



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 35 OF 2023

Shamsher Ahmed Shaikh & Ors. } Petitioners
versus
Municipal Corporation of Greater } Respondents
Mumbai & Ors. }

WITH
PUBLIC INTEREST LITIGATION (L) NO. 24597 OF 2023

Faizan E-Gaus-O-Raza Trust } Petitioner
versus
Municipal Corporation of Greater } Respondents
Mumbai & Ors. }

Mr. Altaf Khan with Mr. Akash Mangalgi for the petitioner in PIL/35/2023.

Mr. Yusuf Muchhala, Senior Advocate with Mr. Altaf Khan for the petitioner in PILL/24597/2023.

Mr. Tejas D. Deshmukh with Mr. H. D. Chavan for intervener in PILL/24597/2023.

Mr. Ram Apte, Senior Advocate with Ms. Oorja Dhond i/b. Mr. S. K. Sonawane for respondents 1 to 6 (MCGM) in PIL/35/2023.

Mr. Abhay L. Patki, Additional Government Pleader with Mr. Atul Vanarse, AGP for State.

Ms. Dhruvi M. Kapadia for respondent no. 12 (SRA) in PIL/35/2023.

Ms. Oorja Dhond i/b. Mr. S. K. Sonawane for MCGM in PILL/24597/2023.

Mr. Ashutosh Kumbhakoni, Senior Advocate i/b. Mr. Akshay Shinde for respondents 13 and 14 in PILL/24597/2023.

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. & AMIT BORKAR, J.

DATE: 10th JUNE 2024

P.C.:

- 1.** This PIL petition concerns itself with the paucity of adequate space to be used for burial ground so that the dead can be give decent and respectful departing note.
- 2.** The Court, in its order dated 22nd August 2023 noticed the statutory obligation of the Municipal Corporation under section 436 of the Mumbai Municipal Corporation Act, 1888 which casts a duty to provide adequate space for disposal of dead.
- 3.** In subsequent proceedings of this matter, three places, namely, (i) some space next to Deonar Colony; (ii) some space at Rafi Nagar; and (iii) another plot of land near Hindustan Petroleum Corporation Limited, were identified.
- 4.** The Court has consistently been making orders to ensure that the aforesaid three plots at three different sites are made available at the earliest to be used as burial ground, however, the expected co-operation from the authorities, specially the authorities of the Municipal Corporation of Greater Mumbai (hereafter referred to as "the Municipal Corporation") does not appear to be in sight.
- 5.** As far as the cemetery proposed next to Deonar Colony is concerned, we have been informed that the State Government has issued a notification under section 37 of the Maharashtra Regional and Town Planning Act, 1966 reserving the area as cemetery, however, there appears to be some dispute in relation

to the said site, which has led to filing of Writ Petition (L) No.13514 of 2024, wherein a challenge to the notification reserving the land as cemetery has been made. We, thus, feel it appropriate to club the said Writ Petition (L) No. 13514 of 2024 with these PIL petitions and hear them together. Accordingly, Writ Petition (L) No. 13514 of 2024 be clubbed with the instant PIL petitions.

6. As far as the cemetery at Rafi Nagar is concerned, the Court, in its order dated 8th November 2023, had noticed the submission that for the reason that there is solid waste heap, using the said plot as cemetery will not be feasible. The Court in the said order also noted that the learned counsel for the Municipal Corporation had informed that some other plot within the vicinity of three kms. has been identified and feasibility study was being undertaken. About seven months' period has elapsed since the said statement on behalf of the authorities of the Municipal Corporation was recorded, however, today when the matter is taken up, learned counsel for the Municipal Corporation informs that even the said plot, in respect of which information was given to the court on 8th November 2023, has not been found feasible for cemetery. On being asked as to whether any other plot has been identified, learned counsel representing the Municipal Corporation states that he will seek instructions in this regard from the authorities concerned.

7. So far as the plot in the vicinity of Hindustan Petroleum Corporation Limited is concerned, it has been informed that the said plot of land is now owned by some private entity and the Court was accordingly informed. The statement made to that effect by the learned Advocate General stands noted in our

order dated 8th November 2023 which reads that since the efforts made for acquiring the said land through private negotiations did not succeed, the process of compulsory acquisition has been initiated and proposal in this regard has been sent by the Municipal Corporation to acquire the said plot. The learned Advocate General also informed that the Municipal Corporation has been required to deposit 30% of the compensation which may be paid in case acquisition takes place.

8. Having regard to the aforesaid facts, we, in our order dated 8th November 2023, had recorded our expectation that the Municipal Corporation shall take appropriate steps to deposit 30% of the compensation amount. We had also directed that process of compulsory acquisition shall be completed within the minimum statutory period in terms of the provisions of the enactment, namely, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

9. As noticed above, the said expectations were expressed and directions were accordingly given, both to the State Government as also the Municipal Corporation on 8th November 2023 and seven months' period since then has elapsed, however, nothing in the direction of acquisition has been done as it has been informed by learned AGP that the 30% of the estimated amount of compensation has yet not been deposited by the Municipal Corporation.

10. Such callousness on the part of the authorities cannot be appreciated. Right of dead to be given a decent and respectful last rites is as important as any other right available when he is alive. Moreover, it is the statutory duty and obligation cast on

the Municipal Corporation to provide adequate place for burial of the dead. The authorities of the Municipal Corporation, thus, cannot shirk their shoulders away from such statutory responsibility.

11. In the aforesaid view of the matter, we direct that none other than the Commissioner of the Municipal Corporation himself shall look into the matter personally and accordingly issue directions/instructions which may be required for (a) finding out another plot of land to be used as burial ground within the vicinity of three kms. from Rafi Nagar and (b) ensuring that all steps are taken for initiation and completion of the process of acquisition of the land which exists near Hindustan Petroleum Corporation Limited, including making of requisite deposit as required by the State Government

12. We also call upon the Municipal Commissioner to file his personal affidavit by the next date of listing indicating therein the steps, which, in the meantime, shall be taken by the authorities of the Municipal Corporation to ensure compliance of this order.

13. Stand over to **21st June 2024 (High on Board)**.

Digitally signed
By JAYANT
VISHWANATH
SALUNKE
Date:
2024.06.10
18:45:03 +0530

(AMIT BORKAR, J.)

(CHIEF JUSTICE)