REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14016 OF 2015

SAYYED RATANBHAI SAYEED (D) TH. LRS. & ORS.

....

APPELLANTS

VERSUS

SHIRDI NAGAR PANCHAYAT & ANR. ...RESPONDENTS

WITH

CIVIL APPEAL NO. 3154 OF 2011

SAYYED RATANBHAI SAYEED (D) TH. LRS. & ANOTHER

...APPELLANTS

VERSUS

THE TAHASILDAR, RAHATA AND OTHERS ...RESPONDENTS

WITH

CIVIL APPEAL NOS. 3155-3157 OF 2011

GANGADHAR KASHINATH TURKANE & ORS. ETC. ..APPELLANTS

VERSUS

THE STATE OF MAHARASHTRA & ORS. ETC. ..RESPONDENTS

WITH

CIVIL APPEAL NO. 3158 OF 2011

KRUSHNARAO (D) THR. L.R. ….APPELLANT

VERSUS

THE TAHASILDAR, RAHATA AND ORS. …RESPONDENTS

WITH

CIVIL APPEAL NO. 14017 OF 2015

PRADEEP AND ANOTHER ….APPELLANTS

VERSUS

SHIRDI NAGAR PANCHAYAT & ANR. …RESPONDENTS

J U D G M E N T

AMITAVA ROY,J.

The appellants, ostensibly small scale shopkeepers located in the vicinity of the internationally revered seat of Shirdi Sai Baba at Shirdi Taluq, Rohata, District Ahmadnagar,

Maharashtra, face ouster from their sites, being entrapped in the dictates of events since after their suit had been decreed on compromise in the year 1979, securing their right of rehabilitation in the same locality.

2. The contextual facts encompass the issues in all the appeals and permit analogous adjudication.

3. The five appeals impeach the consecutive adjudications in sequential phases affirming the displacement of the appellants by acknowledging the mandate of the relevant Town Planning and Municipal Laws and the overriding public interest as perceived, their decree being construed to have been rendered inexecutable by the intervening developments. Their possession, however remains protected by the interim order of status-quo granted by the High Court and continued in the instant proceedings subject to the liberty granted to the respondent- Shirdi Nagar Panchayat (for short, hereinafter to be referred to as "Nagar Panchayat/Municipal Council") to take any action in accordance with law, in connection with the widening of the concerned road or removal of encroachments,

in terms of the order dated 13.12.2010 passed in SLP (C) Nos. 27988 of 2010, 29683-29685 of 2010 and 28235 of 2010.

4. We have heard Mr. Siddharth Luthra, learned senior counsel for the appellants, Mr. Shekhar Naphade, learned senior counsel for the Nagar Panchayat/Municipal Council and the learned counsel for the State.

5. The genesis of the eventful factual background is traceable to a one time small village named Shirdi with minuscule population. It rose to fame and eminence in view of the shrine of Sage Sai Baba, viewed as a mortal incarnation of the divine and with time became a pilgrimage centre of worldwide following. Having regard to the increasing number of devotees thronging for offering oblations, small shops grew around the temple, catering to the essentials of the worshippers for their offerings and also their refreshments and conveniences.

6. The plot involved contained in Survey No. 1, Hissa No. 1A 1/1A/2B2 of Shirdi Takula Kopargaon, District Ahmednagar and situated near the Sanctum Sanctorum adjacent to Nagar

Manmad Road, prior to 30.8.1974, vested in the then Shirdi Gram Panchayat, which had leased out small parcels of land therefrom to the appellants on rent for carrying on their trades. The land was taken over by the State through the Circle Officer, Rahata on 30.8.1974 and as a consequence, though the appellants were ready and willing to pay the rent, the same was not collected from November, 1974. According to them, though by operation of law, they continued to be the tenants under the State Government and were entitled to retain their possession as before, it transpired with time, as visualised by them, that joint efforts were on, of the official respondents and the respondent- Shri Sai Baba Sansthan, Shirdi (for short, hereinafter to be referred to as "Sansthan") to forcibly evict them from their plot measuring 30 gunthas.

7. Situated thus and being faced with imminent loss of their only means of livelihood, the appellants instituted Regular Civil Suit No. 600 of 1976, in a representative capacity, on behalf of 45 shopkeepers similarly situated, in the court of Civil Judge (Sr. Division), Ahmednagar seeking a declaration

that they were lawful tenants of the parcels in their occupation and also for permanent injunction restraining the defendants therein from taking over possession of the same, otherwise than in due course of law. The State of Maharashtra (Revenue Department), Tehsildar, Kopargaon, District Ahmednagar and Shri Saibaba Sansthan Shirdi, Shirdi, Tal Kopargaon were impleaded as defendants. The averments made in the suit would demonstrate that the appellants then had been possessing premises of sizes ranging from 10' x 7 ½' and 12' x 12'.

8. The suit eventually got decreed on compromise on 20.8.1979. As the contents of the order recording the compromise would attest, out of 101 shops mentioned in schedule 'A' of the suit, which had been taken over by the State Government from the Panchayat and handed over to the Sansthan, 45 shops in occupation of the appellants were marked in Schedule 'B', which in terms of the compromise were to remain thereon. Qua the remaining 56 shops, the Government was to provide accommodation in the land in

Survey No. 170. Under the compromise, it was agreed that the Sansthan would construct shops measuring 16' x 11" (hotel) and 7' x 11' (flower, Prasad, photo etc.) in terms of the site plan that was accepted by the parties.

The Sansthan was to start the construction of the building on the land in occupation of the appellants and to complete the same within one year from taking possession thereof. It was agreed in categorical terms that during the period of construction, the 45 shops of the appellants would have to be temporarily accommodated in the triangular plot located towards the west of the proposed building as shown in the map/plan. The Sansthan was obliged in terms of the compromise deed, to accommodate the 45 shopkeepers in the said triangular plot before starting the construction of the proposed building. The appellants were also under an obligation to move to the said plot without any objection so as to enable the Sansthan to initiate the construction for the proposed building. As further agreed, 31 shopkeepers of the remaining 56 shops were to be accommodated in the existing equal number of shops constructed by the Sansthan in the

land of Survey No. 170 on the western side of the Nagar Kopargaon Road and that the allotment was to be made on the basis of lottery. The remaining 25 shopkeepers, after such allotment, were also to be provided space in the land of the same survey number by resorting to lottery. Under the compromise, after the completion of the construction of the shops, the allotments were to be made by lottery system to the 45 shopkeepers i.e. the appellants. The triangular space in which the appellants were to be temporarily rehabilitated was clearly identified by the parties. The rate of rent to be paid by them and the other stipulations pertaining to the continuing lease were also enumerated in the compromise. Resultantly, a decree was passed by the trial court in the same terms on 20.8.1979. The said decree has since remain unchallenged and is thus final and binding on the parties.

9. Years that rolled by thereafter witnessed a passive and inert disposition of both the parties, visibly reconciled to the existing and continuing state of affairs. Undisputedly, the Sansthan did neither arrange for the accommodation of the

appellants in the triangular plot as agreed upon nor did take any initiative for the construction of the shopping complex at the site occupied by them. It was as late as on 19.2.1990, that the Sansthan did file an execution petition before the trial court alleging that the appellants/decree-holders had not handed over the suit site to it to enable the constructional activities. The appellants too, in response, filed an execution petition being R.D. No. 5 of 1990, accusing the respondents of their negligent and irresponsible inaction and failure to comply with the decree.

10. While the matter rested at that, a "Development Plan" of Shirdi was sanctioned by Notification No. D.P. Shirdi/TPV-IV/7334 dated 15.12.1992 of the Director of Town Planning, Maharashtra State, Pune (hereinafter referred to as the development plan) and enforced it on and from 25.2.1993. Thereby an area of 30 gunthas identified as site No. 13 in Survey No. 1 (as involved in the instant proceedings) was shown to be reserved for garden. As the records testify, by Notification No. TPS-1695/996/CR-83/97/UD-9 dated

27.3.2003 of the Urban Development Department, Government of Maharashtra, this 30 gunthas of land in site No. 13 was bifurcated into two equal parts, northern half measuring 15 gunthas, shown reserved for "Garden" as site No. 13A and the remaining southern half of 15 gunthas shown as reserved for "Shopping Centre" as site No. 13B. The notification mentioned that the modification was in terms of the proposal submitted by the Nagar Panchayat which had since been upgraded as Municipal Council by the State Gazette Notification dated 16.6.1999. The Notification also clarified that the Nagar Panchayat in laying such proposal, had complied with the formalities to this effect as stipulated by the Maharashtra Regional and Town Planning Act, 1966 (for short, hereinafter to be referred to as "Act 1966") and was approved by the Director of Town Planning, Maharashtra State, Pune. In terms of this reorientation, the appellants were in occupation of plot No. 13A, as referred to in the above Notification.

11. In the meantime, at the instance of the Nagar Panchayat, the shops constructed by it on the government land, Survey No. 170 were demolished. Consequently, the arrangement of adjusting 31 shopkeepers out of 56 batch did not fructify. The others were also not allotted any open plot by drawing lots as was contemplated in the compromise decree. As the flow of events would testify, the Executing Court on 19.12.2003 directed maintenance of status-quo of the subject matter of the execution proceedings in view of the ongoing demolition drive resorted to by the State and the apprehension expressed by the appellants to suffer the same fate. Eventually, the Executing Court by order dated 21.5.2004 rendered in RD No. 5 of 1990, held that the compromise decree was binding and executable, the facts in the interregnum notwithstanding and that the defendants/judgment debtors were bound to provide temporary accommodation to the appellants till completion of the construction work in the suit land and consequently restrained them i.e. the defendants/judgment debtors from removing or demolishing the shops of the appellants till their

temporary adjustment in the triangular plot in terms of the decree.

12. This view was taken notwithstanding the plea on behalf of the defendants/judgment debtors, that in the face of the development plan and also the proposed widening of the adjacent Palkhi Road within the limits of the Nagar Panchayat, for which a process was afoot for acquisition of land and the overall developmental activities in the area to meet the heavy rush of devotees, their convenience and safety, the decree had become inexecutable with time.

13. Being aggrieved, the State of Maharashtra filed Writ Petition (C) No. 5839 of 2004 in which the Tehsildar, Rahata in his affidavit-in-rejoinder did aver that the land at site No. 13 was vested in the State Government and that the Nagar Panchayat had no authority to develop the same without its approval and permission. Be that as it may, by order dated 31.7.2007, the High Court remanded the matter for fresh consideration by the Executing Court, by setting-aside the order dated 21.5.2004 granting injunction to the appellants.

The Executing Court following the remand, vide order dated 9.3.2009, returned a finding that the decree had become inexecutable in the face of the irreversible intervening events. After an exhaustive evaluation of the evidence, both oral and documentary, as adduced before it, it held that in view of the Shirdi town development plan, as well as the precepts of the Bombay Highways Act, 1955 (for short, hereinafter to be referred to as "Highways Act") prescribing, inter alia, the margin of clearance of the control line as well as the relevant provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, hereinafter to be referred to as "Act 1965") as well as Act 1966, along with the initiatives taken in terms thereof, the decree had become inexecutable. It underlined as well that with the phenomenal rise in the number of devotees to the temple and the consequential mounting challenges to the administration like congestion, traffic jams etc. and the accompanying aspects of safety and security of the visiting worshippers in particular and the public in general, it was not feasible to construct a shopping complex as earlier comprehended. On

the other hand, it was essential in public interest to implement the development plan which included, amongst others, widening of the adjacent Palkhi Road by removing encroachments thereon as reported. It noticed as well that the triangular plot as well as the site earmarked for the shopping complex did come within the prohibited zone of the control line prescribed by the Highways Act for which no construction thereon was permissible as envisaged by the compromise decree.

14. Being highly aggrieved by this determination, the appellants in batches, filed writ proceedings before the High Court which after an elaborate analysis of the run up of facts concluded that in the singular attendant facts, the decree had become inexecutable on account of the failure of both the parties to perform their mutual obligations. The High Court, however vide order dated 5.7.2010 in categorical terms held that the appellants were neither encroachers nor intruders on the land in occupation. It also noticed that meanwhile the Sansthan had deposited approximately Rs. 3 crores for

acquisition of land by the State Government, to shift the shopkeepers from the proximity of the temple to facilitate the implementation of the development work and at the same time rehabilitate them to the extent possible. The High Court with a view to strike a balance between the two competing interests and also to ensure that the shopkeepers are suitably compensated directed, as a rough and ready measure to grant compensation to the shopkeepers @ Rs. 3 lakhs each to those having bigger shops like Hotel, sweet-meat shops etc.) and Rs. 2 lakhs each to those of smaller shops i.e. Flower Vendors, Essence Vendors etc. The State as well as the Sansthan were directed to bear the amount of compensation in equal shares to be deposited within a period of six months. In computing the rate of compensation, the High Court also took note of the sizes of the two categories of shops, 16' x 16' (big) and 7' x 11' (small).

15. Though an appeal was preferred against this verdict, it was eventually withdrawn, whereafter C.A. No. 3154 of 2011 had been instituted before this Court. It is worthwhile to

record that this Court by order dated 1.10.2010 directed maintenance of status-quo. Subsequent thereto, by order dated 18.10.2010, the Sansthan as well as the State Government were required to explore the possibility of identifying a suitable alternative plot even away from the existing plot, for the purpose of construction of shops for the appellants without prejudice to their contentions. While noticing that meanwhile, the Sansthan had deposited a sum of Rs. 2.19 crores in terms of the order of the High Court dated 5.7.2010, it extended the interim protection earlier granted. By order dated 13.12.2010 however, this Court responding to the submissions made on behalf of the Shirdi Municipal Council to the effect that it was not a party to the compromise decree and that the interim order was acting as an impediment for its initiatives to widen the road and to remove the encroachments in accordance with law, clarified that the order of status quo had been granted vis-à-vis the Sansthan and the State Government and that if the Municipal Council decided to take any action in accordance with law for the purpose of widening of road or removal of encroachments,

the same (interim order) would not come in the way of such action being taken in accordance with law. Later, by order dated 28.2.2011, the order of status-quo was allowed to continue subject to the clarification as above.

16. Following this clarification, as aforestated, the Nagar Panchayat issued a public notice being Outward No. NP/Const/KV-11/75/2011 dated 11.4.2001 under Sections 42, 45, 52 and 53 of Act 1966 and under Sections 179,180,187 and 189 of Act 1965 being one directed to the 45 shopkeepers in Schedule 'B' in R.D. No. 5 of 1990 i.e. the appellants, intimating them that their sheds on the land referred to therein were illegal constructions used for business purposes. Referring also to the orders dated 13.12.2010 and 28.2.2011 passed by this Court as above, permitting the Nagar Panchayat to pursue its initiatives for removal of encroachments and widening of road in accordance with law, it was elaborated further that the shops of the appellants, in terms of the reports submitted by the Deputy Director, Town Planning Department, Nasik, pursuant to the order of the High

Court in W.P. (C) No. 583 of 2004, were coming within 9 meters of the Palkhi Road. It was mentioned as well, that the constructions of the appellants were intruding on the fifteen meters wide road towards the temple and for this, the development scheme of the road could not be implemented. It was highlighted that in view of such impediments, the devotees and the public at large were being seriously inconvenienced, while taking the Nagar Manmad Road towards the temple. While stating as well, that the plot No. 13A, in terms of the development scheme, was reserved for garden and that the construction of the appellants have adversely impacted upon the said scheme, it was underlined as well that encroachments by them, were also within 37 meters from the centre of the State Highway No. 10, Nagar Manmad Road, in violation of the construction line and control line. The notice specified that commercial use of land within the said zone was prohibited. The appellants were called upon thereby, to remove the illegal and unauthorized constructions in violation of the provisions of Act 1965 and Act 1966 within 30 days of

the receipt of the notice failing which it was conveyed, that the same would be demolished by the Nagar Panchayat.

17. The appellants against this notice filed a suit being RCS No. 139 of 2011 in the court of Civil Judge (Sr. Division), Kopergaon, seeking annulment thereof and perpetual injunction against the Nagar Panchayat and the State as defendants. The prayer for temporary injunction though refused by the trial court, the appeal before the District Judge-II was allowed and by order dated 11.5.2011, the Nagar Panchayat was restrained, by an ad-interim injunction from interfering with the appellants' possession of the suit property.

18. The Nagar Panchayat in its turn approached the High Court with a writ petition in which by order dated 9.6.2011, the order of ad-interim injunction was maintained but the trial court was directed to decide the application for injunction on its own merits within a period of one month. The trial court by order dated 17.10.2011 rejected the application for temporary injunction holding that the appellants had failed to establish a prima facie case or balance of convenience in their

favour though irreparable loss was not unlikely. The appeal filed by the appellants against this determination failed on 25.9.2012. The First Appellate Court in dismissing the same took note, inter alia, of the pendency of the C.A. No. 3154 of 2011 on the related issues and observed that to decide the same, evidence would be necessary and required the trial court, to address the same accordingly.

19. Being aggrieved, the appellants turned to the High Court again with W.P. (C) No. 8032 of 2012, impeaching the orders of the courts below declining interim injunction and also seeking a restraint on the Nagar Panchayat and the State by interdicting them from demolishing their shops and from interfering with their peaceful possession of the suit property.

20. The High Court, by the decision impugned in Civil Appeal No. 14016 of 2015, on a survey of the entire conspectus of facts, did reiterate that the appellants were not encroachers on their land in their occupation and that their entry thereupon was legal. While recording that they had been occupying the same with their small shops/kiosks since 1970, it was,

however noted that the decree with time had become inexecutable. It also recorded that meanwhile, the development plan of the Shirdi Town had been notified on 15.12.1992 and that the suit site No. 13A had been reserved for 'garden' and 13B for 'shopping complex'. It was noticed as well that, the appellants' shops were located on site No. 13A. While tracing the litigational route and the findings recorded in the earlier proceedings, based on contemporaneous records and noticing the fact that the area comes within the control line and that in terms of the development plan, no construction can be allowed on the site reserved for 'Garden', the High Court declined to protect the appellants' structures. It held that the Nagar Panchayat/Municipal Council, was a planning authority entrusted with the statutory duty to implement the development plan and recalled that in the earlier proceedings, directions had been issued to the State Government and the Sansthan to pay compensation for their eventual ouster. That this Court by order dated 13.12.2010 had granted liberty to the Municipal Council to proceed with

its project of widening the road and clear the encroachments in accordance with law was referred to as well.

21. Section 56 of the Act 1966 was adverted to also to record that the same empowered the planning authority to direct discontinuance of a particular use of land or any building or order removal thereof, having regard to the development plan, if construed to be expedient in the interest of proper planning. That the steps contemplated to widen the Ahmad Nagar Manmad Highway No. 10 and also the roads leading to the temple were in public interest was emphasized. It was thus concluded that the impugned notice had been issued for removal of the structures of the appellants to espouse a public cause. While dismissing the petition, the Nagar Panchayat/Municipal Council was restrained from evicting the appellants for a period of three months.

22. In the above chequered and contentious backdrop, Mr. Luthra has assertively argued that the compromise decree dated 20.8.1979 being final and binding on the parties, the appellants have a vested right to continue at their sites and

thus the contemplated action of evicting them therefrom on the purported plea of intervening events, is palpably illegal and unauthorized besides being unreasonable, unfair and unjust. As on the date of the decree, as well as when the execution thereof was applied for in the year 1990, neither the development plan nor the control line under the Highways Act was in existence, the defence of inexecutability thereof is fallacious and the finding to the contrary recorded in the earlier proceedings is patently unsustainable in law and on facts, he urged. Learned senior counsel argued that the notification contemplating the control line and the development plan being dated 9.3.2001 and 27.3.2003 respectively, these subsequent prescriptions, though statutorily endorsed cannot be invoked with retrospective effect, thereby rendering the compromise decree passed more than two decades prior thereto and the rights conferred thereby, non est. This is more so as the respondents/defendants in the suit had undertaken in terms of the accepted site plan, to rehabilitate the appellants in the proposed shopping complex in recognition of their rights as

lawful tenants of the plots in their occupation, he maintained. Mr. Luthra insisted, that as concurrently held in the earlier proceedings, the appellants are neither encroachers nor intruders nor unauthorized occupants of the suit property, a finding unopposed and unchallenged as on date, and thus the initiative to oust them, under the garb of the development plan, the statutes invoked and the public interest, is not only in violation of their fundamental rights under Articles 14,19 and 21 of the Constitution of India, but also lacks in bona fide. As the situation as it obtains at the present, is the making of the indifferent and careless inaction on the part of the State Government and the Sansthan in particular, the appellants not being responsible for the delay in the execution of the decree, their proposed ouster, if permitted to be actualized, would not only result in irreparable loss and injury to them, but also tantamount to allowing the respondents/judgment debtors to reap the benefits of their own wrong, he urged. Mr. Luthra maintained that the impugned notice dated 11.4.2011 is incompetent and incomplete not being under the Highways Act as well as

Section 56 of the Act 1966 and is thus liable to be quashed on this count alone. Apart from contending that the Municipal council being not the owner of the land involved, lacks in authority to issue the impugned notice, collusion between the State Government, Municipal Council and the Sansthan has also been pleaded, rendering the repugned action illegal and non est bona fide.

23. In response, while the learned counsel for the State endorsed the initiatives of the respondents to be in furtherance of public interest, Mr. Naphade, learned senior counsel for the Nagar Panchayat/Municipal Council urged that the Nagar Panchayat not being a party to the suit, is not bound by the compromise decree. He maintained that the relief sought for by the appellants, being in the form of preventive injunction, it is in essence discretionary in nature and ought not to be granted after the same having been declined consistently by the courts in the earlier proceedings after a thorough and analytical evaluation of the facts and law involved. As the appellants have failed to demonstrate, any

prima face case against the Nagar Panchayat, and the relief of injunction against it is also incomprehensible on the touchstone of the balance of convenience and irreparable loss, no interference by this Court in the exercise of its jurisdiction under Article 136 of the Constitution of India is warranted. The learned senior counsel has emphatically argued, that in absence of any evidence of the claimed tenancy of the appellants and their constructions on the suit land with the permission either of the State Government or the Municipal Council in existence at the relevant point of time, there is no semblance of any right in them to retain the possession thereof. According to Mr. Naphade, the appellants at best can be construed to be licensees sans any vested right and by no means can resist the steps taken by the Nagar Panchayat/Municipal Council, as a planning authority under the relevant legislations in discharge of its statutory functions. The learned senior counsel has asserted that in any view of the matter, the appellants' perceived right to occupy the land has to make way for the overwhelming public interest manifested by the impelling necessity of implementing the

development plan, by removing the encroachments and unauthorized structures to ensure the safety, security and convenience of the devotees in particular and the citizenry in general. As the encroachments and the unauthorized structures have proved to be potential impediments in the free access of the visiting worshippers to the temple apart from being growingly hazardous, those are urgently required to be removed, he maintained. In buttressal of his assertions, the learned senior counsel has referred to the relevant provisions of Act 1965, Act 1966 and the Highways Act. He urged that the statutory provisions having been enacted to secure the underlying objectives of the respective statutes, these have to be accorded an overriding effect, lest the same are rendered redundant. With reference to the additional documents filed on behalf of the respondents, learned senior counsel also sought to impress upon us, that the appellants are really not petty shopkeepers but are instead sufficiently well off and own RCC buildings assessed to tax by the Nagar Panchayat.

24. The learned senior counsel has further urged that the shops of the appellants encroach upon the Palkhi Road as well as the adjoining road of widths 9 meters and 15 meters respectively, leading to the temple which are hindering the implementation of the development plan. Further, their constructions also come within the prohibited area of 37 meters of the control line from the Ahmad Nagar Manmad Highway No. 10 under the Highways Act, he urged. According to Mr. Naphade, except those of the appellants, all other illegal constructions on the Palkhi Road and in conflict with the development plan as well as the provisions of the statutes involved, have since been removed by the Nagar Panchayat/Municipal Council. He submitted that the development plan issued in the year 1992 with later modifications have since been finalized and notified and that the Nagar Panchayat/Municipal Council as the planning authority is duty bound to implement the same.

25. The decisions of this Court in ***M/s. Laxmi & Co. vs. Dr. Anant R. Deshpande & Another*** (1973)1SCC 37, ***Dhurandhar Prasad Singh vs. Jai Prakash University and***

Others (2001)6SCC 534 and ***Arun Lal and Others vs. Union of India and Others*** (2010)14SCC 384 have been cited to reinforce the above.

26. Mr. Luthra, in his rejoinder, while reiterating his assailment to the decisions impugned, has laid before us the documents indicating the alternative sites suggested by the appellants for their rehabilitation, in case their continuance at the present site is disapproved by this Court.

27. We have noted the debated contours of the issues involved. The discord that germinated with the suit by the appellants apprehending their ouster from the plots in their occupation, over the years has culminated in the notice dated 11.4.2001 under the Act 1965 and Act 1966 issued by the Chief Officer, Shirdi Nagar Panchayat, Shirdi requiring them to remove their perceived illegal constructions raised and sustained in violation of the relevant provisions of these legislations and also repugnant to the control line delineated by the Resolution No. RBD-1081/871 dated 9.3.2001 published under the Highways Act. To recall, in terms of the

compromise decree, the appellants-45 shopkeepers in occupation of the land in Schedule B as mentioned therein , were permitted to continue thereat and the Sansthan was to accommodate them in the adjacent triangular plot, to obtain vacant possession of the Schedule B land for raising a shopping complex. The Sansthan thereafter was obliged to rehabilitate the appellants in the new shopping complex. Admittedly the proposed shopping complex was not constructed. The appellants also continued to occupy their plots in the aforementioned Schedule B land. The Nagar Panchayat/Municipal Council had not been impleaded in the suit as defendant, and thus was not a patty to the compromise decree. That the land in question vests in the State Government, is a matter of record.

28. Be that as it may, it was only in the year 1990 that for the first time, the Sansthan filed an execution petition before the trial court alleging that the appellants had not vacated their plots. As a sequel, the appellants also filed an executing petition No. RD 5 of 1990 imputing disobedience of the precepts of the compromise decree by the Sansthan.

Noticeably for over a decade, the appellants had preferred a situation of status quo and did not take any initiative prior thereto for the execution of the decree, for obvious reasons. After a spate of litigations, the High Court vide its ruling dated 5.7.2010, in reiteration of the determination of the executing court made on 9.3.2009, did affirm that with the intervening developments, the decree had become inexecutable. In the attendant facts and circumstances, it however computed compensation @ Rs. 3 lakhs and Rs. 2 lakhs each for the big and small shopkeepers respectively as assessed by it and directed the Sansthan and the State Government to bear the liability in equal shares. That in terms thereof, the Sansthan has meanwhile deposited an amount of Rs. 2.19 crores is also on record.

29. In the interregnum, the development plan of Shirdi had been sanctioned by the Director, Town Planning, Maharashtra on 15.12.1992 to come into effect from 25.2.1993. As per the said development plan, the area measuring 30 gunthas included in Survey No. 1, in occupation amongst others of the appellants was reserved for garden. On the directives of the

State Government, however and on the compliance of the legal formalities under the Act 1966 as claimed, a modification thereto was effected and this plot was bifurcated into two equal halves of 15 gunthas each, the northern part (13A) being reserved for 'garden' and southern part(13B) for shopping centre. The appellants are in occupation of the plot 13A in terms of the modified development plan. This was as far back as on 27.3.2003. Presumably, the shopping complex contemplated under the compromise decree in which the appellants were eventually to be accommodated did not come up in view of this development plan. However, explanation for the inaction of the respondents/defendants for over two decades is not forthcoming.

30. As is discernable from the pleaded stand of the respondents/defendants and endorsed by the Nagar Panchayat/Municipal Council, the shops of the appellants have not only encroached upon the Palkhi Road (9 meters width) but also the adjoining road (15 meters width) adjacent to their plots and used as service road to the temple. Further their constructions also come within the prohibited distance of

37 meters from the centre of the Ahmad Nagar Manmad Road, State Highway No. 10 i.e. the control line fixed under the Highways Act. Such encroachments, according to the respondents, being in derogation of the provisions of Act 1965, Act 1966 and the Highways Act as well as in conflict with the development plan are required to be removed not only to promote the development of the area but also to secure the convenience and safety of the surging volume of devotees in particular and the local population in general.

31. To reiterate, the appellants have not disputed the sequence of events after the compromise decree for which it has been concurrently held in the preceding proceedings that the decree has become inexecutable. Not only these facts are borne out from the contemporaneous documents, there is no persuasive reason either to delve into the same afresh. The unassailable fact is that after the compromise decree on 20.8.1979, a development plan for Shirdi had been formulated and finalized, in terms whereof amongst others, the Palkhi Road and its adjoining road leading to the temple are contemplated to be cleared of encroachments. Further, the

appellants' structures are said to be within the prohibited distance of 37 meters from the Manmad State Highway No. 10 marking the control line. Noticeably the compromise decree did not declare the appellants' title in the land. It is admittedly vested in the State Government. The decree only protected their occupation of the site in possession till they were rehabilitated in the proposed shopping complex to come up in future. The decree, in the framework of the suit in which it was passed, also cannot be construed to be one, endorsing compliance of the statutory requirements of the legislations involved and in force at that point of time. Resultantly, the failure of the Sansthan to construct the shopping complex as undertaken under the compromise decree, ipso facto would not insulate the appellants from the mandate of the relevant statutes in force to test the legality or otherwise of the structures existing allegedly in violation thereof. In absence of any proof, adduced by the appellants to demonstrate that their structures existing do adhere to the prescriptions of the statutes invoked, their mere possession of the site since 1970 would not be available to them as an

impenetrable shield against the infringements as alleged. These violations, if any, however would have to be addressed, by following the due process of law.

32. In all, having regard to the progression of events after the compromise decree, the contraventions alleged and the initiatives proposed in preponderate public interest, we do not feel persuaded to hold at this distant point of time, that the compromise decree is still executable. In our comprehension, the intervening developments have occurred in the free flow of events and in absence of any semblance of evidence of any collusion between the State Government, the Sansthan and the Nagar Panchayat/Municipal Council, we are not inclined to sustain the said accusation.

33. Whereas in ***Arun Lal*** (supra) and ***Dhurandhar Parsad Singh*** (supra), the decrees involved had been held to have been rendered inexecutable in the contextual facts, which need not be dilated, in ***M/s. Laxmi and Co.*** (supra), it was enunciated as a matter of general proposition, that a Court can take notice of subsequent events because of altered

circumstances to shorten the litigation. It was held that if the court finds, in view of such intervening developments, the relief had become inappropriate or a decision cannot be given effect to, it ought to take notice of the same to shorten litigation, to preserve the right of both the parties and to subserve the ends of justice.

34. Inexecutability, of the decree of a court, in the face of intervening and supervening developments, is thus a consequence comprehended in law, however contingent on the facts of each case. We, thus, feel disinclined to interfere with the judgment and order dated 5.7.2010 of the High Court and impugned in CA. No. 3154 of 2011, so far as it pertains to the aspect of inexecutability of the compromise decree dated 20.8.1979. Any contrary view, would have the consequence of effacing the stream of developments for over three decades; more particularly when a formidable element of public interest is involved.

35. To reiterate, the denunciation of the notice dated 11.4.2001 is principally founded on lack of competence of the

Nagar Panchayat/Municipal Council, it being not the owner of the land involved. Further as contended by the appellants, it has no authority as well to invoke the provisions of the Highways Act. It is therefore imperative to briefly notice the relevant provisions of the statutes applied.

36. The Act 1965, as its preamble would disclose, is to unify, consolidate and amend the law relating to Municipal Councils and to provide for constitution of Nagar Panchayat and Industrial Townships in the State of Maharashtra. Prior to the amendment thereto in the year 1994, the statute with the same objectives was relatable to municipalities in the State of Maharashtra. The expressions "council", "local authority", "Municipal Area", "Nagar Panchayat", "Public Street", "a smaller urban area" as defined in Sections 2(6), 2(20), 2(24), 2(25A), 2(42) and 2(47A) respectively are extracted hereinbelow:

> 2(6) "**Council**" means a municipal council constituted or deemed to have been constituted for a smaller urban area specified in a notification issued in this respect, under clause (2) of Article 243-Q of the Constitution of India

or under sub-section (2) of Section 3 of this Act;

2(20) "**local authority**" means a Council or a Municipal Corporation constituted under the Bombay Municipal Corporation Act (now the Mumbai Municipal Corporation Act), or the Bombay Provincial Municipal Corporations Act, 1949 or the City of Nagpur Corporation Act, 1948, or Zilla Parishad constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, or a village panchayat constituted under the Bombay Village Panchayats Act, 1958.

2(24) "**municipal area**" means the territorial area of a Council or a Nagar Panchayat;

2(25A) "**Nagar Panchayat**" means a Nagar Panchayat constituted for a transitional area notified under Section 341A of this Act;

2(42) "**public street**" means any street,–

(a) over which the public have a right of way ;

(b) heretofore levelled, paved, metalled channelled, sewered, or repaired out of municipal or other public funds; or

(c) which under the provisions of this Act becomes, or is declared, a public street;

2(47A) "**a smaller urban area**" or "a transitional area" shall mean an area specified as "a smaller urban area" or "a transitional area", as the case may be, by a notification issued under clause (2) of Article 243-Q of the Constitution of India or under this Act;

37. The "Council", as per the definition enumerated hereinabove, would mean a municipal council constituted or deemed to have been constituted for a smaller urban area specified in the notification to that effect, as contemplated under clause (2) of Article 243-Q of the Constitution of India or under Section 3(2) of Act 1965. Whereas "Nagar Panchayat" is an institution constituted for a transitional area as notified under Section 341A of the Act, "municipal area" defines the territorial area of a Council or a Nagar Panchayat. In terms of Section 1(3), the provisions of the Act would come into force on such date as the State Government would by notification in the official gazette appoint. The parties are not at issue that the Act 1965 applies to the area involved.

38. The Council is one of the municipal authorities as contemplated under Section 7 of the Act 1965 charged with the responsibility of carrying out the provisions there of for each municipal area. Section 8 recognizes it to be a body corporate with perpetual succession and a common seal, possessing the power to acquire, hold and dispose of property, and to enter into contracts and may by the said name sue, or

be sued through its Chief Officer. The duties and functions of the Council as catalogued in Section 49 of the Act in addition to the municipal governance of a municipal area with its limits also make it incumbent for it to undertake and to make reasonable provisions, amongst others for removing obstructions and projections in public streets or places and in spaces, not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the Council or in Government. The plea that the Council is not the owner of the land thus is of no relevance or significance.

39. Chapter XI of this Act deals with the powers of the council pertaining to public streets and open spaces. Whereas Sections 179 and 180 authorize the Municipal Council through its Chief Officer, amongst others to remove any projection, obstruction or encroachment, built or set up, without its written permission, Section 187 empowers its Chief Officer or any other municipal officer authorized by him, to seize any article hawked or sold or exposed for sale, in absence of a license granted by the bye-laws of the Council. The contingencies in which the Chief Officer of the Council

may by a written notice, inter alia, require a person to demolish any construction made, is set out in Section 189 of the Act under 'Chapter XII Control over Buildings'.

40. Chapter XXVI-A deals with the Nagar Panchayats whereunder, as per Section 341A, the State Government, having regard to the factors mentioned in clause (2) of Article 243Q of the Constitution of India, may by notification in the official gazette, specify an area in transition from a rural to an urban area, to be a transitional area and constitute a Nagar Panchayat therefor. In terms of Section 341D, the State Government may, at any time, in accordance with the provisions of the Act, by notification in the official gazette, constitute a transitional area or a part thereof to be a smaller urban area. Section 349 makes it obligatory on every successor Council to continue to carry out any duty or to manage, maintain or look after any institution, establishment, undertaking, measure, work or service which the existing Council had been responsible for carrying out, managing, maintaining or looking after immediately before the appointed

day, until the State Government by order relieves the successor Council of such duty or function.

41. The expressions “development”, “development plan”, “local authority” and “planning authority” appearing in Act 1966 being of definitive significance are extracted hereunder for immediate reference:

> 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 or erection or part of such building, structure or erection; and] [reclamation,] redevelopment and lay-out and sub-division of any land; and "to develop" shall be construed accordingly];
>
> 2(9) "**Development Plan**" means a plan for the development or re-development of the area within the jurisdiction of a planning Authority [[and includes revision of a development plan and] proposals of a Special Planning Authority for development of land within its jurisdiction];
>
> 2(15) "**local authority**" means-
>
> (a) the Bombay Municipal Corporation constituted under the Bombay Municipal Corporation Act, or the Nagpur Municipal

Corporation constituted under the City of Nagpur Municipal Corporation Act, 1948 or any Municipal Corporation constituted under the Bombay Municipal Corporation Act, 1949,

(b) a Council and a Nagar Panchayat constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act 1965,

(c) (i) a Zilla Parishad constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961,

(ii) the Authority constituted under the Maharashtra Housing and Area Development Act, 1976,

(iii) the Nagpur Improvement Trust constituted under the Nagpur Improvement Trust Act, 1936,

which is permitted by the State Government for any area under its jurisdiction to exercise the powers of a Planning Authority under this Act;

2(19) "Planning Authority" means a local authority; and includes,-

(a) a Special Planning Authority constituted or appointed or deemed to have been appointed under Section 40;

(b) in respect of slum rehabilitation area declared under Section 3C of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the Slum Rehabilitation Authority appointed under Section 3A of the said Act;

42. The cumulative reading of the statutory definitions as above would leave no manner of doubt that the "Council" or "Nagar Panchayat" constituted under the Act 1965 would be a planning authority under Act 1966. Section 42 mandates that consequent upon the operation of any development plan or plans under Chapter III of the Act, it would be the duty of every planning authority to take such steps as would be necessary to carry out the provisions thereof. The statutory fiat is, thus unambiguous vis-à-vis the planning authority. Under Chapter IV dwelling on "Control of development and use of land included in development plans", whereas Section 52 prescribes penalty for unauthorized development or for use otherwise than in conformity with the development plan, Section 53 empowers the planning authority to cause a notice to be served on the owner of the unauthorized development carried out in violation of Section 52(1), to take steps as may be mentioned therein either to restore the land to its condition existing before the said development or to secure compliance with the conditions or with the permission earlier granted or as modified, as the case may be. The power to require removal

of unauthorized development or use, is vested in the planning authority to be invoked, after causing a notice to be served on the owner, requiring him to either to discontinue the use or cause alteration or removal of any building/work as the case may be or to impose such condition(s) in the event of continuance of such use. Such a move is contemplated if it appears to the planning authority, that it is expedient to do so, in the interest of proper planning of its areas, having regard to the development plan prepared and any person aggrieved by such notice may prefer an appeal to the State Government in the manner prescribed.

43. In view of the statutory enjoinments and the legislative intent, discernable from the above provisions, the omission to mention Section 56 of Act 1966 in the notice dated 11.4.2001, in the face of unequivocal empowerment of the Council, as the planning authority under the Act 1966, in our estimate does not render it illegal, unauthorized or non est. In our view, the Municipal Council was well within its competence and authority as the planning authority under the Act 1966, to issue the notice dated 11.4.2001, being of the opinion that the

steps advised therein, were essential for the implementation of the development plan, already prepared and finalized, for the progress and advancement of the area.

44. The definitions of the words "encroachment" and "highway" as framed in Sections 2(f) and 2(i) of the Highways Act deserve extraction as well.

> 2(f) "**encroachment** " means any unauthorised occupation of any highway or part thereof, and includes an unauthorised-
>
> (i) erection of a building or any other structure, balconies, porches, projections on or over or overhanging the highway;
>
> (ii) occupation of a highway beyond the prescribed period, if any, for stacking building materials or goods of any other description, for exhibiting articles for sale, for erecting poles, owning, tents, pandals, hoardings and other similar erections or for parking vehicles or stabling animals or for any other purpose; and
>
> (iii) excavations or dumps of any sort made or extended on any highway or underneath such highway;
>
> 2(i) "**highway**" means any [road, way or land] which is declared to be a highway under Section 3. The expression includes-
>
> (i) any land acquired or demarcated with a view to construct a highway along it;

(ii) the slopes, berms, borrow-pits, foot-paths, pavements and side, catch and boundary drains attached to such road or way;

(iii) all bridges, culverts, causeways, carriageways and other structures built on or across such road or way; and

(iv) The trees, fences, posts, boundary, furlong and mile stones, and other highway accessories and materials and material stacked on the road or way;

45. Section 3 of the Highways Act, empowers the State Government to declare any road and way of land, to be a highway and classify it as a State highway (Special) etc. as enumerated therein. Section 7 authorizes the State Government to fix by notification in the official gazette in respect of such highway, the highway boundary, the building line or control line. Section 9 imposes a restriction on or after the appointed day on the buildings between the highway boundary and building line, and between building and control line, notwithstanding anything contained in any law, custom, agreement or instrument for the time being in force. In terms of this Section, no person shall construct, form or lay any

means of access to, or from, a highway or erect any building or materially alter any existing building or make or extend any excavation on any land lying between the highway boundary and the building line and the control line, without the previous permission in writing of the Highway Authority. Thereby, such a person, without the permission in writing of the Highway Authority, is also prohibited from using any building or alter the use of any building in a manner, which in the opinion of the said Authority, would in any way infringe any of the provisions of the Act or interfere with the use of a highway adjoining the land on which such building is erected.

46. Noticeably, Section 73 accords an overriding effect of the provisions of the Highway Act over the provisions of any other law made by the State Legislature insofar as such law is inconsistent with the provisions thereof or the rules made thereunder.

47. From the additional documents laid before this Court on behalf of the Nagar Panchayat/Municipal Council, it would transpire that by Notification No. BHA.3765/116348 dated

19.4.1967 of the Buildings and Communications Department, Sachivalaye, Bombay, the Malegaon-Manmad-Ahmednagar-Dhond-Patas Road, as specified therein, was declared as a state highway and that the said notification was published in the official gazette. By a resolution of the State Government dated 9.3.2001, the building line and the control line amongst others of the State Highway and Main State highway were fixed as hereunder:

Sr. No	Status of road	Building line		Control line (places like factory, cinema hall, commercial godown, market etc. where crowd takes place	
		Civil and Industrial Section	Non-Civil Section	Civil and Industrial Section	Non-Civil Section
3	State Highway & Main State Highway	20 Meters from the centre of road	40 metres from the centre of the road	37 metres from the centre of road	50 metres from the centre of road

48. As would be evident from hereinabove, the building line was marked at 20 meters from the centre of the State Highway & Main State Highway and the control line, 37 meters therefrom.

49. The declaration of Ahmad Nagar Manmad Highway No. 10 and the fixing of the building line and the control line under the Highways Act are also matters of record and supported by above documents.

50. To reiterate, the three legislations involved were in existence when the compromise decree was passed. As determined hereinabove, the compromise decree was not based on any adjudication, declaring the title of the appellants in the land which admittedly belonged to the State Government. Though they were not adjudged to be encroachers or trespassers thereupon, no finding was recorded with regard to the legality or otherwise of their structures vis-à-vis the regulatory edicts of these statutes. There was no occasion to examine or decide these issues. Irrefutably, events irreversible in form and impact have occurred in between.

51. The maps/plans referred to in the course of arguments, do prima facie reveal that the site in occupation of the appellants do come within the control line fixed under the

Highways Act. In the singular facts and circumstances, the insistent stand of the respondents, having regard to the increasing confluence of devotees from all over the world and the resultant congestion and inconvenience suffered, as well as the multiplying challenge to the administration to maintain law and order in the locality, the plea of implementation of the development plan cannot be brushed aside as frivolous or unwarranted. On a careful balance of the competing interests, in the prevailing conspectus, we are constrained to hold that the impugned notice does not call for interference. In our view, the challenges laid to impeach the same do not merit acceptance, in the teeth of the relevant provisions of the legislations involved. Further, the initiative is predominantly to espouse a public cause and thus ought not to be scuttled by judicial intervention.

52. Significantly as claimed by the Nagar Panchayat/Municipal Council, meanwhile it has undertaken the exercise of widening the roads concerned and has cleared the area of the encroachments and that except the structures of the appellants, the operation is otherwise complete.

53. As the recorded facts demonstrate, the growingly felt exigency of clearing the area of the structures and encroachments in conflict with the statutes involved is in the preponderant public interest and it would thus be apparently inexpedient to trivialize the aspects of safety, security and convenience of the burgeoning devotees and the local population as persistently highlighted by the Respondents. Any contrary view, in disregard to this otherwise salutary cause, would signify a retrograde step in the context of greater public import.

54. As noted hereinabove, the appellants have been consistently held not to be encroachers or trespassers on the land in their occupation, they having been let in thereto by the erstwhile Gram Panchayat, the then owner thereof. The land has since changed hands and is vested in the State Government. In our view, both the appellants and the respondents/defendants have to share the blame of leaving the compromise decree unexecuted for over a decade whereafter fresh rounds of confrontations surfaced leading to the present

situation. Be that as it may, though there has been no determinance of the appellants' right, title and interest in the land, except that they are admittedly in continuous possession since the year 1970 and carrying on their business there, understandably, over the years, they have settled themselves in their plots and are earning their livelihood from the income of the business dealings. Though the build up of facts, since the compromise decree cannot be discarded, the contemplated measures of the respondents, to clear the area of the encroachments in public interest and for its overall development, would result in the displacement of the appellants as a compelling necessity. As a corollary, they have to be essentially rehabilitated or adequately compensated bearing in mind, the impact of the passage of time on the relevant perspectives since the date of the compromise decree.

55. The emerging situation is one where private interest is pitted against public interest. The notion of public interest synonymises collective welfare of the people and public institutions and is generally informed with the dictates of public trust doctrine – *res communious* i.e. by everyone in

common. Perceptionally health, law and order, peace, security and a clean environment are some of the areas of public and collective good where private rights being in conflict therewith has to take a back seat. In the words of Cicero "the good of the people in the chief law".

56. The latin maxim "S*alus Populi Est Suprema Lex*" connotes that health, safety and welfare of the public is the supreme in law. Herbert Broom, in his celebrated publication, "A Selection of Legal Maxims" has elaborated the essence thereof as hereunder:

> "This phrase is based on the implied agreement of every member of the society that his own individual welfare shall, in cases of necessity, yield to that of the community; and that his property, liberty and life shall, under certain circumstances, be placed in jeopardy or even sacrificed for the public good."

The demand of public interest, in the facts of the instant case, thus deserve precedence.

57. A Constitution Bench of this Court in ***K.T. Plantation Private Limited and Another vs. State of Karnataka*** (2011) 9 SCC 1 in the context, amongst others, of the right to

compensation under Article 300A of the Constitution of India did observe hereunder in paragraph 134:

> **"134.** Hugo Grotius is credited with the invention of the term "*eminent domain*" (*jus* or *dominium eminens*) which implies that public rights always overlap with private rights to property, and in the case of public utility, public rights take precedence. Grotius sets two conditions on the exercise of the power of eminent domain: the first requisite is public advantage and then compensation from the public funds be made, if possible, to the one who has lost his right. Application of the above principle varies from countries to countries. German, American and Australian Constitutions bar uncompensated takings. Canada's Constitution, however, does not contain the equivalent of the taking clause, and eminent domain is solely a matter of statute law. The same is the situation in the United Kingdom which does not have a written constitution as also now in India after the Forty-fourth Constitution Amendment."

It was propounded that deprivation of property within the meaning of Article 300A, generally speaking, must take place for public purpose or public interest. The concept of eminent domain, which applies when a person is deprived of his property postulates, that the purpose must be primarily public and not private interest, being merely incidentally beneficial to the public. That the concept of public purpose had been given

a fairly expansive meaning and that it ought to be a condition precedent for invoking Article 300A, was emphasized. It was held that for deprivation of a person of his property under Article 300A, requirement of public purpose is a precondition, but no compensation or nil compensation or its illusiveness has to be justified by the State on judicially justiciable standards. That property rights at times are compared to right to life which determine access to the basic means of sustenance and considered as imperative to the meaningful exercise of other rights guaranteed under Article 21 was noted. It was concluded that public purpose is an inviolable, prerequisite for deprivation of a person of his property under Article 300A and that the right to claim compensation is inbuilt in that article and when a person is deprived of his property, the State has to justify both the grounds which may depend on the scheme and object of the statute, legislative policy and other related factors.

58. Judicial solicitude, in the context of the constitutional guarantee of equality and right to life, in the wake of removal

of unauthorized encroachments from a public place and the consequential forcible eviction of the occupants, presidingly pervades the sentient and profound fabric of ***Olga Tellis & Others vs. Bombay Municipal Corporation and Others*** (1985)3 SCC 545. Though upholding the contemplated action under the statute involved for the removal of the petitioners the pavements and basti slum dwellers of the Bombay city, this Court defined the right to livelihood to be an integral part of the right to life. It was acknowledged that the petitioners therein on their eviction would be deprived of their livelihood, albeit, their existence by way of encroachments on footpaths and pavements, was strongly discountenanced. It was empahsised that footpaths and pavements are public properties, intended to serve the convenience of general public and are not laid for private use which, if permitted, would frustrate the very object of carving out the same. That the main reason for laying down footpaths and pavements was to enable the pedestrians go about their daily affairs with a reasonable measure of safety and security was emphasized. Holding that such a facility which had matured into a right of

the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements, the plea that the claim of the pavement dwellers to put up construction on such pavements ought to be preferred, was assertively negated. All these notwithstanding, it was ruled that the forcible eviction of such squatters therein, even if they are resettled in other sites, would totally disrupt the economic life of their households. In the textual facts, however, having noted the proposed re-habilitation schemes/programmes of the State Government, appropriate directions were issued.

59. Apropos the scenario, where the petitioners therein had been denied compensation for their land, taken over by the respondents and that too without initiating any process for acquiring the same in accordance with law, this Court in ***Tukaram Kana Joshi and Others vs. Maharashtra Industrial Development Corporation and Others*** (2013)1 SCC 353, proclaimed in the context of Article 300A of the Constitution of India, that right to property was not only a constitutional or statutory right but also a human right to be

construed in the realm of individual rights, such as right to health, livelihood, shelter, employment etc. It was reminisced that in a welfare state, statutory authorities are bound not only to pay adequate compensation but are also under a legal obligation to rehabilitate the persons displaced. The spectre of the uprooted persons becoming vagabonds with anti-national propensities in case of non-fulfillment of such obligations by the State, was portended with concern. The observation in ***K. Krishna Reddy vs. Special Deputy Collector*** (1988) 4 SCC 163 qua the relevance and significance of monetory compensation, was quoted with approval:

> **"***12.* … After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one-half of it. It is a common experience that the purchasing power of rupee is dwindling**.** With rising inflation, the delayed payment may lose all charms and utility of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated.

> In all such cases, it is of utmost importance that the award should be made without delay. The enhanced compensation must be determined without loss of time."

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

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

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

62. In this precipitable eventuality, a realistic balance of the attendant exigencies is the clarion call of justice. As adverted to hereinabove, even on the date of the conclusion of the arguments, this Court had desired to be informed by the State about the availability of alternative sites of land to accommodate the appellants. Inspite of assurances given, by its learned counsel, no information has been provided. In this premise, having regard to the ensuing consequences qua the appellants, we consider it appropriate to direct, to start with, the State and its functionaries to undertake an exercise to identify a suitable site to accommodate the appellants. We make it clear that even if such a site is not available in the immediate proximity of the land presently in their occupation, a

sincere endeavour would be made to locate a plot as near as possible thereto. The District Administration in coordination with the Sansthan and other authorities, as deemed necessary in law, would undertake the process. The appellants would also cooperate in the pursuit and would not delay the completion thereof.

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

64. It is a matter of record and as has been noted by the High Court, the appellants occupy two categories of plots i.e. 16' x 11' and 7' x 11', where trade/business is being carried on. Though monetary compensation, ipso facto, on a consideration of all attendant factors may not be an exact substitute of the benefits presently enjoyed with the future prospects, we are of the view that, having regard to the permissible ponderables and also the passage of time in between, a lump sum of Rs. 20 lakhs and Rs. 15 lakhs each respectively for the bigger and

smaller shops/stalls, as noted hereinabove would be a reasonable palliative to the appellants. We order accordingly. It is reiterated that the compensation, as indicated hereinabove, would be payable to the appellants only if an alternative site is not feasible. The entire process on both counts, however should be completed within a period of six weeks herefrom. The State Government and the Sansthan would bear the amount of compensation, payable in equal shares and would deposit the same in the Bombay High Court within the period of six weeks aforementioned. The amount already deposited by the Sansthan in terms of the High Court's order, if not withdrawn, shall be adjusted against this amount. The allotment of the new site/deposit, as directed, would be a condition precedent for further action in terms of the impugned notice. It is also ordered that on the deposit being made with the High Court, the Registrar General of the High Court would make suitable arrangements for disbursement thereof to the appellants as due to them, as expeditiously as possible, however on proper identification.

65. The appeals are dismissed, however subject to the above terms. No costs.

.....J.
(V. GOPALA GOWDA)

.....J.
(AMITAVA ROY)

NEW DELHI;
FEBRUARY 22, 2016.