarks

Open land 15%

52,754.25 sq.mtrs

55817.23 sq.mtrs.

3062.98 sq.mtrs. (More)

Public utility 5%

17584.75 sq.mtrs.

18090.61 sq.mtrs.

505.86 sq.mtr. (More)

Total

70339.00 sq.mtrs.

73907.84 sq.mtrs.

3568.84 sq.mtrs. (More)

The 15% reservation indicated above is in terms of Clause 13.3.1(b) of the Development Control Rules for Nagpur City, whereas 5% for public utility is in

terms of Clause 13.8 of the said Regulations. It is further stated that an area of 3568.84 square meters of land would be allotted more than what is required. As per the proposal of the Nagpur Municipal Corporation, if this area of 3568.84 square meters is deducted from 30,732.94 square meters (30,732.94 sq.mtrs. - 3,568.84 sq.mtrs. = 27,164.10 sq.mtrs.), then the required area would be 27,164.10 square meters. The Nagpur Municipal Corporation submitted its proposal on 4-3-2013, which was placed before the meeting of the Cabinet held on 3-9-2014 and a decision is taken to allot 27,164.14 square meters of land to the Society to make out the deficit of encroached portion. Accordingly, on 8-6-2016, the Divisional Commissioner filed an affidavit before this Court.

14. The Divisional Commissioner, Nagpur, in his detailed proposal dated 31-5-2012 forwarded to the Additional Chief Secretary, Revenue and Forest Department, has stated that the land admeasuring 30,732.94 square meters from Survey No.532 of Mouza Indora, and Survey No.1414 of Mouza Jaripatka is available, which can be clubbed together with the land allotted to the said Society, and a revised layout can be sanctioned. The proposal mentions that as per the ready reckoner of 2012, the valuation of the open land in Mouza Jaripatka was fixed at Rs.18,500/- per square meter, whereas the valuation of the land at Mouza Indora was found to be Rs.19,500/- per square meter. Therefore, the total valuation of the land admeasuring 27,164.10 square meters was calculated at Rs.52,50,88,000/- as per the ready reckoner of 2012. It is further mentioned in the proposal that the State Government will have to take decision in respect of the price of land, the terms and conditions, and the deletion of reservation of the adjoining land. Such proposal was also submitted by the Commissioner, Nagpur Municipal Commissioner on 15-7-2011. The Divisional Commissioner, Nagpur, also forwarded the same valuation by his communication dated 2-7-2012.

15. In the affidavit dated 19-7-2012 filed by the Additional Chief Secretary, Revenue Department of the State Government, it is stated that the State Government is willing to accept the proposal submitted by the Nagpur Municipal Corporation. The Government has calculated the actual requirement of the land for sanctioning the revised layout and has come to the conclusion that the land admeasuring 27,164.14 square meters will be necessary for the purpose. It is further stated that the Government is willing to grant this adjoining land, which is reserved for residential purpose, in the sanctioned development plan to the said Society subject to certain terms and conditions specified therein.

16. The decision of the Cabinet taken in its meeting held on 3-9-2014 is communicated to the Divisional Commissioner by the Secretary, Department of Revenue and Forest, on 26-4-2016. The decision states that in exercise of the power conferred by Section 40 of the Maharashtra Land Revenue Code, 1966, it is decided to allot 27,164.14 square meters of Government land in CTS 532, Indora Ground, and CTS No.1414, behind ITI, Mouza Jaripatka to the said Society in order to make out the deficit caused due to encroachment of the land

of the said Society, located at Mouza Hansapuri, Jaripatka and Indora. The decision is on certain terms and conditions stipulated therein, which include clubbing of this area with the existing area of the layout and thereafter the reservation of 15% as open space in terms of Clause 13.3.1(b), and 5% for public utility in terms of Clause 13.8 of the Development Control Regulations in the revised layout, which shall have to be handed over free of cost to the Nagpur Municipal Corporation. This decision is subject to the approval of this Court. If this Court approves the decision, then obviously the implementation of such decision shall be by issuing the Government Resolution, which has till this date not been issued.

17. From the decision of the Cabinet taken on 3-9-2014, we could not find any decision to regularize the encroachments, but it was a decision to allot 27,164.14 square meters of Government land to the Society. Shri Subodh Dharmadhikari, the learned Senior Advocate, representing the State Government, also could not point out to us any decision of the Cabinet to regularize the encroachments in exercise of the power conferred for that purpose under any of the enactments. However, he submitted that it is the consequence of allotment of the additional Government land to the Society. We, therefore, passed a speaking order, requiring an affidavit to be filed of the responsible officer to state as to whether the decision taken by the Cabinet is a composite one and includes regularization of encroachments and allotment of land to the said Society.

18. The affidavit of the Deputy Secretary, Revenue and Forest Department, dated 15-1-2018 has been filed, stating in Paragraphs 3 to 6 as under :

"3. I say and submit that, in pursuance of the said direction issued by this Hon'ble Court on 09.01.2019, I am filing the instant affidavit. I further say and submit that, the decision dated 03.09.2014 of the Council of Ministers is a composite one and involves allotment of land bearing City Survey No.532 at Indora and City Survey No.1414, at Jaripatka, total admeasuring 27164.14 sq.mtrs. in order to regularise the encroachments made on public utility and open spaces of the layout."

"4. I further say and submit that, on 04.03.2013, the Deputy Director, Town Planning Department, Nagpur Division, Nagpur prepared a detailed note that land admeasuring 27,164.10 sq.mtr would be required for making up the deficit of public utility and open spaces in the layout."

"5. I further say and submit that, the Council of Ministers, after going through the detailed Cabinet Note, took a conscious decision on 03.09.2014, that land admeasuring 27164.14 sq.mtrs. be allotted to the Bezanbagh Pragatisheel Kamgar Gruhnirman Sahakari Sanstha in order to make up the shortfall of public utility and open spaces in the layout and thereafter the Corporation should accord approval to the revised layout plan of the society which would enable regularisation of unauthorised structures on the public utility and open spaces of the layout."

"6. In view of the above referred facts and circumstances, it would be clear that, if the said additional government land admeasuring 27164.14 sq.mtrs. is allotted to the said society, then the deficit of public utility and open spaces in the layout would be made up which would facilitate regularisation of unauthorised construction. Hence this affidavit."

Questions to be decided :

19. The questions, which we are required to decide in all these matters in the background of this undisputed factual position, are formulated as under :

(1) Whether there can be regularization of encroachments on the land admeasuring 54,437.19 square meters meant for public utility (school, hospital, Sanskrutik Bhavan, Buddha Vihar, etc.), open spaces (playground and garden) and public roads in the layout of the Society ?

(2) Whether the decision taken by the Cabinet in its meeting held on 3-9-2014 can be considered as the decision to regularize the encroachments on the lands reserved for public utility, open spaces and public roads in the layout of the Society?

(3) Whether the mandamus is required to be issued to direct removal of encroachments made on the entire land of 54,437.19 square meters reserved in the layout for public utility, open spaces and public roads?

As to Question No.(1) :

20. In terms of the agreement dated 23-7-1979, the lands meant for public utility, open spaces and public roads in the layout vest in the local authority, viz. the Nagpur Municipal Corporation. In this case, the land admeasuring 67,453.17 square meters was open space (playground and garden) and the area of 10,763.12 was for public utility (school, hospital, Sanskrutik Bhavan, Buddha Vihar, etc.). There is an encroachment over the area of 54,437.19 square meters, which was required to be handed over to the Nagpur Municipal Corporation. This area is occupied by 369 encroachers for residential and commercial purposes. These encroachers have raised structures contrary to the approval dated 22-6-1979 granted by the Nagpur Municipal Corporation. All these structures are illegal and unauthorized, needed to be removed.

21. Our attention is invited to the affidavit dated 25-10-2010 sworn-in by the Principal Secretary, Revenue and Forest Department, stating in Paragraph 3 that a decision as to whether the encroachments/unauthorized constructions can be regularized, as required by the Government Resolution dated 4-4-2002, can be taken at the Government level. It is further stated that subject to individual scrutiny, the Government has taken an

"In-principle decision" - (i) to regularize the encroachments/unauthorized constructions by 34 original Mill workers over an area admeasuring 3,795.47 square meters for residential purposes, and (ii) to regularize 163 encroachments/

unauthorized constructions by the heirs of the original Mill workers for residential purposes. It is the further stand taken in the affidavit dated 25-10-2010 that a decision regarding regularization of encroachments/unauthorized constructions of remaining 143 persons claiming to be the heirs of the original Mill workers will be taken after completion of individual scrutiny and submission of proposal by a Committee under the chairmanship of Commissioner, Nagpur Municipal Corporation, as required under the present policy of the Revenue Department.

22. We have gone through the Government Resolution dated 4-4-2002. It pertains to regularization of encroachments for residential purpose during 1-1-1985 to 1-1-1996 on payment of market value of the land and fine equivalent thereto. It is the regularization of slums on the Government land. The proposed regularization does not satisfy the conditions of this Government Resolution. As already noted in the order dated 8-3-2011 passed by this Court, Clause (7) of the said Government Resolution states that the encroachments on the public utility/semi-public utility lands cannot be regularized. This Court observed in the said order that in terms of the said Government Resolution, there is no reason for the authorities to wait for future contingencies to take action for removal of encroachments/unauthorized construction on the public utility lands. It has not been pointed out as to how this prima facie view can be faulted with. We, therefore, confirm the said view taken by this Court at an interim stage and hold that there cannot be regularization of encroachment on the lands meant for public and semi-public utility. We cannot, therefore, recognize the "In- principle decision" of the Government to regularize such encroachments with illegal and unauthorized constructions in accordance with the Government Resolution dated 4-4-2002.

23. We have already noticed the stand of the State Government taken on the basis of the Government Resolutions dated 4-4-2002, 7-9-2006, 7-10-2006 and 18-9-2010 issued by the Revenue and Forest Department, and the Circular dated 30-6-2010 issued by the Urban Development Department of the State Government. We have gone through all these Government Resolutions and Circular. The stand is emphatic in the affidavit dated 18-1-2011 that there cannot be encroachments on public utility, open spaces and public roads in the layout, and if such encroachment takes place, the obligation is created upon the competent authorities to undertake the drive of demolition. We do not find that any scope is left to regularize the encroachments made on such lands.

24. In spite of our orders dated 19-12-2008, 18-3-2011 and 6-5-2014, no steps were taken to remove encroachments, but the adjournments were sought to prolong for execution. When the Divisional Commissioner apprehended the action of contempt, Civil Application No.1687 of 2014 was moved for modification of the order dated 6-5-2014 passed on Civil Application No.1923 of 2011 trying to urge that there would be discrimination if the plots in possession of 22 encroachers are handed over to the Municipal Corporation, as no construction was carried out on such plots. This application was rejected on 24-6-2014. When the notice of

contempt was issued by this Court on 19-11-2014, the application, bearing Stamp No.2785 of 2015, was filed on 7-2-2015 for review of the orders dated 6-5-2014 and 24-6-2014. It was stated in the said application that these 22 plots were not open to sky, but there were residential structures existing and the Estate Officer of the Nagpur Municipal Corporation had shown his inability to take possession of it. On 21-4-2016, this Court considered the said application and dismissed it, holding that the plots were open to sky and they ceased to be open plots between 2008 and 2014.

25. About 17 applicants, out of the aforesaid 22 encroachers, claiming to be in possession of 22 plots, filed an application for permission to intervene in the matter on 10-7-2018 and relied upon the decision taken by the Cabinet in its meeting held on 3-9-2014. It was urged that the Government has intended to regularize the encroachments and, therefore, there should be no insistence for demolition of their structures. Writ Petition No.4365 of 2018 was also filed by all 22 persons challenging the notices of removal of encroachment issued on 11-7-2018, relying upon the decision of the Cabinet in its meeting held on 3-9-2014.

On 19-7-2018, the petition was dismissed by this Court. Again, the very same petitioners have filed Writ Petition No.123 of 2019 on the basis of the order dated 4-1-2019 passed in Special Leave Petition No.31140 of 2018 by the Apex Court.

26. The petitioners in Writ Petition No.123 of 2019 are 22 plot holders/encroachers over the public utility, open spaces and public roads in the layout in question during the period from 2008 to 2014. Undisputedly, when this Court passed an order on 19-12-2008 directing handing over of the open space with removal of encroachment by the Divisional Commissioner to the Nagpur Municipal Corporation, there was no construction. It is because of the inaction on the part of the Divisional Commissioner to comply with the order passed by this Court within the stipulated period, these 22 encroachers have taken the advantage and carried out the construction during the years 2008 to 2014. The Divisional Commissioner has tendered an unconditional apology in response to the contempt petition for inaction on his part to comply with the directions of this Court till 6-5-2014.

27. In spite of knowing well that the matter is pending before this Court and the directions are issued to hand over open spaces to the Nagpur Municipal Corporation, illegal and unauthorized constructions are made by all 22 encroachers. There is no decision of the State Government to regularize it. The regularization of it, is opposed by the Government also, and in the affidavit dated 25-10-2010 filed in Public Interest Litigation, the stand is emphatic that all these 22 encroachments with unauthorized and illegal construction cannot be regularized and the same are, therefore, required to be removed.

We, therefore, answer the question No.(1), holding that there cannot be regularization of encroachments with structures on the land admeasuring 54,437.19 square meters meant for public utility, open spaces and public roads

in the layout of the Society.

As to Question No.(2) :

28. The decision of the Cabinet taken on 3-9-2014 is to allot 27,164.14 square meters of the Government land to the Society on the nominal rent in order to make out the deficit or shortfall of open space, place for public utility and public roads caused due to encroachment of land located at Mouza Hansapuri, Jaripatka and Indora. The total area of the land allotted to the Society stands increased from 3,20,962.21 square meters to 3,48,126.34 square meters. The essential conditions contained in this decision are as under :

(1) The area of 15% shall be reserved as open space (open place, playground, garden, etc.) and 5% for public utility in the revised layout of 3,48,126.34 square meters of land, which shall be handed over free of cost to the Nagpur Municipal Corporation.

(2) The encroachments by construction for commercial purposes in the layout as well as for the purposes of residence by the persons other than the original Mill workers or their legal representatives will have to be demolished.

(3) The steps will have to be taken, as required by Section 37 of the Maharashtra Regional and Town Planning Act to -

(a) delete the reservation already existing in the land admeasuring 54,437.19 square meters for public utility (school, hospital, Sanskrutik Bhavan, Buddha Vihar, etc.), open spaces (playground and garden), and public roads, as is stated in Paragraph 'I' of the affidavit dated 11-7-2018 filed by the Divisional Commissioner in Contempt Petition No.168 of 2014, and

(b) delete the reservation for residential purposes in respect of the land admeasuring 27,164.14 square meters proposed to be allotted to the Society.

29. The aforesaid decision of the Cabinet has to be implemented by issuing the Government Resolution in the name of the Governor of the State, as required by Article 166(1) of the Constitution of India. By a detailed speaking order dated 18-3-2011, this Court has made it clear that even if the encroachments are for residential purpose by the Mill workers or their legal representatives or transferees, the same shall be subject to the result of this petition. Hence, unless this Court approves the decision of the Cabinet, the same cannot be implemented by issuing the Government Resolution.

Whether the decision to allot is legal and valid?

30. We are required to consider such question for the reason that the allotment of land to the Society is a step proposed to be taken to regularize the encroachments. The decision of the Cabinet refers to the provision of Section 40 of the Maharashtra Land Revenue Code, which is reproduced below :

"40. Saving of powers of Government Nothing contained in any provision of this

Code shall derogate from the right of the State Government to dispose of any land, the property of Government, on such terms and conditions as it deems fit."

The aforesaid provision confers power upon the State Government to dispose of any land, the property of Government, on such terms and conditions as it deems fit. The power is not absolute, but it is guided by the Rules, called "The Maharashtra Land Revenue (Disposal of Lands) Rules, 1971". Rule 26 thereunder deals with the disposal of the building sites, and Rule 35 deals with the long term leases for non-agricultural purposes and renewal thereof. We need not elaborate on this aspect of the matter, for the reason that the mandatory procedure prescribed for allotment of land either on ownership basis or on leasehold rights has not been followed and it is also not the case of the respondents that such procedure has been followed.

31. In our view, the decision of allotment of land by the Cabinet is in contravention of the mandatory provisions of Rules 26 and 35 of the Rules without conducting auction and recovering price of Rs.52,50,88,000/-, which is already determined. It is contrary to the decision of this Court in the case of Bhupal v. Collector, reported in 1997(2) Mh.L.J. 651. This decision is on Section 40 of the Maharashtra Land Revenue Code and it lays down that grant of land without auction is arbitrary. In view of this decision, we cannot put our seal on such allotment of land.

32. The question is whether the stand of the respondents in the affidavit dated 15-1-2018 to the effect that the policy decision of the Cabinet is composite one, involving the allotment of land and regularization of encroachments made on public utility and open spaces in the layout, is substantiated on the basis of the power to regularize the encroachments conferred under different enactments. We try to find out whether the encroachments with structures can be saved on the basis of either executive instructions or statutory provisions.

33. We have also gone through the provisions of the Maharashtra Gunthewari Developments (Regulation, Upgradation and Control) Act, 2001 ("the Maharashtra Gunthewari Act"). The object of this enactment is to provide for the regularization and upgradation of certain Gunthewari developments and for the control of Gunthewari developments. Section 2(a) of the Maharashtra Gunthewari Act defines "Gunthewari development" as under :

Section 2(a) :

" "Gunthewari development" means plots formed by unauthorisedly sub-dividing privately owned land, with buildings, if any, on such plots, including excess vacant land under the Urban Land (Ceiling and Regulation) Act, 1976, not vested in the State Government, but excluding land under encroachment."

In our view, the Maharashtra Gunthewari Act applies to the unauthorized layouts prepared, consisting of plots in the privately owned land. It does not apply to plots in the authorized and sanctioned private layouts. It also does not apply to

the development by way of encroachments, which is specifically excluded from the definition of "Gunthewari development", reproduced above. In the present case, we are not concerned with the unauthorized layouts in the privately owned land, but this is a case where there is a sanctioned layout in which the space reserved as open, public utility and public roads is encroached upon contrary to the sanction granted by the Municipal Council on 22-6-1979. The regularization of encroachments in question under the provisions of this Act is not possible.

33.1 The proviso below sub-section (1) of Section 3 of the Maharashtra Gunthewari Act regarding regularization of Gunthewari developments deals with the categories of plots and buildings in unauthorized layouts, in which shall not be eligible for regularization. Clause (a) therein relates to the plots formed and transferred after the 1st January, 2001. In the present case, the plots are in the authorized layouts and some of it were transferred by the Society and the others were encroached upon after 1st January, 2001. Therefore, in terms of clause (a), the encroachments in question with structures standing thereon are also not eligible to be regularized.

34. The entire land, which is the subject-matter of the Public Interest Litigation, is the Government land, and Section 50 of the Maharashtra Land Revenue Code, 1966 deals with the removal of encroachments on land vesting in Government; provisions for penalty and other incidental matters. Sub-sections (1), (3) and (4) therein being relevant, are reproduced below :

"50. Removal of encroachments on land vesting in Government; provisions for penalty and other incidental matters

(1) In the event of any encroachment being made on any land for fore-shore vested in the State Government (whether or not in charge of any local authority) or any such land being used for the purpose of hawking or selling articles without the sanction of the competent authority, it shall be lawful for the Collector to summarily abate or remove any such encroachment or cause any article whatsoever hawked or exposed for sale to be removed; and the expenses incurred therefor shall be leviable from the person in occupation of the land encroached upon or used as aforesaid.

(3) The collector may, by notice duly served under the provisions of this Code, prohibit or require the abatement or removal of encroachments on any such lands, and shall fix in such notice a date, which shall be a reasonable time after such notice, on which the same shall take effect.

(4) Every person who makes, causes, permits or continues any encroachment on any land referred to in a notice issued under sub-section (3), shall in addition to the penalties specified in sub-section (2), be liable at the discretion of the Collector to a fine not exceeding twenty-five rupees or such amount as may be prescribed, whichever is higher in the case of encroachment for agricultural purposes and fifty rupees or as may be prescribed, whichever is higher, in other cases for every day during any portion of which the encroachment continues

after the date fixed for the notice to take effect."

The aforesaid provisions confer a duty upon the Collector to prohibit the encroachments or require to remove the encroachments on such lands and to impose the penalty and fine, as is specified under sub-sections (2) and (4).

35. Section 51 of the Code deals with the regularization of encroachments, and it runs as under :

"51. Regularisation of encroachments

Nothing in Section 50 shall prevent the Collector, if the person making the encroachment so desires, to charge the said person a sum not exceeding five times or such times as may be prescribed, whichever is higher, of the value of the land so encroached upon and to fix an assessment not exceeding five times or such times as may be prescribed, whichever is higher, of the ordinary annual land revenue thereon and to grant the land to the encroacher on such terms and conditions as the Collector may impose subject to rules made in this behalf; and then to cause the said land to be entered in land records in the name of the said person:

Provided that, no land shall be granted as aforesaid, unless the Collector gives public notice of his intention so to do in such manner as he considers fit, and considers any objections or suggestions which may be received by him before granting the land as aforesaid. The expenses incurred in giving such public notice shall be paid by the person making the encroachment; and on his failure to do so on demand within a reasonable time, shall be recovered from him as an arrear of land revenue."

Notwithstanding the duty under Section 50 to remove encroachments, the Collector is empowered to regularize the encroachments on the terms and conditions specified therein and in accordance with Section 51 read with Rule 43 dealing with the grant of lands encroached upon, under the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971. Clause (a) under sub-rule (1) of Rule 43 deals with the conditions for grant of encroached land in occupancy rights, and Clause (b) deals with the conditions for grant of encroached land in leasehold rights; Rule 44 therein deals with the permission for continuing certain encroachment on no claim basis, and Rule 45 deals with the grant of land encroached upon by backward classes for housing.

36. In spite of our best efforts to get response from the State Government or the other competent authorities on the point of exercise of powers under the aforestated provisions of the Maharashtra Land Revenue Code, it is not the stand taken that the encroachments in question with structures are regularized in exercise of such power. There is definite procedure prescribed and regularization of encroachment has to be on payment of sum not exceeding five times of the value of the land. Neither the procedure prescribed is followed, nor such payment is being recovered.

We hold that there is no decision of the State Government taken in exercise of statutory power under Section 51 of the Maharashtra Land Revenue Code read with Rules 43 to 45 above to regularize the encroachments, which are the subject-matter of the Public Interest Litigation.

37. All the encroachers have placed reliance upon the Government Resolution dated 17-11-2018 issued by the Urban Development Department, constituting a Committee for regularization of encroachments on the Government lands for residential purpose upon certain terms and conditions. The encroachments for residential purpose made prior to 1-1-2011 are proposed to be regularized. Probably, this is also under the Maharashtra Gunthewari Act, substituting the date of 1-1-2001 to 1-1-2011. We have gone through the said Government Resolution. In terms of Condition No.(6), the proposal for regularization on the lands reserved for public or semi-public utility in the layout has to be submitted to the Director of Town Planning, Maharashtra State, Pune, and in terms of Condition No.(7)(a) therein, the regularization should, as far as possible, conform to the provisions of the Maharashtra Regional and Town Planning Act and the Development Regulations framed therein.

38. In spite of our best efforts to get response from the State Government on the question of regularization of encroachments in question, it is not the stand taken in any of the affidavit that such regularization is being considered or has actually been considered in terms of the Government Resolution dated 17-11-2018. This Government Resolution prescribes some norms and the terms and conditions for regularization. We do not find any such exercise is carried out by the Government. In the absence of such specific stand of the State Government or the competent authorities, it is not possible for us to hold that the encroachments in question are covered by the Government Resolution dated 17-11-2018.

39. In our view, it is not possible to agree with the stand taken in the affidavit dated 15-1-2018 that the decision of the Cabinet taken on 3-9-2014 is to regularize the encroachment over 54,437.19 square meters of land in the layout of the Society. Even if there is such decision, it is not in exercise of any statutory power, but on the contrary it encourages failure to perform statutory duty to remove an encroachment. We cannot therefore construe the decision of the Cabinet as regularization of encroachment on the lands reserved for public utility, open spaces and public roads in the layout in question. The question No.(2) is answered accordingly.

40. The Maharashtra Regional and Town Planning Act is the fountain-head of the planning, development and user of the land in the regions, to which it is applicable. Section 2(7) therein defines "development" as under :

"2(7). "development" with its grammatical variation means the carrying out of buildings, engineering, mining or other operations in or over or under, land or the making of any material change, in any building or land or in the use of any

building or land or any material or structural change in any heritage building or its precinct and includes demolition of any existing building structure of erection or part of such building, structure of erection; and reclamation, redevelopment and lay-out and sub-division of any land; and "to develop" shall be construed accordingly."

Section 42 deals with the implementation of plans, and it runs as under :

"42. Implementation of plans

On the coming into operation of any plan or plans referred to in this Chapter, it shall be the duty of every Planning Authority to take such steps as may be necessary to carry out the provisions of such plan or plans."

Section 43 dealing with the restrictions on development of land, reads as under :

"43. Restrictions on development of land

After the date on which the declaration of intention to prepare a Development Plan for any area is published in the Official Gazette or after the date on which a notification specifying any undeveloped area as a notified area, or any area designated as a site for a new town, is published in the Official Gazette, no person shall institute or change the use of any land or carry out any development of land without the permission in writing of the Planning Authority. ..."

The definition of "development" is wide and includes even demolition of the property. Once the development plan comes into force by way of notification in the Official Gazette, it becomes a statutory duty of the Planning Authority under Section 42 to take such steps as may be necessary to carry out the provisions of such plan or plans. The restriction on development after coming into force of the development plan, as contained in Section 43, does not permit any person to institute or change the user of any land or carry out any development of land without permission in writing of the Planning Authority, except the matters which are excepted under the proviso below it. In the present case, we are not concerned with the development excepted under the proviso.

41. Section 52 of the said Act deals with the penalty for unauthorized development or for use otherwise than in conformity with development plan, and sub-section (1) therein being relevant, is reproduced below :

"52. Penalty for unauthorised development or for use otherwise than in conformity with Development Plan

(1) Any person who, whether at his own instance or at the instance of any other person commences, undertakes or carries out development or institutes, or changes the use of any land--

(a) without permission required under this Act; or

(b) which is not in accordance with any permission granted or in contravention of any condition subject to which such permission has been granted;

- (c) after the permission for development has been duly revoked;
- (d) in contravention of any permission which has been duly modified

shall, on conviction, be punished with imprisonment for a term which shall not be less than one month but which may extend to three years and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees, and in the case of a continuing offence with a further daily fine which may extend to two hundred rupees for every day during which the offence continues after conviction for the first Commission of the offence."

In terms of the aforesaid provision, any person who commences, undertakes or carries out development or institutes, or changes the use of any land without permission required under the Act, can be convicted for the offence punishable for a term which shall not be less than one month but which may extend to three years and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees, and in the case of a continuing offence with a further daily fine which may extend to two hundred rupees for every day during which the offence continues after conviction.

42. Section 53 deals with the power to require removal of unauthorized development, and sub-sections (1)(a) and (b) therein being relevant, are reproduced below :

"53. Power to require removal of unauthorised development (1)(a) Where any development of land has been carried out as indicated in clause (a) or (c) of sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section, serve on the owner, developer or occupier a prior notice of 24 hours requiring him to restore the land to conditions existing before the said development took place;

(b) if the owner, developer or occupier fails to restore the land accordingly, the Planning Authority shall immediately take steps to demolish such development and seal the machinery and materials used or being used therefor."

Where any development of land has been carried out without permission of the Planning Authority after bringing into force of the Development Plan, the duty is cast upon the Planning Authority to serve on the owner, developer or occupier a prior notice of 24 hours requiring him to restore the land to conditions existing before the said development took place. If the owner, developer or occupier fails to restore the land, the Planning Authority is duty bound to take steps to demolish such development and seal the machinery and materials used or being used therefor.

43. Bare perusal of the aforesaid provisions would reveal that the provisions in the other laws, like the Municipal Corporations Act, the Nagpur Improvement Trust Act, the Maharashtra Gunthewari Act, the Maharashtra Land Revenue Code, etc., are subject to the provisions of the Maharashtra Regional and Town Planning Act in respect of grant of sanction to the layouts and schemes, building permits,

conversion of user of land, allotment, regularization of developments, layouts and encroachments.

Section 156 of the Maharashtra Regional and Town Planning Act deals with the effect of laws, and it runs as under :

"156. Effect of laws

Notwithstanding anything contained in any law for the time being in force--

(a) * * * Deleted by Mah. 10 of 1997, s. 7.

(b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained:

Provided that, the development which has been duly permitted or deemed to have been permitted by the concerned Village Panchayat within the area of the gaathan or the gunthewari development which has been regularized in accordance with the provisions of the Maharashtra Gunthewari Developments (Regularisation, Upgradation and Control) Act, 2001, shall not be treated as unauthorised development under this Act."

Perusal of the aforesaid provision makes it clear that the provisions of the Maharashtra Regional and Town Planning Act are in addition to the provisions of any other law for the time being in force, and without permission under this Act, no development can be carried out even if permission, approval or sanction required under such other law for such development is obtained. Thus such laws are subservient to the provisions of the Maharashtra Regional and Town Planning Act, except the position covered by the proviso below Section 156 above. It is not the stand that the case is covered by the said proviso. There is no notification issued under Section 37 of the Maharashtra Regional and Town Planning Act in exercise of any such power conferred even under the Maharashtra Gunthewari Act to change the user of the land in question as open space, public utility and public roads.

44. The importance of Town Planning and Development Act and illegal and unauthorized constructions of buildings and other structures in contravention thereof has been highlighted in the decision of the Apex Court in the case of Dipak Kumar Mukherjee v. Kolkata Municipal Corporation and others, reported in (2013) 5 SCC 336. Paragraph 2 therein highlights this position as under :

"2. In the last four decades, the menace of illegal and unauthorised constructions of buildings and other structures in different parts of the country has acquired monstrous proportion. This Court has repeatedly emphasised the importance of planned development of the cities and either approved the orders passed by the High Court or itself gave directions for demolition of illegal constructions as in K. Ramadas Shenoy v. Town Municipal Council, Udipi (1974) 2 SCC 506, Virender

Gaur v. State of Haryana (1995) 2 SCC 577, Pleasant Stay Hotel v. Palani Hills Conservation Council (1995) 6 SCC 127, Cantonment Board, Jabalpur v. S.N. Awasthi 1995 Supp (4) SCC 595, Pratibha Coop. Housing Society Ltd. v. State of Maharashtra (1991) 3 SCC 341, G.N. Khajuria v. DDA (1995) 5 SCC 762, Manju Bhatia v. NDMC (1997) 6 SCC 370, M.I. Builders (P) Ltd. v. Radhey Shaym Sahu (1999) 6 SCC 464, Friends Colony Development Committee v. State of (2004) 8 SCC 733, Shanti Sports Club v. Union of India (2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707 and Priyanka Orissa , Shanti Sports Club v. Union of India Estates International (P) Ltd. v. State of Assam (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283.

44.1 In Paragraph 5 of the said decision, the earlier decision of the Apex Court in the case of Friends Colony Development Committee v. State of Orissa, reported in (2004) 8 SCC 733, has been considered and the relevant portion of it, is reproduced below :

"20. ... Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the suffers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. ..."

44.2 In Paragraph 6 of the said decision, the earlier decision of the Apex Court in the case of Shanti Sports Club v. Union of India, reported in (2009) 15 SCC 705, has been considered, and the relevant portion of Paragraphs 74 and 75 are reproduced below :

"74. ... In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who

cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc. ..."

"75. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

44.3 In Paragraph 9 of the said decision, the Court has held that there should be no judicial tolerance of illegal and unauthorized constructions by those who treat the law to be their subservient, and in Paragraph 29, it is held as under :

"29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction but also impose adequate penalty on the wrongdoer."

45. The menace of encroachments over the lands reserved for public utility, open

spaces, playgrounds, gardens, parks and public roads with illegal and unauthorized constructions has started, spreading its tentacles to grip the systematic planning and development of the cities, towns and villages, thereby frustrating the very object and purpose of maintaining the balance between the planning and development on one hand and the public health, safety, comfort, ecology and environment on the other hand, sought to be achieved by the provisions of the Maharashtra Regional and Town Planning Act. Such encroachments are posing serious threat to breathing of clean and fresh air to lead the healthy life by the residents of the locality. It is causing damage and injury to the right to life, enshrined under Article 21 of the Constitution of India and an irreparable harm to the concept of planned development of the cities and urban areas. Such encroachments are also causing traffic congestion and pollution at the instance of encroachers, serving self or personal interest, which must yield to the interest of public or Society at large. The private interest stands subordinated to public good.

46. We are repeatedly coming across the Public Interest Litigations and normal Writ Petitions complaining encroachments by illegal and unauthorized constructions in every city, town and village, more particularly on the lands reserved for public utility, playgrounds, gardens, hospitals and public roads. We are also noticing failure on the part of the State Government, Municipal Authorities and other local bodies, including the Planning Authorities, to perform the statutory duties of either preventing such constructions or demolishing it. The Apex Court has in the decision cited taken note of the authorities competent to prevent or remove encroachments are turning blind eye either due to influence of higher functionaries of State or other extraneous reasons. It is also observed that if such activities are to stop, some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. Let the message go that the Courts are not going to be the silent spectators to tolerate such menace and let the impression be created that the violators do not deserve sympathy or leniency on the ground that they have spent substantial amount on construction of buildings, which are standing since long.

47. The Society was allotted the land in question admeasuring 80.09 acres by the Government Resolution dated 24-6-1977 and the layout plan prepared on 24-6-1978 was approved on 22-6-1979, in which the land admeasuring 64,453.17 was reserved as open space (play grounds and gardens), and the land admeasuring 10,763.12 was reserved for public utility. In terms of the agreement dated 23-7-1979, this land was required to be handed over to the Nagpur Municipal Corporation for development as such, but in the year 2008 it was found that only 14,660.77 square meters of land remained available from the open space, which was handed over to the Nagpur Municipal Corporation as per the order dated 9-12-2009.

48. Though the State Government and the other authorities were under statutory

obligation to prevent and remove the encroachments, no steps were taken by them. This Court tried to find out whether such a mass encroachment can be regularized either under the executive or legislative policy of the State Government and granted time. But we find that the Government or other authorities are neither competent nor intend to regularize the encroachments in question contrary to the statutory provisions. The efforts are futile. There is no will to perform the statutory duty to remove the encroachments. The Cabinet has taken a decision for the first time on 3-9-2014 to allot the land to the Society, which we do not find to be in conformity with law. The illegal and unauthorized structures, which have come up over the years, cannot be compounded under any provision of law. To permit the respondents to adopt the procedure under Section 37 of the Maharashtra Regional and Town Planning Act to change the user of the land in question, would amount to perpetuating illegality and encouraging illegal and unauthorized constructions. The very object of the proposal to have recourse to Section 37 of the Maharashtra Regional and Town Planning Act, defeats the existing legislative and executive policies.

49. There is a statutory duty cast upon the Collector to remove encroachments on the Government land and to impose penalty and fine, as provided under Section 50 of the Maharashtra Land Revenue Code. Section 42 of the Maharashtra Regional and Town Planning Act imposes a statutory duty upon the Planning Authority to take such steps as may be necessary to carry out the provisions of the Development Plan. If the development of land has been carried out without permission, as required under the Maharashtra Regional and Town Planning Act, or if such development is not in accordance with any permission granted or in contravention of any condition, subject to which such permission has been granted, Section 53 of the said Act confers a duty upon the Planning Authority to serve on the owner, developer or occupier a prior notice of 24 hours, requiring him to restore the land to conditions existing before such development, and if it is not complied with to take immediate steps to demolish such development and seal the machinery and materials used or being used therefor.

50. In view of the aforesaid provisions, the Court is not powerless to issue a writ directing the Public/Statutory Authorities to perform their statutory duties in exercise of jurisdiction under Article 226 of the Constitution of India. We can understand the policy of the State Government or the Planning Authority to regularize the encroachments or illegal and unauthorized constructions in terms of Section 51 of the Maharashtra Land Revenue Code or proviso below Section 156 of the Maharashtra Regional and Town Planning Act within the four corners of the law, but in the absence of such exercise, the Court cannot put its seal on the actions or the decisions taken in contravention of the statutory provisions of the enactments.

51. We, therefore, hold that mandamus is required to be issued to direct removal of encroachments with structures standing thereon made on the entire land of 54,437.19 square meters reserved in the layout of the said Society for public

utility, open spaces and public roads. The question No.(3) is answered accordingly.

52. We now come to Contempt Petition No.168 of 2014. This Court, by the orders dated 19-12-2008, 18-3-2011 and 6-5-2014, directed removal of encroachments and handing over of vacant possession of plots to the Nagpur Municipal Corporation. The failure to comply with the directions till issuance of notices for demolition on 11-7-2018 is not in dispute. Even the vacant plots have been encroached upon and the structures were raised during the pendency of the petition, is also not in dispute. The contempt petition was admitted on 19-11-2014 against Shri Anoop Kumar, the Divisional Commissioner, who is the contemner.

53. In the ultimate affidavit dated 11-7-2018, unconditional and unqualified apology is expressed in Paragraph 2 as under :

"2. At the outset only, I tender my sincere, unconditional, and unqualified apology to this Hon'ble Court, should I be found to have committed any act which even borders on being infraction of order of this Hon'ble Court. I say that, I hold this Hon'ble Court and all Courts in highest esteem and I could not even dream of committing / doing anything which would amount to committing contempt of this Hon'ble Court. I am filing this affidavit not to defend my actions but to place before this Hon'ble Court, the facts for being appreciated by this Hon'ble Court in proper perspective. I repeat that, despite this affidavit, if this Hon'ble Court comes to the conclusion that I am guilty of committing contempt of this Hon'ble Court, I would pray to this Hon'ble Court to accept my unconditional and unqualified apology, as it has never been my intention to do anything contrary to what was directed by this Hon'ble Court."

54. The violation of the orders passed by this Court has not been explained. Which compelling reasons refrained the contemner from executing the orders passed by this Court, is also not made clear. The affidavit lacks repentance or contrition necessary to meet the standard expected. We know that the contemner is the highly qualified and placed officer under the State Government, holding responsible and respectable position and, therefore, our expectations were much more than those from the other Government officials. With the expectation that the contemner shall realize his responsibilities and shall be efficient in future in implementing the orders passed by the Courts, we decide to accept the apology tendered as genuine and expect him to contribute an amount of Rs.25,000/- to the Juvenile Justice Fund for the State.

We accordingly drop the proceedings for contempt against him.

55. In view of above, we pass an order as under :

O R D E R

(1) Writ Petition No.123 of 2019 filed by 22 plot holders/encroachers for regularization of their encroachments along with structures, is hereby dismissed.

(2) The proceedings for contempt initiated in Contempt Petition No.168 of 2014 are dropped.

(3) Writ Petition (PIL) No.1515 of 2008 is allowed as under :

(a) The respondents are directed to demolish the encroachments with structures standing on the land admeasuring 54,437.19 square meters, as is shown in Paragraph 8.2 of this decision, except Plot No.27, which is found to be in the sanctioned layout, and the plot of 280 square meters occupied by Buddha Vihar, which is one of the reservations in the layout in question.

(b) We direct the Nagpur Municipal Corporation to take vacant possession of the land admeasuring 54,437.19 square meters, as above, and to develop it for the purpose for which it is reserved in the layout sanctioned on 22-6-1979.

(c) We further direct the respondents- State Government and the local authority/ Planning Authority - Nagpur Municipal Corporation to see that the steps are taken to prevent repeated encroachments on the land in question.

(d) The entire exercise be carried out within a period of eight weeks from today.

56. Put up this matter after eight weeks to see the compliance.

(Vinay Joshi, J.) (R.K. Deshpande, J.)

Later on :

57. In view of the aforesaid decision, none of the civil applications filed in these petitions survive. Hence, all those civil applications stand disposed of as not survived.

58. At this stage, the learned counsel appearing for the petitioners in Writ Petition No.123 of 2019 prays for stay of this decision for a period of four weeks so as to enable the petitioners to approach the Apex Court.

59. This matter is pending since 2008. We are conscious of the fact that on earlier occasion, this Court had decided the claims of the petitioners in Writ Petition No.123 of 2019. However, keeping in view the fact that the interim order granted by this Court to the demolition is operating till this date, we stay the decision of this Court for a further period of four weeks from today; at the end of which, the interim order shall stand vacated automatically without reference to the Court and the respondents shall be at liberty to proceed further to execute the decision of this Court.