
(2014) 08 BOM CK 0153

In the Bombay High Court

Case No : Public Interest Litigation Nos. 155 of 2011, 25 of 2013, 136 and 45 of 2009, 37 of 2010, Civil Application No. 167 of 2013, Contempt Petition No. 82 of 2010 in Public Interest Litigation No. 37 of 2010 and in writ Petition No. 2570 of 2013 and in Writ Pet

Suswarajya Foundation

APPELLANT

Vs

The Collector, Satara

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Bombay Police Act, 1951 — Section 33
Constitution of India, 1950 — Article 51, 51A

Citation : (2014) 5 ABR 708 : (2014) 6 ALLMR 365 : (2015) 2 BomCR 686

Hon'ble Judges : Abhay Shreeniwas Oka, J; A.S. Chandurkar, J

Bench : Division Bench

Advocate : Uday P. Warunjikar, Sugandh B. Deshmukh, Sagar Joshi, S.S. Bhise and Party-in-Person, Advocate for the Appellant; S.N. Patil, AGP, Mahesh Rawool i/by P.B. Shah, Vaibhav Patankar, Aniruddha A. Garge, A.Y. Sakhare, Senior Advocate, Yamuna Parekh, Abhijit P. Kulkarni, Rathesh Dube i/by Rutuja Ambekar, R.S. Apte, Senior Advocate i/by N.R. Bubna, Shriram S. Kulkarni, Umesh Mankapure, G.H. Keluskar, Sameer S. Tambekar, Ashwin V. Hon, Balaji Shinde i/by Shaid Ansari, Yuvraj P. Marvankar, Uday Sonawane, Nikhil Sakhardande, Anil D. Yadav, Satish Upadhyay i/by M.V. Kini and Co., Jailee Angachekar i/by Neeta Karnik, Geeta Shastri, Addl. Government Pleader, Deepali Patankar, H.P. Shah and Pankaj Shah, Advocate for the Respondent

Judgement

1. These Public Interest Litigations have been filed essentially for bringing to the notice of the Court that in all major cities in the State there are large number of illegal banners, hoardings, posters, digital flexes, arches etc. displayed mainly by the political leaders/workers. Occasions for such display are birthdays of political leaders, appointments made of the political leaders to a particular post, alleged achievements of the political leaders. There are posters and banners displayed for welcoming the political dignitaries to various cities. There is a display of banners, posters, flexes, Arches etc by the political leaders for conveying good wishes on account of religious festivals. Apart from illegalities committed by

political leaders/workers, there are others who indulge in such illegalities. The illegalities are causing defacement of private and public properties in the cities. It is brought to the notice of the Court that the Municipal/Police Authorities are not taking action in respect of these illegalities for various reasons.

2. The issues raised relate to the implementation of the provisions of the Maharashtra Municipal Corporations Act, 1949 (for short "the said Act of 1949"), the Mumbai Municipal Corporation Act, 1888 (for short "the said Act of 1888"), the Maharashtra Prevention of Defacement of Property Act, 1995 (for short "the Defacement Act") and other municipal laws. Considering the important issues involved, these petitions need final hearing. Accordingly, we issue Rule. The parties who are represented in these petitions before this Court waive service of notice through their respective Advocates.

3. Before advertng to the factual aspects, a reference will have to be made to the provisions of the said Act of 1949. Section 244 of the said Act of 1949 reads thus:

"244 Regulations as to sky-signs.

(1) No person shall, without the written permission of the Commissioner, erect, fix or retain any sky-sign of the kind prescribed by rules whether existing on the appointed day or not. [Where a sky-sign is a poster depicting any scene from a cinematographic film, stage play or other stage performance, such permission shall not be granted unless prior scrutiny of such poster is made by the Commissioner and he is satisfied that the erection or fixing of such poster is not likely to offend against decency or morality. A permission under this section] [may be granted or renewed for a period not exceeding two years] from the date of each such permission or renewal, subject to the condition that such permission shall be deemed to be void if,-

(a) any addition is made to the sky-sign except for the purpose of making it secure under the direction of the City Engineer;

(b) any change is made in the sky-sign, or any part thereof;

(c) the sky-sign or any part thereof fall either through accident, decay or any other causes;

(d) any addition or alteration is made to, or in, the building or structure upon or over which the sky-sign is erected, fixed or retained, involving the disturbance of the sky-sign or any part thereof;

(e) the building or structure upon or over which the sky-sign is erected, fixed or retained becomes unoccupied or be demolished or destroyed.

(2) Where any sky-sign shall be erected, fixed or retained after the appointed day upon or over any land, building or structure, save and except as permitted as hereinbefore provided, the owner or person in occupation of such land, building or structure shall be deemed to be person who has erected, fixed or

retained such sky-sign in contravention of the provisions of this section unless he proves that such contravention was committed by a person not in his employment or under his control, or was committed without his connivance.

(3) If any sky-sign be erected, fixed or retained contrary to the provisions of this section, or after permission for the erection, fixing or retention thereof for any period shall have expired or become void, the Commissioner may, by written notice required the owner or occupier of the land, building or structure, upon or over which the sky-sign is erected, fixed or retained, to take down and remove such sky-sign."

4. As far as the definition of sky sign is concerned, a reference will have to be made to Chapter XI of the Schedule D of the said Act of 1949 which defines a sky sign. Rule 1 of Chapter XI of schedule D reads thus:

"1 Interpretation of sky-sign.

(1) For the purposes of section 244 the expression "sky-sign" means any word, letter, model, sign, device or representation in the nature of an advertisement, announcement or direction, supported on or attached to any post, pole, standard frame-work or other support, wholly or in part upon or over any land, building or structure which, or any part of which sky-sign, shall be visible against the sky from some point in any street and includes all and every part of any such post, pole, standard frame-work or support. It shall also include any balloon, parachute or other similar device employed wholly or in part for the purposes of any advertisement, announcement or direction upon or over any land, building or structure or upon or over any street.

(2) A sky-sign shall not include-

(a) any flagstaff, pole, vane or weathercock, unless adapted or used wholly or in part for the purpose of any advertisement, announcement or direction;

(b) any sign, or any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blocking course of any wall, or the ridge of a roof;

Provided that such board, frame or other contrivance be of one continuous face and not open work, and do not extend in higher more than three feet above any part of the wall, or parapet or ridge to, against, or on which it is fixed or supported;

(c) any word, letter, model, sign, device or representation as aforesaid, relating exclusively to the business of a railway administration, and placed wholly upon or over any railway, railway station, yard, platform or station approach belonging to a railway administration and so placed that it cannot fall into any street or public place;

(d) any notice of land or buildings to be sold, or let, placed upon such land or buildings."

5. As far as the power of the Municipal Corporations to regulate the sky signs is concerned, even section 245 is material. Sub-section 1 of section 245 provides that the Commissioner may require the owner or the person in occupation of any land or building, wall, hoarding or structure to take down or remove within such period as is specified in the notice, any advertisement upon such land, building, wall hoarding or structure. Sub-section (2) of section 245 gives power to the Commissioner to remove or take down the advertisement and provides that the expenses for taking down or removal thereof shall be paid by such owner or the person. The definition of the sky sign which we have quoted above, is very wide. The sky sign includes any word, letter, model, sign, device or representation in the nature of advertisement, announcement or directions attached to any post, pole, standard frame work or support wholly or in part upon or over land, building, structure which or any part of which sky sign shall be visible against the sky from any point in a street.

6. As far as the penal provisions are concerned, a reference will be necessary to section 392 of the said Act of 1949 which makes contravention of the various provisions of the said Act of 1949 an offence. As far as the violation of section 244 is concerned, the fine is prescribed by the part 1 of the table in Appendix-II. The fine as specified therein is Rs. 100/-. There is another provision in the form of section 402 which provides that if on account of any act or omission, any person has been convicted of an offence against the provisions of the said Act of 1949 and if any damage is caused to any property of the Corporation, notwithstanding the punishment which has been imposed on the defaulter, he shall be liable to pay compensation. If there is a dispute regarding the payment of compensation, the same shall be decided by the Magistrate.

7. The provisions of the Mumbai Municipal Corporation Act, 1888 are more or less similar. The provisions of the said Act of 1888 also deal with the sky signs. The concept of sky sign u/s 328 of the said Act of 1888 is no different from the concept of sky sign u/s 244 of the said Act of 1949. Again in case of violation or breach of the provisions of section 328, a very nominal fine is provided. Section 328-A of the said Act provides that no person without a written permission of the Corporation shall erect, exhibit or retain any advertisement on any building, wall etc.

8. Before we go to provisions of the Defacement Act, we must note here that the State Government has exercised the Rule making power conferred by sections 244 and 245 read with section 456A of the said Act of 1949 and has framed the Bombay Provincial Municipal Corporations (Control of Advertisement and Hoardings) Rules, 2003 (for short "the said Rules"). In Rule 2, the terms "advertisement", "hoardings" and "posters" have been defined. Even temporary arches have been defined. It will be material to make a reference to clauses 2, 14, 15, 19 and 20 of Rule 2 of the said Rules which read thus:

"(1)...

(2) "advertisement" means and includes any representation in any manner such as announcement or direction by words, letters, models, signs by means of any device or posters, hoarding boards, banners, temporary arches, illuminated signs, name boards, direction boards, small advertisement boards on existing poles, balloons, etc.; and the term "advertising" shall be construed accordingly;

(3)...

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(14) "hoarding" means any surface of structure erected on ground or any portion of a roof of a building at, on or above the parapet, with characters, letters or illustrations applied thereto and displayed in any manner whatsoever, for purpose of advertising;

(15) "poster" means a sheet of paper or any other material used to advertise in a public place;

(16)...

(17)...

(18)...

(19) "temporary arches" means temporary structures erected across the road for greeting of personalities or for display of an advertisement;

(20) "Permanent arches" means structures erected across the road for directional road signs and permanent arches constructed across the road for display of advertisements."

9. Rule 3 provides that subject to the provisions of section 79 of the said Act of 1949, a Corporation may permit hoardings on the municipal lands. Rule 4 provides that advertisements shall not be put up without any written permission from the Commissioner of a Municipal Corporation. The said Rules provide that when there is any installation of hoardings without prior written permission of the

Commissioner or in contravention of sub-rules (1) to (5) of Rule 4, the same shall be treated as unauthorised and shall be liable for demolition or removal, as the case may be. Rule 6 provides that any agency contravening the provisions of Rule 4, shall on conviction, be punished with fine of Rs. 500/-.

10. As far as the definition of advertisement under the said Rules is concerned, it is wider in some respects than the concept of sky sign. It covers any announcement or representation by words, letters, models, signs by means of any device or posters, hoarding boards, banners, temporary arches, illuminated signs, name boards, direction boards, small advertisement boards on poles, balloons etc,. Thus, the said Rules provide for a complete prohibition on putting up advertisements without prior written permission of the Municipal Commissioner. As defined in clause (2) of Rule 2, a representation or announcement made by way of posters, banners, hoarding boards, temporary arches is also an advertisement within the meaning of the said Rule. The poster is defined as a sheet of paper or any other material used to advertise in a public place. Sub-section (19) defines temporary arches to mean temporary structures erected across the road for greeting of personalities or for display of an advertisement. Such temporary arches are covered by the definition of advertisement. However, permanent arches as defined in clause (20) of Rule 2 are excluded from the definition of advertisement. A hoarding is defined to mean any surface erected on ground, on a roof of a building or on a parapet and displayed in any manner for advertising. A banner means a cloth or any other material which contains an advertisement.

11. At this stage, we must make a useful reference to the provisions of Defacement Act which is being hardly implemented in the State. The preamble of the Act records that it was necessary to have a special law to provide for the prevention of the defacement of any property or place open to public view. With this object, the enactment of the Defacement Act has been made. The Act defines the terms "advertisement", "defacement", "place open to public view" and "public place". Definitions are made in clauses (a) to (d) of section 2 which reads thus:

(a) "advertisement" means any printed, cyclostyled, typed or written notice, document, paper or any other thing containing any letter, word, picture, sign or visible representation;

(b) "defacement" includes impairing or interfering with the appearance or beauty, damaging disfiguring, spoiling or injuring in any way whatsoever and the word "deface" shall be construed accordingly;

(c) "place open to public view" includes any private place or building, monument statue, post, wall, fence, tree or contrivance visible to a person being in, or passing along, any public place;

(d) "public place" means any place (including a road, street or way whether a thoroughfare or not and a landing place) to which the public are granted access

or have a right to resort or over which they have a right to pass."

12. Defacement Act is essentially a penal statute and therefore, a penalty for defacement has been provided in section 3 which reads thus:

"3 Whoever by himself or through any other person defaces any place open to public view shall, on conviction, be punished with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both:

Provided that nothing in this section shall apply to any advertisement which,-

(i) is exhibited with the written permission of the local authority having jurisdiction over such area in this behalf;

(ii) is exhibited within the window of any building if the advertisement relates to the trade, profession or business carried on in that building; or

(iii) relates to the trade, profession or business carried on within the land or building upon or over which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein or to any sale, entertainment or meeting to be held on or upon or in the same; or

(iv) relates to the name of the land or building upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building; or

(v) relates to the business of a railway administration and is exhibited within any railway station or upon any wall or other property of a railway administration."

13. What is prohibited by the Defacement Act is an action of defacement of any place open to public view. We have already made a reference to the definition of "place open to public view". Going by the said definition in clause(c) of Rule 2, a place open to public view includes any private place or building, monument, statue, post, wall, fence, tree or contrivance visible to a person being in, or passing along any public place. Hence, a private building, wall etc. becomes place open to public view when it is visible from a road, street or way. Thus, any act of defacement of a private building, a private place or a wall visible to a person being in or passing along any public place is an offence u/s 3 of the Defacement Act. We must note here that public places do not necessarily mean only a road or a public street, but it includes any place to which public are granted access or have a right to resort or right to pass. At this stage, we must also note that the definition of defacement is very wide. It includes interference in any manner with the appearance of a place open to public view. The Defacement does not necessarily mean only a damage to the beauty of the place or disfiguring, spoiling of the place. Any interference with the appearance of the place or injuring in any way a place open to public view will attract the violation of the Defacement Act. The offence punishable u/s 3 is specifically made cognizable. Apart from the basic penal provisions, the Defacement Act confers a

power on the State Government to take such steps as may be necessary for freeing any place from any defacement, erasing any writing or removing fixation from any place open to public view. This power to remove defacement creates a corresponding obligation in the State Government to remove the defacement of the places in public view. We must note that section 7 gives overriding effect to the Defacement Act over any other laws for the time being in force.

14. As far as the Satara Municipal Council which is a respondent in the Public Interest Litigation No. 155 of 2011 is concerned, the relevant provision will be Section 196 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short "the said Act of 1965") Section 196 reads thus:

Section 196. Penalty for defacing buildings etc.

Any person-

(a) who, without the consent of the owner or occupier, and in the case of municipal property without the permission in writing of the Chief Officer, affixes any posting bill, placard or other paper or means of advertisement against or upon any building, wall, board, fence, pole, post, lamp-post, or the like; or

(b) who, without such consent or permission as aforesaid writes upon soils, defaces or marks any such buildings, wall, board, fence pole, post, lamp-post, or the like, with chalk or paint or in any other way whatsoever, shall on conviction, be punished with fine which may extend to five hundred rupees"

15. The said Section is applicable when an encroachment is made on the municipal property. The provision is attracted when in a municipal property, without the permission in writing of the Chief Officer, any person affixes any posting bill, placard or other paper or means of advertisement against or upon any building, wall, board, fence, pole, post, lamp-post, or the like; or defaces or soils such buildings, walls, board, poles etc. The penal provision is applicable in relation to a municipal property, whenever such acts are done without permission of the Chief Officer. If the mischief is done in the case of a private property without the consent of the owner or occupier, the penal provision of Section 196 is attracted.

16. To summarize, under the said Act of 1949, there is a complete prohibition on erecting or displaying sky signs and advertisements without permission of the Commissioner of the Municipal Corporation. As stated earlier, sky signs have been defined in Rule 1 of Chapter XI of the Rules forming part of Schedule D of said Act of 1949. There are similar provisions in relation to Mumbai Municipal Corporation under the said Act of 1888. In addition, in case of a Municipal Corporation constituted under the said Act of 1949, there are wider powers conferred under the said Rules which provide that no advertisement shall be put up without permission of the Commissioner of the Municipal Corporation. As we have noted earlier, the definition of "advertisement" under the said Rules is very

wide which includes any representation or announcement by means of any device, posters, hoardings/banners/temporary arches, name boards, etc. As noted earlier, there is a power vesting in Rule 5 in the Commissioner to remove or demolish unauthorized hoardings erected without his written permission. As far as the said Act of 1965 is concerned, in view of Section 196, if any bill, placard or any advertisement is affixed in municipal property or private property without the permission of the Chief Officer or the Owner of the property, as the case may be, the person who commits breaches can be prosecuted. It is obvious that the Chief Officer gets a corresponding power to remove something which is done in contravention of Section 196 of the said Act of 1965. Apart from the powers conferred on the Municipal Authorities to which we have made a reference, there are wide powers vesting in the State Government under the provisions of the Defacement Act. "Defacement" under the said Act includes impairing or interfering with the appearance or beauty, damaging, disfiguring, spoiling or injuring in any way whatsoever. Defacing any place open to public view is made an offence and there is a power vested by Section 5 in the State Government to remove any defacement. As there are vast powers vesting in the Municipal Authorities and the State Government as pointed out earlier, the concerned authorities are under an obligation to take action under the aforesaid enactments in case of illegalities. What is complained of in these petitions is about the complete inaction on the part of the authorities in taking action by exercising statutory powers.

17. We must also note that under clause (db) of Section 33 of the Bombay Police Act, 1951 the State Government can exercise a rule making power for the purposes of licensing, controlling or prohibiting the erection, exhibition, fixation or retention of any sign, device or representation for the purpose of advertisement, which is visible against the sky from some point in any street and is hoisted or held a loft over any land, building or structure at such heights as (regard being had to the traffic in the vicinity, and the likelihood of such sign, device or representation at that height being a distraction or causing obstruction to such traffic) may be specified in the rule or order. The State Government has not exercised the said rule making power which ought to have been exercised.

18. We have already noted that the submissions were made by the learned Counsel for the petitioners in Public Interest Litigation No. 155 of 2011 as well as the petitioner appearing in person in Original Side Public Interest Litigation No. 37 of 2010. We must note here that though the Municipal Corporation of City of Nagpur has been impleaded as a party respondent, considering a comprehensive order passed by the Bench of this Court at Nagpur in Criminal Writ Petition No. 749 of 2005 and Criminal Writ Petition No. 754 of 2005 dated 4th March, 2010 in relation to the same issue, no relief can be granted against the Municipal Corporation of Nagpur. Similarly, the case of Aurangabad Municipal Corporation will be governed by the Judgment and Order dated 10th June 2010. Hence, we are not issuing any direction against the said Municipal Corporation.

19. We must take a note of the submissions canvassed on behalf of the Municipal Corporation of Greater Mumbai in the Appellate Side as well as Original Side Petitions by the learned Senior Counsel Shri Sakhare. In a written note submitted, the learned Senior Counsel has pointed out the details of the action taken of removal of illegal banners, posters, hoardings, etc from January, 2010 to June, 2014. It is stated that action was taken against the 3,44,695 banners, posters, hoardings, etc. Out of those 3,44,695 items, 2,79,160 (about 79%) were the items displayed by the political parties or their workers. The said figures show that all the political parties without an exception are indulging in such large scale illegalities in the City of Mumbai. A judicial notice can be taken of the fact that in all major Cities in the State, the situation cannot be different. In the statement submitted by the Mumbai Municipal Corporation, it is stated that out of 3,44,695 cases, only 31,378 are commercial and 44,157 are religious in nature. In this context, the learned Senior Counsel for the Mumbai Municipal Corporation has submitted that it becomes very difficult to take action inasmuch as many of such boards or banners display photographs of high profile leaders such as the Prime Minister, Chief Ministers, Ministers and other prominent political leaders. In the said note handed over across the bar, it is pointed out that while taking action against the illegal boards or banners, the members of the Municipal Staff have to always face a strong opposition from the political parties and their workers. It is pointed out that normally police help is not available when action of removal is taken and, therefore, there are various instances of violence and not only that there is a damage caused to the vehicles of the Municipal Corporation but also the members of staff are the victims of violence. It is stated that such instances have adverse effect on the routine work of the staff and they have to work under extreme tension. He has also pointed out that most of the banners and boards are displayed during night time. There is a candid statement made that as some of the banners figure the prominent leaders of the political parties, it becomes very difficult to lodge the prosecution or to take action in accordance with law. Therefore, a submission was made that unless adequate police help is provided to the Municipal Staff, it will not be possible for the Municipal Staff to take effective action. As majority of cases of illegalities are by the political parties or its workers, we find merit in the submission made by the learned Senior Counsel representing the Mumbai Municipal Corporation. The Mumbai Municipal Corporation has come out with a scheme for effective implementation. Certain suggestions have been incorporated in the said note which records that the Senior Inspector of Licence of each ward will act as a nodal officer on behalf of the MCGM. Similarly, a police officer of the each police station and a senior officer of traffic police of respective zones can be designated as Nodal Officers to coordinate with the Municipal Authorities and take action. The note submitted by the Municipal Corporation records that unless minimum two police constables accompany the encroachment removal van of Corporation for removal of illegal banners, posters, boards, etc., it will be impossible for the Municipal Corporation to take any action, considering the fact that high profile political leaders are involved. As

stated earlier, we find considerable merit in the submissions made on behalf of the Mumbai Municipal Corporation.

20. We must note here that in the Public Interest Litigation No. 155 of 2011 there is an undertaking on oath submitted by Shri Mukund Kulkarni, the Additional Office Secretary and authorized representative of the Bhartiya Janta Party, Maharashtra. The Clauses 2 and 3 of the said affidavit read thus:

1)...

2) Respondent No. 27 undertakes to issue a circular to all its units through out State of Maharashtra instructing them that:-

(a) No hoarding, banners, posters, digital flexes and arches shall be displayed without the permission of the Competent Authority;

(b) that they shall strictly follow the provisions of law in the matter of display of hoardings, banners, posters, digital flexes, arches;

(c) that they shall not allow and/or encourage raising of any illegal hoardings, banners, posters, digital flexes and arches in public place for any occasions whatsoever without the permission of the Competent Authority;

(d) they shall display the permissions granted by the Competent Authority on the banners and hoardings;

3) Respondent No. 27 further undertakes to co-operate with the authorities for removal of the illegal hoarding, banners, posters and arches (if any) being displayed by Respondent No. 27 and shall not create any objections for removal of the same."

21. In terms of the said undertaking, the said political party will have to issue a circular to all its units within the State of Maharashtra. There is an undertaking given not only to issue a circular in terms of clause (2) but also to co-operate with the authorities for removal of illegal hoardings, banners, posters and arches displayed by the said political party. There is an undertaking that no obstruction will be created in removal of the same. We accept the Undertaking.

22. Similarly, Shri Shivaji Garje, General Secretary (Maharashtra) of the Nationalist Congress Party, has filed an undertaking on oath which is affirmed on 31st July, 2014. Clause (3) of the said undertaking read thus:

"3. I the deponent above named do hereby on behalf of the respondent No. 25 above named undertaking to this Hon"ble Court as follows:

A. The Respondent No. 25 shall not allow/encourage raising of any illegal hoardings or banners in public place for any occasion, whatsoever;

B. Further, all the units of the party in the State of Maharashtra and Goa shall be informed of the said undertaking through internal circular;

C. It is also hereby undertaking that the all the party members and workers of the respondent No. 25 shall co-operate and assist the concerned authorities and police authorities while removing such illegal hoardings, posters, digital flexes, banners etc. and shall not cause any obstruction whilst removing the same. Further, no member of the party shall put posters, banners, arches, hoardings, etc. without the permission of requisite authority."

23. Accordingly, said political party will have to issue a circular in terms of the undertaking. The undertaking contains a statement that no member of the party shall put posters, banners, arches, hoardings without permission of the requisite authority. We accept the Undertaking. We must note here that at one stage, the Counsel appearing for the Republican Party (Athawale Group) had made a statement to give a similar undertaking. However, subsequently, none has appeared for the said party. The Advocate for the petitioners in the Public Interest Litigation No. 155 of 2011 has issued notices to other political parties on more than one occasion. However, none of them have responded.

24. Considering the controversy, even the Election Commission of India will have to consider whether any action can be initiated against the political parties who are indulging in such illegalities.

25. The figures given by the Mumbai Municipal Corporation suggest that illegal banners, posters, flexes, hoardings are displayed in thousands. The elected representative of the people have a role to play. They are under an obligation to prevent such illegalities. We must note here that two political leaders have also filed undertakings. The respondent No. 7 Ms. Priya Dutt and the respondent No. 9 Krishna Hegde in the Public Interest Litigation No. 37 of 2010 have tendered undertakings to this Court showing willingness to give directions to all party members and office-bearers to display, banners, hoardings etc only as per rules and after obtaining necessary permission. An assurance has been given by them to abide orders of the Court. We accept the said Undertakings.

26. Considering a large number of illegalities pointed out in this petition, appropriate interim directions will have to be issued to the Municipal Authorities as well as to the State Authorities. However, we must note here that there is a need to have awareness programmes in all the cities. Most of the illegalities are committed on the public properties. Article 51 of the Constitution of India enjoins every citizen to safeguard the public properties. If the citizens including political workers and leaders follow the mandate of Article 51A of the Constitution of India by safeguarding the public properties from such illegalities, the occasion for the Court issuing directions will not arise. We propose to issue notices to the political parties who are parties to the petition who have not caused appearance calling upon them to state whether they are willing to file an undertakings in terms of the undertakings filed by Shri Mukund Kulkarni and Shri Shivaji Garje.

27. We have perused the affidavits filed by various Municipal Corporations and the Satara Municipal Council setting out the steps taken to stop illegalities. We

are happy to note here that the Satara Municipal Council has set up a machinery by forming nodal committees. The directions issued by this Court under this order will not affect the machinery already set up by the said Council. But the other directions will have to be implemented by the said Council and the State.

28. Considering the above discussion, we issue the following interim directions:

a) In case of Satara Municipal Council, the Municipal Corporation of Greater Mumbai and other Municipal Corporations in the State, the implementation of the provisions of the Municipal Laws shall be made at ward levels. In case of the Mumbai Municipal Corporation, the Senior Inspector of Licence of every Ward shall be responsible for the implementation of provisions of section 328 and 328A of the said Act of 1888 along with corresponding penal provisions. In case of other Municipal Corporations, the Ward Officers in-charge of every Ward or any other officer who is In-charge of the Ward shall be responsible for implementation of the provisions of Section 244 and 245 of the said Act of 1949 read with Rule 1 of the Chapter XI of the Rules in Schedule D as well as the provisions of said Rules. In case of the Satara Municipal Council, the Officers already nominated/the committees already formed in charge of every Ward shall be responsible for implementation of the provisions of section 196 of the said Act of 1965. The Officers or the Committees, as the case may be, shall be responsible for expeditious removal of illegal hoardings, banners, flexes, temporary arches, posters etc. The Municipal Commissioners shall appoint a Deputy Commissioner to supervise the work of the Municipal Officers;

b) Whenever an action is proposed to be taken by the Officers as stated above, the Senior Inspector of Police or the Officer In-charge of the concerned local police station shall extend adequate police protection and police help to the Municipal staff and Municipal officials while taking action of removal of the illegal hoardings, banners etc. Minimum two armed constables shall accompany the municipal officials and the staff at the time of removal of illegal hoardings, banners, flexes, temporary arches, posters etc;

c) On the Municipal Officers conveying even an oral information about the commission of an offence punishable under the Defacement Act, the Officer in-charge of the concerned Police Station or the Senior Inspector of Police of the concerned police station shall be under an obligation to register an offence and to expeditiously take further steps in accordance with law in as much as the offence punishable under the Defacement Act is a cognizable offence. The Municipal Officers specified in clause 1 above shall be duty bound to furnish information about the commission of an offence punishable under the Defacement Act to the Officer in-charge of the Police Station or the Senior Inspector of Police of the concerned police station;

d) In case of those Municipal areas where there is a Commissioner of Police, he shall nominate one or more Senior Officers not below the rank of Deputy Commissioner of Police to act as Nodal Officers to oversee the performance of

duties of the Senior Inspectors of Police or Officers In-charge of the concerned Local Police Stations. In the large cities like Mumbai and Pune, more than one such Officers shall be appointed. In case of those Municipal Areas where there is no office of the Commissioner of the Police, the District Superintendent of the Police shall appoint a Nodal Officer not below the rank of the Deputy Superintendent of Police. In the event the Municipal Officers find that the concerned officers of the local Police Stations are not responding to their requisitions, they will be entitled to make a written complaint to the Nodal Police Officers who shall take immediate remedial measures;

e) While we are dictating this order, the learned AGP appearing in the Original Side Public Interest Litigation No. 37 of 2010 has tendered across the bar communication dated 6th August, 2014 which records that a Deputy Commissioner of Police shall be appointed as a Nodal Officer in the Commissionerate area and in other areas, it will be a Deputy Superintendent of Police;

f) The Nodal Police Officers so appointed shall take immediate action on the complaints received from the Municipal Officers regarding non co-operation by officers attached to the concerned Local Police Station;

g) The Commissioner of police or the Superintendent of Police, as the case may be, shall issue directions to the concerned Police staff entrusted with the job of night patrolling including the beat marshals to keep a constant vigil for preventing the activity of erection/display of illegal hoardings, banners, flexes, temporary arches, posters etc during night time. Instructions shall be given to the said police officials to immediately register offences under the Defacement Act;

h) In case of breaches of the provisions of the said Act of 1988, the said Act of 1949 and the said Rules as well as the said Act of 1965, the Municipal Officials, as stated above, shall be under an obligation to take action against the illegality notwithstanding the fact that the illegalities are also covered by the Defacement Act. It will be their obligation to give information about the commission of an offence under the Defacement Act to the Officer In-charge of the concerned Police Station, who shall act on the information as directed above;

i) In the event, the Municipal officials come across the cases of breaches not attracting any of the municipal laws but which are covered by the Defacement Act, the Municipal Officers shall forthwith report to the District Collector or the Nodal Revenue Officers nominated by the District Collector about the breaches of the provisions of the Defacement Act. On such information being received by the Collector or the Nodal Officer appointed by the Collector, an action of removal of defacement shall be taken by the said Officers. The District Collector shall nominate Revenue Officers for each Municipal Corporation area and Satara Municipal area as Nodal Officers who shall not be below the rank of an Assistant Collector who shall be entrusted with the power to take action of removal of

defacement in accordance with the Defacement Act;

j) The action of appointing Nodal Officers of the Police, Municipal Corporations as well as the Revenue Department shall be taken within a period of one month from today. Adequate publicity shall be given to such appointments in the media as well as on web sites;

k) We direct the Satara Municipal Council and other Municipal Corporations who are parties to the petition as well as District Collectors to create a facility of at least two toll free telephone numbers on which complaints can be received from the Citizens regarding putting up of illegal hoardings, banners, flexes, temporary arches, etc. We are informed that the Municipal Corporation of Greater Mumbai has already provided one toll free Number. The toll free numbers shall be made available within a period of one month from today and the Municipal Corporations and the Municipal Council as well as the District Collectors shall give wide publicity to the toll free numbers in the leading newspapers as well as in the Electronic Media. Notifications to that effect shall also be published on the website of the Municipal Authorities, if same are available;

l) Even anonymous complaints shall be entertained on the toll free numbers and action shall be taken on the basis of such complaints. If the Citizens find that no action is being taken on the basis of the complaints made on toll free numbers, it will be open for them to make a complaint in writing to the Nodal Officers of the Municipal Authorities as well as the Nodal Revenue Officers of the State Government who shall take action on the basis of such complaints;

m) We make it clear that even the petitioners in Public Interest Litigations will be free to submit complaints to the Municipal/Nodal Officers by pointing out specific instances of illegalities. The Municipal Corporation and the Municipal Councils who are parties to the petition shall consider of constituting committees of Citizens at Ward levels. The Committees shall be constituted so that the members of the Committees can keep a vigil and point out illegalities to the Municipal officers as well as the officials of the State. The Citizens' Committees shall be also entrusted with the job of starting awareness programmes;

n) The Municipal Corporation of Greater Mumbai has a policy for grant of permissions to display hoardings, banners, flexes etc. All other Municipal Corporations shall formulate exhaustive policies within a period of four months from today;

o) While granting permissions, The Municipal Corporations/Satara Municipal Council shall incorporate a condition of prominently displaying the permission number and its duration on the hoardings, banners, flexes, temporary arches etc;

p) Before taking action of removal of illegal hoardings, banners, etc., the concerned Municipal Officials shall take digital photographs thereof which shall be preserved on record and copies thereof shall be made available to the police authorities. If necessary, the Municipal Officers shall draw a panchanama;

- q) If illegal hoardings, banners, flexes, temporary arches are displayed on special occasions such as the birthdays of the leaders or religious festivals, the same shall be promptly removed by the Municipal Officers before the birthday or the date of festival;
- r) We direct the Registry to issue notice of rule and rule on interim relief to all concerned respondents who are not represented before this Court. The notice issued to the political parties and/or political leaders shall call upon them to state whether the said political parties/leaders are willing to file undertakings in terms of the undertaking filed by Shri Mukund Kulkarni and Shri Shivaji Garje. The notices are made returnable on 30th September, 2014;
- s) Compliance affidavit shall be filed by the Municipal Officers as well as the Police and Revenue Officers of the State Government on or before 26th September, 2014;
- t) The Municipal Commissioners and/or Deputy Municipal Commissioners/Chief Officer, the Revenue Nodal Officers and the Nodal Officers of police shall file affidavits in this Court after every four months setting out particulars of the action taken. First such affidavits shall be filed on or before 30th September 2014;
- u) The Original side Contempt Petition No. 82 of 2010 shall be listed on the next date along with Original Side Public Interest Litigation No. 37 of 2009;
- v) The PILs shall be listed under the caption of hearing as to interim relief;
- w) Intervention Applications, if any, shall be heard along with the main petition;
- x) All parties to act upon an authenticated copy of this order;
- y) The Registry is directed to send a copy of this order to the Election Commission of India who shall file its response on or before 26th September, 2014. The Election Commission of India to State whether any action can be taken against the political parties indulging in such illegalities;
- z) These directions will not apply to the Municipal Corporations of Nagpur and Aurangabad which will be governed by the directions already issued by the respective Benches.