

मिरा भाईंदर महानगरपालिका

अतिक्रमण व अनधिकृत बांधकाम नियंत्रण विभाग
जा.क्र.मनपा/अवि/369/2096-99
दि.99/99/2096

संगणक विभाग
आवक क्र: 599.
दिनांक: 99/99/2096.

आदेश

विषय :- अनधिकृत धार्मिक स्थळांवर करावयाच्या कार्यवाहीबाबत.

संदर्भ :- 9) विधी अधिकारी यांचेकडील जा.क्र.मनपा/विधी/469/2096-99

दि.02/99/2096 रोजीचे पत्र.

2) महाराष्ट्र शासन, नगरविकास विभाग शासन परिपत्रक

क्र.याचिका-2098/प्र.क्र.299(भाग-8)/नवि-20 दि.05 नोव्हेंबर 2096.

अनधिकृत धार्मिक स्थळांबाबत मा.उच्च न्यायालय मुंबई येथे दाखल जनहीत याचिका क्र.908/2090 मध्ये मा.उच्च न्यायालयाने दि.09/90/2096 रोजी आदेश पारित केले आहेत. सदर आदेशाबाबत विधी अधिकारी यांनी संदर्भ क्र. 9 अन्वये कळविले आहे. तसेच महाराष्ट्र शासन नगरविकास विभागाने दि.05/99/2096 रोजी परिपत्रक काढले आहे. (संदर्भ क्र.9 सह मा.उच्च न्यायालयाचे आदेशाची प्रत व शासन परिपत्रकाची प्रत सोबत जोडली आहे.)

मा.उच्च न्यायालयाच्या आदेशाचे काटेकोरपणे पालन करणे आवश्यक आहे. तरी सर्व संबंधीत अधिकारी यांनी मा.उच्च न्यायालयाचे आदेश व शासन परिपत्रकाचे अवलोकन करून खालील प्रमाणे कार्यवाही करावी.

- दि.29.09.2009 पुर्वीची नियमित करावयाची/स्थलांतरीत करावयाच्या अनधिकृत धार्मिक स्थळांबाबत दि.39.92.2096 पर्यंत कोणत्याही परिस्थितीत कार्यवाही पूर्ण करणे.
- दि.29.09.2009 नंतरची निष्कासित करावयाच्या अनधिकृत धार्मिक स्थळांबाबत दि.39.92.2096 पर्यंत कोणत्याही परिस्थितीत कार्यवाही पूर्ण करणे.
- महाराष्ट्र प्रादेशिक व नगररचना अधिनियम, 1966 मधील तरतुदीनुसार दि.29.09.2009 नंतर उभ्या राहिलेल्या अनधिकृत धार्मिक स्थळांबाबत तात्काळ आवश्यक कार्यवाही करावी. सार्वजनिक ठिकाणी नविन धार्मिक स्थळ आवश्यक त्या परवानग्या मिळाल्याशिवाय उभारलेल्या स्थळांबाबत प्राप्त झालेल्या तक्रारींचे निराकरण करण्यासाठी "तक्रार निवारण यंत्रणा" उभारणे आवश्यक आहे. त्याकरीता खालील प्रमाणे कार्यवाही करावी.

अ.क्र.	करावयाची कार्यवाही	संबंधित अधिकारी	शेरा
9	अनधिकृत धार्मिक स्थळांबाबत तक्रार करण्यासाठी टोल फ्री क्रमांक, ऑनलाईन तक्रारीसाठी महानगरपालिकेचे ॲप्लीकेशनबाबत जाहीर प्रसिद्धी देणे.	जनसंपर्क अधिकारी, जनसंपर्क विभाग	वृत्तपत्रात तसेच महानगरपालिकेच्या वेब साईटवर व प्रेस नोट च्या माध्यमातून व्यापक प्रसिद्धी द्यावी. (नागरीकांना या संदर्भात निनावी देखील तक्रार करता येईल असे नमुद करावे.)
2	अनधिकृत धार्मिक स्थळांबाबत नागरीकांना प्रभाग कार्यालयाकडे तक्रार करण्यासाठी जाहीर आवाहन प्रभाग कार्यालयाच्या नोटीस बोर्डवर प्रसिद्ध करणे.	प्रभाग अधिकारी (सर्व)	

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३	अनधिकृत धार्मिक स्थळाबाबत प्राप्त होणाऱ्या (टोल फ्रि क्रमांक, ऑनलाईन, टपालाद्वारे) तक्रारींची स्वतंत्र नोंदवही ठेवावी. प्राप्त तक्रारींवर तातडीने कार्यवाही करून तक्रारीचे निराकरण करणे.	प्रभाग अधिकारी (सर्व)	याबाबत सप्ताहिक अहवाल दर सोमवारी मा.आयुक्त कार्यालय, अतिक्रमण नियंत्रण विभाग, जनसंपर्क विभाग व विधी विभागाकडे सादर करावा.
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४. यापुर्वी निष्कासित केल्या व निष्कासित करण्यात येणाऱ्या अनधिकृत धार्मिक स्थळाच्या ठिकाणी पुन्हा अनधिकृत धार्मिक स्थळ उभारण्यात आल्यास, ते कोणतीही सुचना न देता तात्काळ निष्कासित करणेची कार्यवाही करावी.

मा.उच्च न्यायालयाचे आदेश, शासन परिपत्रकाचे काटेकोरपणे पालन करण्याची दक्षता घ्यावी.



(दिपक पुजारी)

उप-आयुक्त (अतिक्रमण नियंत्रण)

मिरा भाईदर महानगरपालिका

प्रति

- १) प्रभाग अधिकारी (सर्व)
- २) प्र.जनसंपर्क अधिकारी
- ✓ ३) प्र.सिस्टीम मॅनेजर
- ४) दुरध्वनी चालक/सहाय्यक

प्रत:- विधी अधिकारी यांना आवश्यक कार्यवाहीकरीता.

प्रत :- मा.आयुक्त सो यांना माहितीस्तव.

क्र.सं.	विषय	कार्यवाही	दिनांक
१	प्रभाग अधिकारी (सर्व)	प्रभाग अधिकारी (सर्व)	
२	प्र.जनसंपर्क अधिकारी	प्र.जनसंपर्क अधिकारी	
३	प्र.सिस्टीम मॅनेजर	प्र.सिस्टीम मॅनेजर	
४	दुरध्वनी चालक/सहाय्यक	दुरध्वनी चालक/सहाय्यक	

महाराष्ट्र शासन
नगर विकास विभाग

शासन परिपत्रक क्रमांक:- याचिका-२०१४/प्र.क्र.२१९(भाग-४)/नवि-२०
मंत्रालय, मुंबई- ४०० ०३२
दिनांक:- ०५ नोव्हेंबर, २०१६.

- वाचा:- १) शासन निर्णय, गृह विभाग क्र. सीटीएम ०९०९/प्र.क्र.५५८/(भाग-२)/विशा-१ ब,
दिनांक ०५.०५.२०११.
- २) शासन परिपत्रक, नगर विकास विभाग क्र. याचिका-२०१४/प्र.क्र.२१९/नवि-२०,
दिनांक १६.०२.२०१५
- ३) शासन निर्णय, गृह विभाग क्र. सीटीएम ०२१५/प्र.क्र.७४/विशा-१ ब, दिनांक १८.११.२०१५
- ४) मा. उच्च न्यायालय, मुंबई येथे दाखल जनहित याचिका क्र. १०४/२०१० (सोसायटी फॉर फास्ट
जस्टीस आणि इतर विरुद्ध महाराष्ट्र शासन व इतर) मध्ये दिलेले दिनांक १८.०२.२०१६
- ५) शासन परिपत्रक, नगर विकास विभाग क्रमांक:- याचिका-२०१४/प्र.क्र.२१९(भाग-३)/नवि-२०,
दिनांक १६.०३.२०१६
- ६) मा. उच्च न्यायालय, मुंबई येथे दाखल जनहित याचिका क्र. १०४/२०१० (सोसायटी फॉर फास्ट
जस्टीस आणि इतर विरुद्ध महाराष्ट्र शासन व इतर) मध्ये दिलेले दिनांक ०१.१०.२०१६ चे आदेश

शासन परिपत्रक:-

अनधिकृत धार्मिक स्थळांबाबत मा. उच्च न्यायालय, मुंबई येथे दाखल जनहित याचिका क्र.
१०४/२०१० (सोसायटी फॉर फास्ट जस्टीस आणि इतर विरुद्ध महाराष्ट्र शासन व इतर) मध्ये मा. उच्च
न्यायालयाने दिनांक ०१.१०.२०१६ रोजी खालीलप्रमाणे आदेश दिले आहेत :-

- (a) We grant prayer clauses (a) and (b) of Paragraph 8 of the affidavit/Application dated 21st September 2016 filed on behalf of the State Government by Shri Venkatesh Madhav Bhat, the Deputy Secretary to the Government of Maharashtra, Home Department, Mantralaya, Mumbai. We make it clear that no further extension will be granted;
- (b) Hence, all illegal religious structures made after 29th September 2009 which have been already identified shall be demolished on or before 31st December 2016. The structures constructed before 29th September which have been identified as falling in "B" category shall be demolished on or before 17th November 2017. The structures constructed before 29th September which have been identified as falling in "C" category shall be removed and relocated on or before 31st December 2016. The Municipal Commissioners and the Collectors, as the case may be, shall be responsible for the implementation of these directions as provided in the second GR. Any breach on their part will result into an action against them under the Contempt of Courts Act, 1971. The Home Department shall issue a circular to the Municipal

- (c) On or before 30th November 2016, the State Government shall place on record the data of identified structures on streets and footpaths in the Municipal Corporation areas of Amaravati, Ahmednagar, Malegaon, Akola, Parbhani, Aurangabad and Nashik;
- (d) We direct the State Government to issue directions to the Committees constituted under the said GR dated 5th May 2011 to undertake exercise of identifying illegal religious structures or shrines erected on all the public properties in the State. Needless to add that after identifying such illegal religious structures, the same shall be divided into two broader categories as provided in the said GR of the structures erected prior to 29th September 2009 and the structures made after 29th September 2009. As provided in the said GR, all structures erected after 29th September 2009 shall have no protection. The structures erected up to 29th September 2009 shall be divided into three categories as provided in the said GR dated 5th May 2011. Needless to add that out of these structures which will fall in the "B" category cannot be tolerated will have to be demolished;
- (e) We direct the State Government to complete the said exercise of identifying and categorizing the illegal religious structures including classification of various structures on the public properties till 31st March 2017;
- (f) Depending upon the large number of structures identified, the State Government shall take appropriate decision fixing a reasonable outer limit for implementation in terms of the said GR dated 5th May 2011. Such outer limit shall be fixed by issuing Government Resolution which shall be placed on record along with the compliance affidavit;
- (g) We direct the said Committees constituted under the said GR dated 5th May 2011 to regularly hold meetings to monitor the entire exercise. As provided in the second GR, the Divisional Commissioners shall be responsible to supervise the implementation of the said GR dated 5th May 2011. The Home Department shall issue a Circular to the Divisional Commissioners enclosing therewith a copy of this Judgment within a period of three weeks from the date on which this Judgment is uploaded;
- (h) As provided in the second GR dated 18th November 2015, it shall be the obligation of the Police Commissioners and the District Superintendent of Police, as the case may be, to provide adequate police protection by deputing police force comprising of male and female police constables including one armed constable for the purposes of assisting and protecting the public servants who undertake the work of demolition and/or shifting of illegal religious structures. The Police force shall be immediately provided on requisition being made by the concerned officers;

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- (i) The Commissioners of Police or the District Superintendents of Police, as the case may be, shall issue specific directions to all the police stations under their jurisdiction to provide such police protection;
- (j) Criminal law shall be set in motion against the persons responsible for the construction of illegal religious structures. If any obstruction is made or if there are any threats given to the public servants in the work of demolition or relocation, criminal law shall be set in motion against the concerned persons howsoever influential are the said persons;
- (k) We make it clear that the directions issued under this Judgment shall apply to the structures which are already identified and classified as well as the structures which will be identified and classified in terms of this judgment and order;
- (l) The State Government shall issue specific directions under Section 154 of the Maharashtra Regional and Town Planning Act, 1966 to all the Planning Authorities in the State to scrupulously implement the said GR dated 5th May 2011 and the second GR dated 18th November 2015 and directions issued by the judgment and order including the direction to take preventive measures;
- (m) Directions shall be issued to all the Planning Authorities and the District Collectors by the State Government to ensure that no construction of illegal religious structures or shrines takes place on the public properties including the streets, footpaths or foot ways. A direction shall also be issued by the State Government to create a Grievance Redress Mechanism for dealing with the complaints of the citizens including anonymous complaints about the commencement or erection of illegal religious structures on the public properties. Action shall be forthwith taken on the complaints by all the concerned Authorities forthwith. These directions shall be issued within a period of one month from the date on which this Judgment is uploaded. A direction shall be issued to regularly conduct public awareness campaign against such illegal construction of shrines on public properties;
- (n) The Grievance Redress Mechanism shall be in accordance with the Grievance Redress Mechanism which was ordered to be created as per the directions issued in the decision in the case of *Dr. Bedekar*. Adequate publicity shall be given to availability of the said mechanism by publishing the details on the Websites of all concerned authorities and by prominently displaying the information about it in all Municipal offices and Collectors' offices. Wide publicity shall be given to the said mechanism in leading newspapers and local newspapers atleast twice a year;
- (o) The State Government shall file an affidavit of compliance reporting compliance with the provisions of both the Government Resolutions and this judgment and order at the end of every calendar month. The first compliance affidavit shall be filed on or before

- (p) We direct the State Government to produce a report on investigation carried out in C.R. No.0480 of 2015 registered at MIDC, Walunj Police Station at Aurangabad in a sealed envelope. The report shall be submitted on or before 30th November 2016;
- (q) While issuing directions, the State Government shall issue directions to all the concerned Authorities to ensure that illegal religious structures are not re-erected at the same place where earlier illegal religious structures were erected and demolished. The re-erected religious structures shall be forthwith demolished without any notice;
- (r) The issue of legality and validity of the aforesaid Government Resolutions in so far as the fixing of the cut off date is concerned, is kept open in light of the pendency of the Special Leave Petition before the Apex Court;
- (s) We make it clear that all interim directions which are not modified by this judgment and order shall continue to operate with full force as final directions;
- (t) We may clarify here that the policy of tolerating illegal structures made before the cut off date incorporated in the said GR dated 5th May 2011 is applicable only to the illegal religious structures made on public properties. The policy incorporated in the said GR is not applicable to the illegal religious structures made on private properties. Therefore, the State and the Planning Authorities cannot extend the protection of the said GR to the illegal religious structures made on private properties. They shall proceed to demolish the same in accordance with the law unless a particular structure is protected by any other exiting valid policy.

२. मा. उच्च न्यायालयाच्या उपरोक्त आदेशाचे काटेकोरपणे पालन करावे.
३. शासन निर्णय, गृह विभाग, दिनांक १८.११.२०१५ अन्वये अनधिकृत धार्मिक स्थळांवर कार्यवाही करण्याकरीता विहित केलेल्या मुदतीत दिनांक २९.०९.२००९ पूर्वीची नियमित करावयाची/ स्थलांतरीत करावयाच्या व दिनांक २९.०९.२००९ नंतरची निष्कासीत करावयाच्या अनधिकृत धार्मिक स्थळांबाबत कार्यवाही न झाल्याने सदर कार्यवाही पूर्ण करण्यासाठी दिनांक ३१.१२.२०१६ पर्यंत मुदतवाढ मा. उच्च न्यायालयाने दिली आहे. तरी दिनांक ३१.१२.२०१६ पर्यंत कोणत्याही परिस्थितीत सदर कार्यवाही पूर्ण करण्याची जबाबदारी संबंधीत आयुक्त, महानगरपालिका यांची राहिल. सदर कालावधीत कार्यवाही पूर्ण न झाल्यास संबंधीत आयुक्त महानगरपालिका हे न्यायालयाचा अवमान केल्याबाबत Contempt of Courts Act, 1971 नुसार कार्यवाहीस पात्र ठरतील.
४. महाराष्ट्र नगररचना अधिनियम, १९६६ मधील तरतुदीनुसार दि. २९.०९.२००९ नंतर उभ्या राहिलेल्या अनधिकृत धार्मिक स्थळांबाबत सर्व नियोजन प्राधिकरणांनी तात्काळ आवश्यक कार्यवाही करावी. सार्वजनिक ठिकाणी नवीन धार्मिक स्थळ आवश्यक त्या परवानग्या मिळाल्याशिवाय उभारले

स्थळांबाबत प्राप्त झालेल्या तक्रारींचे निराकरण करण्यासाठी "तक्रार निवारण यंत्रणा" उभारण्यात यावी. सदर तक्रार निवारण यंत्रणा मा.उच्च न्यायालय (अपिल शाखा), मुंबई येथे दाखल जनहित याचिका क्र. १७३/२०१० मध्ये मा. न्यायालयाने दिलेल्या आदेशानुसार असावी.

५. यापूर्वी व आता निष्कासित करण्यात येणाऱ्या अनधिकृत धार्मिक स्थळाच्या ठिकाणी पुन्हा अनधिकृत धार्मिक स्थळ उभारण्यात आल्यास, ते कोणतीही सूचना न देता तात्काळ निष्कासित करण्याची कार्यवाही संबंधित नियोजन प्राधिकरणाने करावी.

६. सदर शासन परिपत्रक महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आले असून त्याचा संगणक संकेतांक २०१६११०५१६३२४०६४२५ असा आहे. हे परिपत्रक डिजीटल स्वाक्षरीने सांक्षातिक करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नांवाने,

(ज. ना. पाटील)

उप सचिव, महाराष्ट्र शासन

प्रत,

- १) मा. विरोधी पक्षनेते, दोन्ही सभागृह, महाराष्ट्र विधानमंडळ, मुंबई
- २) सर्व सन्माननीय विधानसभा/ विधानपरिषद व संसद सदस्य
- ३) मा. राज्यपाल महोदय यांचे सचिव
- ४) मा. मुख्यमंत्री महोदय यांचे प्रधान सचिव
- ५) सर्व मा. मंत्री / राज्यमंत्री यांचे खाजगी सचिव
- ६) मा. राज्य निवडणूक आयोग यांचे कार्यालय
- ७) मा. मुख्य सचिव यांचे वरिष्ठ स्वीय सहाय्यक
- ८) मा. लोकआयुक्त व उपलोकआयुक्त यांचे कार्यालय
- ९) मुख्यमंत्री महोदय यांचे जनसंपर्क अधिकारी
- १०) महानगर आयुक्त, मुंबई महानगर प्रदेश विकास प्राधिकरण, बांद्रा (पूर्व), मुंबई
- ११) व्यवस्थापकिय संचालक, सिटी अँड इंडस्ट्रियल डेव्हलपमेंट कॉर्पोरेशन, नवी मुंबई
- १२) सभापती, नागपूर सुधार प्रन्यास, नागपूर
- १३) जिल्हाधिकारी (सर्व)
- १४) राज्यातील सर्व महानगरपालिकांचे आयुक्त
- १५) मुख्य कार्यकारी अधिकारी, पिंपरी-चिंचवड नवनगर विकास प्राधिकरण, निगडी, पुणे
- १६) उप सचिव, गृह विभाग, मंत्रालय, मुंबई
- १७) निवडनस्ती

मिरा भाईदर महानगरपालिका

7

मिरा भाईदर महानगरपालिका

जा.क्र. मनपा/विधी/५८९/२०१६-१७

मा. उप-आयुक्त बालन

दि. ०२/११/२०१६

आवक क्र. १५२८

प्रति,

मा. उपायुक्त दिनांक:- २१/११/२०१६
अतिक्रमण व अनधिकृत बांधकाम नियंत्रण विभाग
मिरा भाईदर महानगरपालिका.

विषय :- महानगरपालिका क्षेत्रातील अनधिकृत धार्मिक स्थळांच्या बांधकामासंदर्भात.

संदर्भ :- जनहित याचिका क्र. १०४/२०१०.

Sopciery For fast justice, through its president ashish Mehta and others विरुद्ध मिरा भाईदर महानगरपालिका.

महोदय,

उपरोक्त संदर्भिय विषयान्वये आपणास कळविण्यात येते कि, महानगरपालिका क्षेत्रामधील अनधिकृत धार्मिक स्थळांच्या अनधिकृत बांधकामाबाबत दाखल संदर्भिय जनहित याचिकेमध्ये मा. उच्च न्यायालयाचे मा. न्यायाधीश श्री. ए. एस. ओक व ए. ए. सईद यांनी दि. ०१/१०/२०१६ रोज आदेश पारित केले आहेत. सदर आदेशाची प्रत दि. ०२/११/२०१६ रोजी मा. उच्च न्यायालयाच्या संकेतस्थळावरून प्राप्त झालेली आहे.

सदर आदेशामध्ये मा.उच्च न्यायालयाने मनपा क्षेत्रातील अनधिकृत धार्मिक स्थळांच्या बांधकामांबाबत करावयाच्या कार्यवाहीबाबत निर्देश दिलेले आहेत. तरी सदर आदेशाची प्रत आपल्या अवलोकनार्थ तसेच त्याअनुषंगाने करावयाच्या कार्यवाहीस्तव या पत्रासोबत आपणास उपलब्ध करून देण्यात येत आहे.

कळावे, हि विनंती.

(अ.ब.व.वि.वि.)

३/११/१६
उप-आयुक्त
मिरा भाईदर महानगरपालिका

सोबत : मा. उच्च न्यायालयाच्या आदेशाची प्रत.

प्रत माहितीस्तव : मा. आयुक्त दालन.

Seenadke

सई वडके

विधी अधिकारी

मिरा भाईदर महानगरपालिका

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.104 OF 2010

Society for Fast Justice,
through its President Ashish Mehta
and Another.

Court
.. Petitioners

Vs

The State of Maharashtra and Others.

.. Respondents

Shri Bhagvanji Raiayni, the Petitioner No.2 in person.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadani,
AGP and Shri P.G. Sawant, AGP for the Respondent Nos.1, 4 and 5.

Shri A.Y. Sakhare, Senior Counsel along with Ms. Soumya R. Kokare,
Shri Yatin Malvankar and Ms. Trupti Puranik for the Respondent No.2
BMC.

Shri A.R. Khairnar i/b Shri D.A. Nalawade for the Respondent No.3.

Ms. Padmaja Jadhav i/b Shri P.G. Lad for the Respondent No.4 MHADA.

CORAM : A.S. OKA & A.A.SAYED, JJ
DATED : 1ST OCTOBER 2016

ORAL JUDGMENT(PER A.S.OKA,J)

OVERVIEW AND FACTUAL ASPECTS

1. A very important issue is raised in this Public Interest Litigation. The issue is regarding the failure on the part of the State Government and the Mumbai Municipal Corporation in taking action of demolition of several illegal religious structures/shrines. No religion encourages illegality. No religion preaches that worship or prayer should be offered in illegally constructed place of religion. The material

on record shows that there are large number of illegal religious structures constructed in the State. The illegal shrines have been erected by the persons belonging to all religions, and therefore, we make it clear that we are dealing with the illegally constructed places of religion/shrines of all the religions and sects.

2. The Petitioners had earlier filed a Public Interest Litigation being PIL Writ Petition No.2063 of 2002 for inviting attention of this Court to the fact that no action of demolition was taken in respect of more than 1,100 illegal religious structures erected on the public roads, footpaths/ foot-ways in the city of Mumbai. Under the interim orders of this Court, some of the illegal structures were demolished. In fact, the order dated 3rd August 2006 passed by this Court records a statement of the learned counsel appearing for the Mumbai Municipal Corporation that 1,015 unauthorised illegal shrines were demolished by 31st June 2006. Ultimately, by an order dated 24th August 2006, the earlier PIL filed by the Petitioners was disposed of by a Division Bench of this Court. This Court referred to the ad-interim order dated 20th November 2003 passed by the First Court under which illegal shrines were ordered to be demolished. The said order dated 20th November 2003 provides that in case re-erection takes place, the Mumbai Municipal Corporation is entitled to demolish the same without notice. This Court also noted that there were illegal shrines on the roads belonging to the

Maharashtra Area Development Authority (MHADA), Mumbai Metropolitan Regional Development Authority (MMRDA), Bombay Port Trusts (MBPT) and other public authorities. By recording the assurances given by the Municipal Commissioner to give assistance by providing manpower and machinery to the said authorities for demolishing the illegal shrines and by continuing the earlier directions issued from time to time, the Writ Petition was disposed of. Therefore, the order dated 20th November 2003 which directed the Mumbai Municipal Corporation to demolish the illegal shrines continues to be in force.

ORDERS PASSED BY THE APEX COURT ON THE SUBJECT

3. It is necessary to make a reference to the orders passed by the Apex Court in the pending *Suo Moto Special Leave Petition* before the Apex Court. In view of the pendency of the *Suo Moto Special Leave Petition*¹ before the Apex Court, the scope of this Petition has been considerably restricted in relation to the illegal construction of religious structures on the streets and public properties. The order dated 29th September 2009 passed by the Apex Court in the said Petition notes that on 25th March 2008, it took a note of a news item published in Times of India, Ahmedabad Edition, recording that there were 1200 temples and 260 Islamic shrines constructed by encroaching

¹ Special Leave Petition No.8519 of 2006 (Union of India v. State of Gujarat and Others).

upon public places. It records that a letter dated 19th September 2009/23rd September 2009 of the Home Secretary of the Government of India addressed to the learned Solicitor General of India was taken on record. Relevant portion of the said letter as quoted in the said order reads thus:

“I had taken a meeting with the Chief Secretaries of the States on 17.09.2009 with a view to evolve consensus on the problem of encroachment of public spaces by religious structures. I am glad to report that after the meeting, the following consensus emerged:-

(i) No unauthorized construction of any religious institution namely, temple, church, mosque or gurudwara, etc shall be permitted on public street/public space.

(ii) In respect of unauthorized constructions of any religious nature which has taken place in the past, the State Governments would review the same on a case by case basis and take appropriate steps. This will be done as expeditiously as possible.”

(emphasis added)

On the basis of the said letter, the Apex Court issued directions by way of an interim measure which read thus:

“As an interim measure, we direct that henceforth no unauthorized construction shall be carried out or permitted in the name of Temple, Church, Mosque or Gurudwara etc. on public streets, public parks or other public places etc.

In respect of the unauthorized construction of religious nature which has already taken place, the State Governments and the Union Territories shall review the same on case to case basis and take appropriate steps as expeditiously as possible.”
(emphasis added)

4. This interim order continues to operate as the Special Leave Petition is still pending. The direction of the Apex Court is that henceforth no unauthorized construction will be permitted in the name of the Temple, Church, Mosque or Gurudwara etc. on public streets, public parks or other public places etc. In the second part of the said order, the State Governments were directed to review the unauthorized religious structures which were already constructed and were directed to take a decision on case to case basis as expeditiously as possible.

THE RESPONSE OF THE STATE GOVERNMENT

5. Now, we must note the response of the State to the order of the Apex Court dated 29th September 2009. On 4th October 2010, the State came out with a policy of demolition of illegal religious structures in terms of the directions of the Apex Court. The said policy also dealt with the illegal structures constructed prior to 29th September 2009 which is the cut off date fixed under the order of the Apex Court dated 29th September 2009. Surprisingly, notwithstanding the continuation of

the interim order of the Apex Court, on 14th March 2011, the State Government issued a Government Resolution directing that implementation of the earlier Notification dated 4th October 2010 shall not be made. Thus, it is apparent that under the Government Resolution dated 14th March 2011, the State Government stopped the process of the demolition of illegal religious structures. Then comes relevant policy decision which operates even as of today which is in the form of the Government Resolution dated 5th May 2011 (for short "the said GR"). It refers to the order of the Apex Court dated 29th September 2009. It specifically deals with the religious structures illegally constructed on the Government as well as public properties. The Government constituted three Committees at three levels. Apart from establishing a State Level Committee headed by the Chief Secretary, District Level Committees headed by the District Collectors and Municipal Corporation Level Committees headed by the respective Municipal Commissioners in case of seven Municipal Corporation areas in the State were formed. The Government Resolution provides that all illegal religious structures constructed after 29th September 2009 shall be demolished by the District Level Committees or by the Municipal Corporation Level Committees. Ignoring that there are several Municipal Corporations in the State, the Municipal Corporation Level Committees were constituted only for 7 Corporations in the State. By way of illustration, we may point out that only in one District -Thane,

there were not less than five Municipal Corporations in existence at the relevant time. However, the Municipal Corporation Level Committees were constituted only for Mumbai, Thane, Pune, Nagpur, Nashik, Amaravati and Aurangabad Municipal Corporations. As regards illegal religious structures constructed prior to 29th September 2009, the said GR provides for dividing the illegal religious structures into three categories. The category "A" is of the structures which are required to be regularized. The category "B" is of the illegal religious structures which cannot be regularized and are required to be demolished. The category "C" is of the religious structures which are required to be relocated. A detailed procedure for identifying the structures falling in these three categories was laid down in the GR. Thus, the illegal religious structures were divided broadly into two categories. The first category is of the illegal structures erected after 29th September 2009 which were not given any protection. The second category is of the structures erected prior to 29th September 2009 which was sub-divided into three sub-categories as indicated above.

6. As far as the procedure to be followed for categorization is concerned, it will be necessary to make a reference to the Paragraph Nos.3 and 4 of the said GR. The English translation of the said two paragraphs reads thus:

“3.(i) The list of all the unauthorized religious structures in the city/District should be made upto the date in the next three months.

ii) The unauthorized religious structures which came into existence after issuance of the directions by the Hon'ble Supreme Court on 29.9.2009, should be removed without delay at the level of District level Committees/Municipal Corporation Level Committees itself.

(iii) In case of the unauthorized religious structures which were existing prior to 29.9.2009, Police report pertaining to law and order, traffic, public approval etc, opinion of concerned Planning Authority in view of Development Control Rules and Development Plan etc as well as consent of the concerned land holder should be obtained and on the basis thereof, a draft action plan in respect of removal/regularisation of all the unauthorized religious structures, should be prepared within 6 months as follows:-

(A) In case of the unauthorized religious structures, which are quite old, which has extensive public approval, police report and opinion of Planning Authority in respect of which are favourable for its regularisation and the concerned land holder has consent for which, should be classified in “A” class and the same should be included in the list of unauthorized religious structures, proposed for regularisation.

(B) In case of the unauthorized religious structures which are not possible to be regularised on the ground of law and order or as the same are causing obstruction to traffic or in view of Development Plan/Development Control Rules or on account of some specific reasons, such unauthorised religious structures should be classified in “B” class and the same should be included in the

list of unauthorized religious structures proposed for removal.

(iv) The classified list of unauthorized religious structures, prepared as above and draft action plan in respect of regularisation/removal of unauthorized religious structures, prepared in accordance therewith, should be published in local news papers by the District level/Municipal Corporation level Committees. In the said notification, it should be clearly mentioned that as per the directions of Hon'ble Supreme Court, the religious structures in the action plan are under consideration for regularisation/ removal as per its classification and if anybody has any objection in respect thereof, they should submit the same to the District level/Municipal Corporation level Committees within one month.

(v) If any person/organisation submits any objection- suggestion in respect of removal/regularisation of any of the unauthorised religious structures mentioned in the draft action plan, notified by the District level /Municipal Corporation level Committees, then, the District level/Municipal Corporation level Committees, after receipt of such objection letter, should conduct hearing in respect thereof on a specific date, if necessary or if such demand is made by the concerned.

In case of any unauthorized religious structures, if a group of local residents or an organisation make a demand to regularise the same at the place where it is located, on account of its public approval and local custom, they should be asked to produce evidence in respect thereof on aforesaid points and the concerned should be heard as per the requirement.

If any organisation or group has proposed shifting of any unauthorized religious structures elsewhere and has submitted a complete proposal to that effect then, suitability of such place proposed by such organisation/ group should be checked thoroughly. While carrying

out such checking, it should be completely ensured that the concerned land holder has consent therefor, the proposed place would not cause obstruction for traffic, the said shifting would not cause breach of Development Plan/Development Control Rules and that shifting of said unauthorized religious structure would not create any law and order issue. The said unauthorized religious structure should be classified in class "C" and it should be included in the list of unauthorized religious structures to be shifted.

- (vi) Thereafter, the District level/Municipal Corporation level Committees should consider the objections and suggestions received in respect of each of the unauthorized religious structure, should finalize their A/B/C classification and should take action in respect thereof as under-
- (A) The decision about regularisation of each "A" Class unauthorized religious structure at its existing place itself, subject to proper terms and conditions, should be taken at the level of District level/Municipal Corporation level Committees only and a consolidated report in respect thereof should be sent to the state level committee.
- (B) Before removing the religious structure, from out of the "B" class unauthorized religious structures, which is existing prior to 1 May 1960, it should be necessary to obtain prior permission of the State level committee. Of course, the action of removal of 'B'-Class unauthorized religious structures after the dt. 1 May 1960, should be taken by the District level Committee/Municipal Corporation Level Committees at their level and in case of removal of "B" Class unauthorized religious structures, existing prior to the date 1 May, 1960, the action of removal should be taken by obtaining prior permission of State level Committee.

Bombay

Before taking action of removal of any unauthorized religious structure, a 15 days notice about the proposed date of removal of said concerned unauthorized religious structure should be published by pasting it on the concerned unauthorized religious structure and then only action of actual removal should be taken.

- (C) In case of the unauthorized religious structures included in 'C' class, the District level/Municipal Corporation level Committees should minutely check the proposals received from any group/organisation proposing its shifting, should ensure that the proposed shifting would not cause any obstruction to the traffic/pedestrian movement, would not cause breach of Development plan/Development Control Rules as well as would not create law and order issue and then should take decision about shifting of such unauthorised religious structures at its level and should send a consolidated report in this regard to the state level committee.

4. While taking the time bound action as above, the state level committee and the Govt. shall have the right to grant extension of time period for justifiable reasons as well as to review any decision taken by the District level/Municipal Corporation level committees and to carry out revision/change therein, as the case may be."

STEPS TAKEN BY THE STATE GOVERNMENT AND OTHER AUTHORITIES

7. When the present PIL came up before this Court earlier, it was noticed that there was hardly any implementation of the said GR dated 5th May 2011. It will be necessary to set out in some detail the alleged steps taken by the State Government on the basis of the said GR

which will ultimately show a complete inaction on the part of the State Government of not implementing the said GR. In this case, we are not dealing with the aspect of breach of the order of the Apex Court as the same will be dealt with by the Apex Court. This Court is confining itself to the inaction of the State Government as far as the implementation of the said GR and the subsequent Government Resolutions are concerned.

8. After noticing that nothing was done by the State Government, on 9th January 2015, this Court directed that the State Government shall exercise powers under Section 154 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act") directing all the Planning Authorities in the State to take immediate steps for removal of the illegal religious structures which have come up after the cut off date of 29th September 2009. The State Government purported to comply with the said direction by issuing a Notification dated 16th February 2015 which is on Page 121. Perusal of the said Notification shows that it is completely ineffective in the sense that the names of the Planning Authorities to whom the direction was issued under Section 154 of the MRTP Act are not at all mentioned in the said Notification. That is the reason why the said Notification remained only on paper as the said direction was not conveyed to the Planning Authorities in the State.

9. Another flaw which was noticed by this Court is that the said GR provides for creating a Committees at Municipal Corporation Level in respect of only seven Municipal Corporation areas. The said error was corrected by the State Government under the orders of this Court by issuing a corrigendum dated 1st July 2015. The said corrigendum provided that the Municipal Corporation Level Committees as provided in the said GR will be appointed at the level of all Municipal Corporations in the State. Thus, it is apparent that the said GR dated 5th May 2011 was not implemented till 1st July 2015 in relation to the majority of the Municipal Corporation areas in the State. After this Court found that there was absolutely no implementation of the said GR, in view of the directions issued by this Court, on 22nd September 2015, the Chief Secretary of the State convened a meeting in Mantralaya, Mumbai to discuss the issue of the implementation of the said GR. The decisions taken in the meeting are recorded in the form of minutes which are placed on record. A decision was taken to take immediate action of demolition of illegal religious structures erected after 29th September 2009. As regards the finalization of the classification of structures constructed prior to 29th September 2009 into the categories A to C, it was resolved in the meeting that the exercise will be completed by 30th September 2015. As regards the direction issued by the Court of developing public awareness is

concerned, it was agreed to take steps immediately. The affidavits filed on record show that the said decisions taken in the meeting presided over by the Chief Secretary have again remained on paper and there is hardly any implementation thereof. Thereafter, there were number of orders passed by this Court ending with the order dated 23rd October 2015. By the said order dated 23rd October 2015, the directions were given to the State Government to come out with a concrete time bound programme for implementation of the said GR. On the basis of the said order, the Government Resolution dated 18th November 2015 (for short "the second GR") was issued. It provides the period of nine months from 18th November 2015 for the demolition of the illegal religious structures on the public properties constructed after 29th September 2009. The said period of nine months has already expired. Admittedly not even 1/3rd of the illegal religious structures have been demolished. The second GR provides that the structures falling in the second category of structures erected before 29th September 2009 which are required to be demolished will be demolished within a period of two years from 18th November 2015. The action of relocating the structures will be completed within a period of nine months from 18th November 2015. Going by the affidavits filed on record, even the said outer limit is not complied with.

10. The State Government has filed an affidavit for seeking extension of time provided in the second GR. The relevant affidavit is of Shri Venkatesh Madhav Bhat, the Deputy Secretary to the Government of Maharashtra, Home Department, Mantralaya, Mumbai, dated 21st September 2016. Certain statistics is set out in the said affidavit. The relevant part of the said affidavit setting out the figures reads thus:

“Status of Unauthorized Religious Structures in Municipal Corporation Area till 31st August 2016.

Total Unauthorized Religious Structure before 29.09.2009	Classification					
	(A)		(B)		(C)	
	Regularized	Remaining	Demolished	Remaining	Shifted	Remaining
14519	2138	2878	120	3554	17	289

It is humbly submitted that though the figures mentioned above are consolidated figures individual Report of action taken in regard to Amravati, Ahmednagar, Malegaon, Akola, Parbhani, Aurangabad and Nashik Municipal Corporation is awaited and the same will be submitted before this Hon'ble Court as soon as the same is received by this Respondent.

Total Unauthorized Religious Structure after 29.09.2009	Demolished	Remaining
871	225	646

Status of Unauthorized Religious Structure in Collectorate area (including municipal councils) till 31.08.2016

Total Unauthorized Religious Structure before 29.09.2009	Classification					
	(A)		(B)		(C)	
	Regularized	Remaining	Demolished	Remaining	Shifted	Remaining
49849	34276	11942	421	2781	69	240

It is further submitted that since the District Committees are formed under the Chairmanship of Collector, this committee monitors both the rural and the municipal council area. Therefore, the report for council area included in Collectorate report.

Total Unauthorized Religious Structure after 29.09.2009	Demolished	Remaining
847	159	688

11. Thus, going by the said figures, in the State, total 1718 illegal religious structures constructed after 29th September 2009 were identified. As per the second GR, the work of demolition of these structures was to be completed within 9 months from 18th November 2015. The said period expired on 17th August 2016. However, only 384 structures have been so far demolished. Thus, only 22% structures have been demolished. The affidavit show that total 6876 structures constructed prior to the cut-off date were to be demolished out of which only 641 have been so far demolished. Thus, only 9% structures have been demolished. Total 615 structures constructed before the cut off date were to be relocated out of which only 86 have been relocated.

The percentage of relocated structures comes to only 13%. The Mumbai Municipal Corporation has placed the said data on record to which we will make a brief reference. Perhaps, by reason of the orders passed in the earlier PIL filed by the Petitioners, a substantial number of newly erected illegally erected structures were demolished and, therefore, it is found that there were only 4 illegal religious structures constructed after 29th September 2009 in the City of Mumbai. The chart shows that 482 illegal structures constructed before the cut off date were required to be demolished. Out of which, only 4 have been demolished. Nine structures were to be relocated, out of which not a single structure has been relocated. We must note here that in the figures set out as aforesaid, the figures of seven Municipal Corporation areas are not included on the ground that the same are available.

12. Another important aspect which is revealed is that as far as the Mumbai Municipal Corporation is concerned, the identification of the structures as required by the said GR is made only in respect of the structures on the public streets including footpaths/foot ways. There is no identification of illegal religious structures constructed on the public properties such as the properties which are vesting in the State and the different Planning Authorities and other statutory Authorities/Public Sector Corporations. The said work remains to be done. Even the figures which are given by the State Government appear to be of illegal

religious structures erected on the streets including footpaths or foot ways. The said GR is in respect of the illegal shrines on all public properties. The exercise of identifying illegal religious structures as provided in the said GR on the public properties (excluding streets and footpaths/foot ways) is not at all done. As noted earlier, the said GR specifically provides for taking action of removal or shifting of unauthorized religious structures on the public/Government lands. Perhaps, that is the reason why in the Municipal Corporation Level Committees, the representatives of Maharashtra Industrial Development Corporation (MIDC), Mumbai Metropolitan Regional Development Authority (MMRDA), Maharashtra Housing and Area Development Authority (MHADA), etc have been included. Even the representatives of Cantonment Board, MIDC, the City and Industrial Development Corporation of Maharashtra Limited (CIDCO) have been included. To sum up, it can be said that there is hardly any implementation of the said GR issued way back on 5th May 2011 and a large number of illegal religious structures continue to exist not only on the streets but also on the public properties. As stated earlier, Suo Moto Special Leave Petition is pending before the Apex Court and, therefore, it is for the Apex Court to decide whether the policy of the State Government of regularizing substantial number of illegal religious structures erected prior to 29th September 2009 is legal and valid and, therefore, we are not making any adjudication on the said aspect. The regularization of certain

structures constructed before the said cut-off date will be naturally subject to the further order passed by the Apex Court. As stated earlier, we are confining ourselves to the implementation of the decisions taken by the State Government incorporated in the the said GR as well as the second GR.

LEGAL POSITION

ILLEGAL RELIGIOUS STRUCTURES ON STREETS INCLUDING FOOTPATHS OR FOOTWAYS

13. Now, we deal with the legal position as regards the public streets vis-a-vis rights of the citizens. In a recent decision of this Court in the case of, *Dr. Mahesh Vijay Bedekar v. The State of Maharashtra and Others* (for short referred to as "the case of *Dr. Bedekar*")², this Court held that the footpaths or foot ways are integral part of the streets as defined in the Municipal Laws in the State. This Court considered various decisions of this Court as well as the Apex Court on this aspect and in Paragraph 27 of the said decision, this Court observed that the right to have streets in a reasonable condition is a part of fundamental rights guaranteed under Article 21 of the Constitution of India. The basic object of constructing streets is to allow the passage of vehicles. The basic object of making foot-paths/foot ways which are a part of street is to allow the citizens to walk and travel from one place

to another. If obstructions are created on the streets or foot-paths in such a manner that it prevent the citizens from beneficially or reasonably enjoying their right of passage through the streets and foot-paths, surely it will amount to infringement of the fundamental right guaranteed under Article 21 of the Constitution of India to have streets in a reasonable condition. The fundamental right to have the streets in a reasonable condition will naturally encompass in it a right to have the same free of any obstructions which prevent its beneficial or reasonable user. The Apex Court has expanded the scope of Article 21 of the Constitution of India. The Apex Court has held that the right to live dignified life is also a part of Article 21 of the Constitution of India. Right to live a meaningful life is also a part of Article 21 of Constitution of India.

14. In the case of *Sudhir Madan v. MCD*³, the Apex Court in paragraph 6 observed thus:

“6. The scheme need not be populist in its appeal, but must be practical and consistent with the rights of citizens, who have a fundamental right to use the roads, parks and other public conveniences provided by the State.”

(emphasis added)

15. In Paragraphs 28 and 29 of the said decision in the case of *Dr. Mahesh Bedekar*, this Court proceeded to hold thus:

“28. It is in this context, that the powers conferred under the aforesaid statutes namely the power under Section 234 of the said Act of 1949 and Section 317 of the said Act of 1888 will have to be considered. On plain reading of the sections it is apparent that the sections are only enabling sections which enable the Commissioners of the Municipal Corporations to grant written permission for temporary erection of booth or other structure on any street on the occasion of ceremony and festivals. This power can be exercised by the Municipal Commissioners only with the concurrence of the Commissioner of Police or any Officer nominated by him. In the areas where Commissioner of Police is not appointed, the power will have to be exercised the concurrence of the District Magistrate or any Officer nominated by him. The use of the word may in both the sections shows that the power is discretionary. The power under the said sections cannot be exercised so as to defeat the fundamental right of the citizens under Article 21 of the Constitution of India of having the roads and foot-paths free of obstruction and in a reasonable condition. Moreover, the power cannot be exercised so as to completely defeat the statutory obligations of the Municipal Corporations under both the enactments.

29. Considering the object for which the streets are constructed, as expressly provided, the powers under both the sections can be exercised only with the concurrence of the Commissioner of the Police or the District Magistrate, as the case may be. Concurrence is certainly more than mere consultation. Concurrence means consent. It is obvious that the exercise of powers under both the sections without concurrence will be bad in law. It is obvious that power under both the

sections cannot be exercised by permitting the erection of structures in such a manner that it will obstruct free movement and free flow of vehicular traffic on the streets or free movement of the pedestrians on the foot ways or foot-paths. Perhaps, for this reason, a provision is made to ensure that the power is not exercised without concurrence of an Officer of appropriate higher level. The aspect of obstruction to the free flow of traffic of vehicles and to the movement of pedestrians can be considered in a better manner by the Police Officers and therefore, there are provisions regarding obtaining their concurrence.”

(emphasis added)

16. This Court was dealing with the issue of pandals constructed on the streets including footpaths or foot ways for celebrating festivals. In the same decision in the case of *Dr. Bedekar*, this Court also dealt with the argument based on the protection granted under Article 25 of the Constitution of India. Paragraphs 35 and 36 of the said decision read thus:

“35. There is one more issue concerning the pandals or temporary booths erected for celebrating religious and other festivals. A contention is raised by religious groups regarding fundamental right under Article 25 of the Constitution of India. It is claimed that if permission to erect temporary booths for celebrating religious festivals is denied, it will be an infringement of Article 25. As far as the scope of right conferred under Article 25 of the Constitution of India is concerned, the law is well settled. For the sake of convenience, we are referring to the decision of the Constitution Bench of the Apex Court in the

case of *Dr.M. Ismail Faruqui Vs. Union of India and others* [(1994)6 SCC 360]. The Apex Court observed that the right guaranteed under Article 25 of the Constitution of India does not extend to the right of worship at any and every place. The Apex Court held that though the offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless a particular place has a particular significance for that religion so as to form an essential or integral part of the religion. Paragraphs 77 and 78 are relevant which read thus:

“77. It may be noticed that Article 25 does not contain any reference to property unlike Article 26 of the Constitution. The right to practise, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right to acquire or own or possess property. Similarly this right does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution. The protection under Articles 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion.

78. While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having

particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially.”

(emphasis added)

36 While passing interim orders from time to time, this Court has made it expressly clear that the decision of this Court will apply to festivals/functions all religions and sects. We reiterate that position. Only by way of illustration that this Court may have referred to the religious festivals of Ganesh utsav, Navratri and Dahihandi. Offering a prayer in a particular manner, performing religious ceremony in a particular manner or celebrating religious festivals in a particular manner may be in a given case an essential part of a particular religion. But by no stretch of imagination, the right conferred by Article 25 will extend to celebrating such festivals and functions on streets and foot-ways unless offering prayers or worship at a particular place is proved to be an essential part of a particular religion by reason of a particular significance of that place. Hence, ordinarily, no one can claim fundamental right under Article 25 to conduct a religious function or festival on a street or foot-path/footway.”

(emphasis added)

17. The right conferred under Article 25 of the Constitution of India does not give right of worship and right of offering prayers at every place. It was further held that though the offer of prayer or worship is a religious practice, its offering at every place where such prayers can be offered or worship can be made would not be an essential or integral part of such religious practice unless a particular

place has a particular significance for that religion so as to form an essential or integral part of the religion. Hence, if illegal religious structures are allowed to be constructed on the streets including the footpaths or foot ways, the argument based on the Article 25 of the Constitution of India will not be available unless it is proved that offering prayers or worship in an illegally constructed religious structure at a particular place or foot way is an essential part of a particular religion by reason of a special significance of that place. No religion preaches that a prayer should be offered or worship should be made in a structure which is illegally and unauthorizedly constructed.

ILLEGAL RELIGIOUS STRUCTURES ON PUBLIC PROPERTIES

18. Now we deal with the issue of illegal construction of religious structures on public properties. The said GR applies to the illegal religious structures constructed on the public places or public properties. It is repeatedly held by the Apex Court that the doctrine of public trust is applicable to the public properties. In the case of *Aggarwal & Modi Enterprises (P) Limited and Another v. New Delhi Municipal Council*⁴. In Paragraph 23, the Apex Court held thus:

“23. Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public

property in contradiction to the disposal of private property i.e. it should be for public purpose and in public interest. Invitation for participation in public auction ensures transparency and it would be free from bias or discrimination and beyond reproach."

(emphasis added)

19. In the case of *NOIDA Entrepreneurs Assn. v. NOIDA*⁵, in paragraphs 39 to 41, the Apex Court held thus:

"38. The State or the public authority which holds the property for the public or which has been assigned the duty of grant of largesse, etc. acts as a trustee and, therefore, has to act fairly and reasonably. **Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. Every holder of a public office is a trustee.**

39. State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a "democratic form of Government demands equality and absence of arbitrariness and discrimination". The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

40. The public trust doctrine is a part of the law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only be a case of colourable exercise of power. The rule of law is the foundation of a democratic society. [Vide *Erusian Equipment & Chemicals Ltd. v. State of W.B.* [(1975) 1 SCC 70 : AIR 1975 SC 266], *Ramana Dayaram Shetty v. International Airport Authority of India* [(1979) 3 SCC 489 : AIR 1979 SC 1628], *Haji T.M. Hassan Rawther v. Kerala Financial Corpn.* [(1988) 1 SCC 166 : AIR 1988 SC 157], *Shrilekha Vidyarthi v. State of U.P.* [(1991) 1 SCC 212 : 1991 SCC (L&S) 742 : AIR 1991 SC 537] and *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu* [(1999) 6 SCC 464 : AIR 1999 SC 2468].] **41. Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. "Public authorities cannot play fast and loose**

with the powers vested in them." A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other. [Vide *Commr. of Police v. Gordhandas Bhanji* [AIR 1952 SC 16], *Sirsi Municipality v. Cecelia Kom Francis Tellis* [(1973) 1 SCC 409 : 1973 SCC (L&S) 207 : AIR 1973 SC 855], *State of Punjab v. Gurdial Singh* [(1980) 2 SCC 471 : AIR 1980 SC 319], *Collector (District Magistrate) v. Raja Ram Jaiswal* [(1985) 3 SCC 1 : AIR 1985 SC 1622], *Delhi Admn. v. Manohar Lal* [(2002) 7 SCC 222 : 2002 SCC (Cri) 1670] and *N.D. Jayal v. Union of India* [(2004) 9 SCC 362 : AIR 2004 SC 867].]"

(emphasis added)

20. Another leading decision of the Apex Court is in the case of *Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh and Others*⁶. Paragraphs 65 to 68 read thus:

⁶⁵ What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory

public properties vesting in it to be occupied by religious structures/shrines. It is the obligation of the State and its instrumentality to ensure that the public properties are used for public good and for promoting public interest. The allotment of a public property by the State or its agencies/instrumentalities to a body/organisation/ institution which carry the tag of caste, community or religion is not only contrary to the concept of Secular Democratic Republic but is also fraught with grave danger of dividing the society on caste or communal lines. Therefore, it is the duty of the State and all public authorities to ensure that public properties are not occupied by illegal religious structures.

22. In the case of *Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.*⁷,

"8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to the poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storeyed structures raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors."

(emphasis added)

23. In the case of *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu*⁸, on page 73, the apex Court held thus:

“73. The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots.”

(emphasis added)

24. Considering the legal position, in a Secular Democratic Republic, the State or its Agencies cannot tolerate construction of illegal religious structures on a public property. The Constitutional mandate enjoins the State to adopt zero tolerance to the illegal religious structures on public properties including the streets and foot-paths. Person who makes construction of illegal religious structures deserves no sympathy at all. The case of a person making illegal construction of

a religious structures on a public property is even worst than a case of a person making a construction of an illegal building.

25. In the State, apart from the immovable properties vesting in the State Government, there are properties vesting in several public authorities such as the Planning Authorities within the meaning of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act"). There are authorities such as Maharashtra Industrial Development Corporation (MIDC), Mumbai Metropolitan Regional Development Authority (MMRDA), Maharashtra Housing and Area Development Authority (MHADA) and the regional boards constituted therein, the City and Industrial Development Corporation of Maharashtra Limited (CIDCO) which is the Planning Authority for several areas, Special Planning Authorities created for Pimpri-Chinchwad Area, Mumbai Port Trust (MPT), Railways, State Transport Corporation and various other Public Sector Undertakings and the Government owned Companies. The lands vesting in the said authorities are also public properties. As far as the lands vested in the State Government are concerned, the disposal of lands is governed by the Maharashtra Land Revenue (Disposal of Government) Rules, 1971. The said Rules do not provide for the grant of land for the religious purposes. In short, no property vested in the State Government or its instrumentality or agency can be allowed to be occupied by illegal

shrines or illegal structures. Allowing occupation of public properties by illegal shrines will amount to a complete violation of the public trust doctrine. Moreover, such action will be completely arbitrary in violation of Article 14 of the Constitution of India. That is the reason why the said GR dated 5th May 2011 specifically refers to a construction made not only on the streets, but also on the public properties. For the sake of completion, we may again note here that the order of the Apex Court dated 29th September 2009 specifically prevents the construction of Temple, Church, Mosque or Gurudwara, etc on the public streets, public parks or other public places etc.

IMPLEMENTATION

26. As narrated above, the exercise done by the State, Government and its Committees on the basis of the said GR is only in relation to the illegal structures on the public streets which includes footpaths or foot ways. The said GR is specifically made applicable to the illegal shrines constructed on the Government properties and public properties. Therefore, implementation of the said GR will not be complete unless identification of illegal shrines constructed on all public properties in the State prior to 29th September 2009 and subsequent thereto is made and the structures made prior to the cut off date are classified into three categories A, B and C. The obligation is both, the demolition of illegal shrines which are not protected and the prevention

of construction of such illegal shrines. As noted earlier, the directions of

the Apex Court contained in the order dated 29th September 2009 are to

ensure that no such illegal shrines are constructed from the said date on

the public properties. In fact, the second GR dated 18th November 2015

specifically records that the Municipal Commissioners shall be

responsible for demolition of illegal shrines within the Municipal

Corporation Areas and the District Collectors shall be responsible for

demolition of illegal shrines within a District excluding the Municipal

Corporation Areas. The said GR specifically provides that the concerned

Police Commissioner and the District Superintendent of Police, as the

case may be, shall be under an obligation to provide adequate police

protection (police bandobast) for implementation of the programme

laid down in the said GR. The Divisional Commissioners are made

responsible for co-ordination of the actions to be taken in terms of the

second GR. The said GR specifically provides that the same has been

issued with the concurrence of Revenue and Forest Department as well

as the Urban Development Department. Both the Government

Resolutions have been issued by the Home Department of the State

Government.

27. As stated earlier, for more than 5½ years after the said GR

dated 5th May 2011 was issued, there is hardly any implementation

made of the said GR. As a result, the illegal shrines constructed not

28. We may clarify here that the policy of tolerating certain illegal structures made before the cut off date incorporated in the said GR is applicable only to the illegal religious structures made on public properties. The policy incorporated in the said GR is not applicable to the illegal religious structures made on private properties. Therefore, the State and the Planning Authorities cannot extend the protection of the said GR to the illegal religious structures made on private

ILLEGAL RELIGIOUS STRUCTURES ON PRIVATE PROPERTIES

only on the public properties, but also on the streets including footpaths or foot ways have been allowed to continue in large numbers. That is the reason why we propose to issue a writ of mandamus containing stringent directions to the State Government. We may note here that this Court is dealing with the public properties. We must also note here that under the Constitution of India, the framers of the Constitution of India have envisaged the creation of a secular State. Therefore, the State Government or any Agency or Instrumentality of the State cannot allow the illegal shrines erected on the public properties to stand. In view of the concept of Secular State which is a part of the basic structure of the Constitution of India, no State Government or any Agency or instrumentality of the State can patronage such illegal religious structures erected on the public properties.

properties. They shall proceed to demolish the same in accordance with the law unless a particular structure is protected by any other existing valid policy.

PROPOSED DIRECTIONS

29. Now, the question is what should be the directions issued to the State Government. As far as implementation of the said GR is concerned, there is an affidavit filed on behalf of the State Government by Shri Vijay Damodar Patil, the Deputy Secretary to the Government of Maharashtra on 19th September 2016. The affidavit seeks extension of time to comply with the time schedule provided in the second GR dated 18th November 2015. Shri Venkatesh Madhav Bhat, the Deputy Secretary to the Government of Maharashtra has filed another affidavit on 21st September 2016. Though it is claimed in Paragraph 6 of the said affidavit that a substantial progress has been made in implementation of the said GR, the figures given on Page A27 which we have already quoted above are to the contrary. The reason given for the delay in implementation of the time schedule in the second GR dated 18th November 2015 is the drought situation in the State. It is stated therein that the State Government will demolish all illegal religious structures constructed after 29th September 2009 by 31st December 2016. As stated earlier, the State Government has not identified illegal

religious structures on all the public properties in the State and, therefore, naturally, the said outer limit will apply only to the illegal religious structures which are already identified by the Committees as mentioned in the said affidavit. Even for shifting the illegal religious structures which are required to be relocated, the extension of time is sought up to 31st December 2016.

30. After referring to the second GR dated 18th November 2015, by an order dated 23rd November 2015, this Court directed the State Government to submit monthly reports. In fact, after perusing the first monthly report, in the order dated 19th January 2016, this Court noted that it will be difficult for the State Government to meet the deadline fixed by the second GR. Inaction on the part of the State is noted even in the order dated 18th February 2016. Only by way of indulgence, we propose to extend the time as prayed. We also propose to issue a direction to the State Government to issue necessary directions to the Committees appointed under the said GR to identify illegal religious structures on all the public properties in the State. Exercise of identification will have to be completed within a period of six months and the State Government will have to come out with a time bound schedule for dealing with the illegal structures of all categories.

31. There is already a direction contained in the second GR dated 18th November 2015 making the Municipal Commissioners and Collectors responsible for implementation of the policy of the State Government. The said GR also provides that the Commissioner of Police or the District Superintendent of Police, as the case may be, shall provide adequate police protection to the Municipal and other staff for carrying out the work of demolition.

32. We have already pointed out that no religion encourages its followers to offer prayer or worship in the illegally constructed religious structures and especially the structures on the public properties and, therefore, we are sure that no religion or sect or no religious leader would oppose the action of the State Government of demolishing illegal religious structures or illegal shrines constructed on the public properties. In fact under the orders of this Court passed in the earlier Petition filed by the Petitioners, several such structures were demolished without any major protest. Nevertheless, the State must protect its own staff as well as the members of the staff and officers of the Planning Authorities while carrying out the work of demolition or relocation and, therefore, the concerned Commissioner of Police or the District Superintendent of Police, as the case may be, shall be under an obligation to provide adequate police protection by deploying male and

female police constables including at least one Armed Police Constable for protecting the public servants at the time of demolition. If any obstruction is made or if there are threats given to the staff, criminal law shall be set in motion against the concerned persons howsoever influential they are.

33. Needless to add that against those who have made illegal construction of religious structures, criminal law will have to be set in motion by taking recourse to the provisions of the MRTP Act, and the Municipal laws.

34. The order dated 23rd November 2015 makes a note of an incident occurred at Aurangabad wherein a First Information Report was registered at MIDC, Walunj Police Station in Aurangabad District against certain political leaders on the ground that they obstructed the work of demolition of six religious structures. The State Government will have to take FIR to its logical conclusion. We propose to direct the State Government to submit a report on investigation concerning C.R.No.0480 of 2015 registered with the MIDC, Walunj Police Station at Aurangabad in a sealed envelope.

35. As directed earlier, the second part of implementation of the said GR will be the prevention of construction of such illegal

religious structures. The State Government shall issue direction to all the Planning Authorities under Section 154 of the MRTP Act to create a Grievance Redress Mechanism on par with the Grievance Redress Mechanism which was ordered to be created as per the directions issued in the decision in the case of *Dr. Bedekar*. Even the Collectors may issue similar direction so that the complaints can be received including anonymous complaints about the construction of illegal religious structures on both the public and private properties. Needless to add that to avoid controversy, action has to be taken at the earliest before completion of illegal construction. Unless adequate preventive measures are taken, the very object of issuing both the Government Resolutions will be completely frustrated. The State Government must start public awareness campaign on the issue of such illegal structures.

36. We may reiterate here that in this Petition, we have dealt with only the issue of implementation of the aforesaid Government Resolutions which provide that no illegal religious structures constructed on the public properties including streets will be tolerated after the 29th September 2009. The Government Resolutions provide for tolerating some illegal structures made prior to the cut off date. We have not dealt with the issue of legality and validity of the action of the State Government of tolerating illegal religious structures erected prior to the cut off date as the said issue is under consideration of the Apex

Court in the pending Petition. As observed earlier, the regularization and relocation will be the subject to the orders of the Apex Court.

37. If the Municipal Commissioners and Collectors who are responsible for implementation of both the Government Resolutions fail to perform their duty, it will result into an action against them under the Contempt of Courts Act, 1971.

38. Hence, we pass the following order:

ORDER :

(a) We grant prayer clauses (a) and (b) of Paragraph 8 of the affidavit/Application dated 21st September 2016 filed on behalf of the State Government by Shri Venkatesh Madhav Bhat, the Deputy Secretary to the Government of Maharashtra, Home Department, Mantralaya, Mumbai. We make it clear that no further extension will be granted;

(b) Hence, all illegal religious structures made after 29th September 2009 which have been already identified shall be demolished on or before 31st December 2016. The structures constructed before 29th

September which have been identified as falling in

"B" category shall be demolished on or before 17th

November 2017. The structures constructed before

29th September which have been identified as falling

in "C" category shall be removed and relocated on or

before 31st December 2016. The Municipal

Commissioners and the Collectors, as the case may

be, shall be responsible for the implementation of

these directions as provided in the second GR. Any

breach on their part will result into an action against

them under the Contempt of Courts Act, 1971. The

Home Department shall issue a circular to the

Municipal Commissioners and Collectors enclosing

therewith a copy of this Judgment within a period of

three weeks from the date on which the Judgment is

uploaded;

- (c) On or before 30th November 2016, the State Government shall place on record the data of identified structures on streets and footpaths in the Municipal Corporation areas of Amaravati, Ahmednagar, Malegaon, Akola, Parbhani, Aurangabad and Nashik;

- (d) We direct the State Government to issue directions to the Committees constituted under the said GR dated 5th May 2011 to undertake exercise of identifying illegal religious structures or shrines erected on all the public properties in the State. Needless to add that after identifying such illegal religious structures, the same shall be divided into two broader categories as provided in the said GR of the structures erected prior to 29th September 2009 and the structures made after 29th September 2009. As provided in the said GR, all structures erected after 29th September 2009 shall have no protection. The structures erected up to 29th September 2009 shall be divided into three categories as provided in the said GR dated 5th May 2011. Needless to add that out of these structures which will fall in the "B" category cannot be tolerated will have to be demolished;

- (e) We direct the State Government to complete the said exercise of identifying and categorizing the illegal religious structures including classification of various

structures on the public properties till 31st March
2017;

(f) Depending upon the large number of structures identified, the State Government shall take appropriate decision fixing a reasonable outer limit for implementation in terms of the said GR dated 5th May 2011. Such outer limit shall be fixed by issuing Government Resolution which shall be placed on record along with the compliance affidavit;

(g) We direct the said Committees constituted under the said GR dated 5th May 2011 to regularly hold meetings to monitor the entire exercise. As provided in the second GR, the Divisional Commissioners shall be responsible to supervise the implementation of the said GR dated 5th May 2011. The Home Department shall issue a Circular to the Divisional Commissioners enclosing therewith a copy of this Judgment within a period of three weeks from the date on which this Judgment is uploaded;

sng

(h) ✓ As provided in the second GR dated 18th November 2015, it shall be the obligation of the Police Commissioners and the District Superintendent of Police, as the case may be, to provide adequate police protection by deputing police force comprising of male and female police constables including one armed constable for the purposes of assisting and protecting the public servants who undertake the work of demolition and/or shifting of illegal religious structures. The Police force shall be immediately provided on requisition being made by the concerned officers;

(i) The Commissioners of Police or the District Superintendents of Police, as the case may be, shall issue specific directions to all the police stations under their jurisdiction to provide such police protection;

(j) Criminal law shall be set in motion against the persons responsible for the construction of illegal religious structures. If any obstruction is made or if there are

any threats given to the public servants in the work of demolition or relocation, criminal law shall be set in motion against the concerned persons howsoever influential are the said persons;

- (k) We make it clear that the directions issued under this Judgment shall apply to the structures which are already identified and classified as well as the structures which will be identified and classified in terms of this judgment and order;

- (l) The State Government shall issue specific directions under Section 154 of the Maharashtra Regional and Town Planning Act, 1966 to all the Planning Authorities in the State to scrupulously implement the said GR dated 5th May 2011 and the second GR dated 18th November 2015 and directions issued by the judgment and order including the direction to take preventive measures;

- ✓ (m) Directions shall be issued to all the Planning Authorities and the District Collectors by the State Government to ensure that no construction of illegal

religious structures or shrines takes place on the public properties including the streets, footpaths or foot ways. A direction shall also be issued by the State Government to create a Grievance Redress Mechanism for dealing with the complaints of the citizens including anonymous complaints about the commencement or erection of illegal religious structures on the public properties. Action shall be forthwith taken on the complaints by all the concerned Authorities forthwith. These directions shall be issued within a period of one month from the date on which this Judgment is uploaded. A direction shall be issued to regularly conduct public awareness campaign against such illegal construction of shrines on public properties;

- (n) ✓ The Grievance Redress Mechanism shall be in accordance with the Grievance Redress Mechanism which was ordered to be created as per the directions issued in the decision in the case of Dr. Bedekar. Adequate publicity shall be given to availability of the said mechanism by publishing the details on the Websites of all concerned authorities

and by prominently displaying the information about it in all Municipal offices and Collectors' offices. Wide publicity shall be given to the said mechanism in leading newspapers and local newspapers atleast twice a year;

(o) The State Government shall file an affidavit of compliance reporting compliance with the provisions of both the Government Resolutions and this judgment and order at the end of every calender month. The first compliance affidavit shall be filed on or before 30th November 2016;

(p) We direct the State Government to produce a report on investigation carried out in C.R. No.0480 of 2015 registered at MIDC, Walunj Police Station at Aurangabad in a sealed envelope. The report shall be submitted on or before 30th November 2016;

(q) While issuing directions, the State Government shall issue directions to all the concerned Authorities to ensure that illegal religious structures are not re-erected at the same place where earlier illegal

religious structures were erected and demolished. The re-erected religious structures shall be forthwith demolished without any notice;

(r) The issue of legality and validity of the aforesaid Government Resolutions in so far as the fixing of the cut off date is concerned, is kept open in light of the pendency of the Special Leave Petition before the Apex Court;

(s) We make it clear that all interim directions which are not modified by this judgment and order shall continue to operate with full force as final directions;

(t) We may clarify here that the policy of tolerating illegal structures made before the cut off date incorporated in the said GR dated 5th May 2011 is applicable only to the illegal religious structures made on public properties. The policy incorporated in the said GR is not applicable to the illegal religious structures made on private properties. Therefore, the State and the Planning Authorities

cannot extend the protection of the said GR to the
illegal religious structures made on private
properties. They shall proceed to demolish the same
in accordance with the law unless a particular
structure is protected by any other exiting valid
policy.

- (u) With the above directions, the Petition is disposed of.
The Rule is disposed of accordingly.

(A.A. SAYED, J)

(A.S. OKA, J)

Bombay

High