



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7079 OF 2023

- | | | | |
|----|----------------------------------------|---|-----------------------|
| 1] | Mr. Karansingh Shivsingh Gill |] | |
| | Age: 45 years, Occ: Business, |] | |
| | R/o I.D.Hospital Compound, Near Dwarka |] | |
| | Circle, Service Raod, Nashik. |] | ...Petitioner. |

Versus

- | | | | |
|----|-------------------------------------|---|------------------------|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |
| | Encroachment Department, |] | |
| | Nashik Municipal Corporation |] | |
| | having his office at : |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 3] | The State of Maharashtra |] | ...Respondents. |

WITH

WRIT PETITION NO. 1750 OF 2023.

- | | | | |
|----|---------------------------------------|---|-----------------------|
| 1] | Mr. Mayuresh Shantaram Karad |] | |
| | Age: 35, Occ: Business |] | |
| | R/at:-Old Deolali Naka, I.D. Hospital |] | |
| | Pune Road, Nashik -422011 |] | ...Petitioner. |

Versus

- | | | | |
|----|-------------------------------------|---|--|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |
| | Encroachment Department, |] | |
| | Nashik Municipal Corporation |] | |
| | having his office at : |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |

3] The State of Maharashtra] ...Respondents.

WITH
WRIT PETITION NO. 1752 OF 2023 .

1] Mr. Prashant Shrikant Tayade]
Age: 40, Occ: Business]
R/at:- Old Deolali Naka, I.D. Hospital]
Pune Road, Nashik - 422011] ...Petitioner.

Versus

1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.] ...Respondents.

WITH
WRIT PETITION NO. 1762 OF 2023 .

1] Mr. Fakir Mohammad Akbar Patel]
Age:29, Occ: Business]
R/at:- Old Deolali Naka, I.D. Hospital]
Pune Road, Nashik - 422011] ...Petitioner.

Versus

1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
3 The State of Maharashtra] ...Respondents.

WITH
WRIT PETITION NO. 1751 OF 2023.

- | | | | |
|----|----------------------------------------|---|-----------------------|
| 1] | Mr. Ramlal Babulal Sakhare |] | |
| | Age: 60, Occ: Business |] | |
| | R/at:- Old Deolali Naka, I.D. Hospital |] | |
| | Pune Road, Nashik - 422011 |] | ...Petitioner. |

Versus

- | | | | |
|----|-------------------------------------|---|------------------------|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |
| | Encroachment Department, |] | |
| | Nashik Municipal Corporation |] | |
| | having his office at : |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 3 | The State of Maharashtra |] | ...Respondents. |

WITH
WRIT PETITION NO. 1759 OF 2023.

- | | | | |
|----|----------------------------------------|---|-----------------------|
| 1] | Mr. Arun Pandurang Shelke |] | |
| | Age: 55, Occ: Business |] | |
| | R/at:- Old Deolali Naka, I.D. Hospital |] | |
| | Pune Raod, Nashik-422011 |] | ...Petitioner. |

Versus

- | | | | |
|----|-------------------------------------|---|------------------------|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |
| | Encroachment Department, |] | |
| | Nashik Municipal Corporation |] | |
| | having his office at : |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 3] | The State of Maharashtra |] | ...Respondents. |

WITH
WRIT PETITION NO. 1827 OF 2023.

- | | | | |
|----|----------------------------------------|---|-----------------------|
| 1] | Mr. Ravindra Abhimanyu Marathe |] | |
| | Age: 37, Occ: Business |] | |
| | R/at:- Old Deolali Naka, I.D. Hospital |] | |
| | Pune Road, Nashik - 422011 |] | ...Petitioner. |

Versus

- | | | | |
|----|-------------------------------------|---|------------------------|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |
| | Encroachment Department, |] | |
| | Nashik Municipal Corporation |] | |
| | having his office at : |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 3] | The State of Maharashtra |] | ...Respondents. |

WITH
WRIT PETITION NO. 7102 OF 2023.

- | | | | |
|----|------------------------------------------|---|-----------------------|
| 1] | Mr. Shaikh Fattu Shaikh Chand |] | |
| | Age: 79 years, Occ:- Business, |] | |
| | R/o. I.D. Hospital Compound, |] | |
| | Near Dwarka Circle, Service Road, Nashik |] | ...Petitioner. |

Versus

- | | | | |
|----|-------------------------------------|---|------------------------|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |
| | Encroachment Department, |] | |
| | Nashik Municipal Corporation |] | |
| | having his office at : |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 3] | The State of Maharashtra |] | ...Respondents. |

WITH
WRIT PETITION NO. 7081 OF 2023.

- | | | | |
|----|----------------------------------------|---|----------------|
| 1] | Mr. Shivsingh Hazarasingh Gill |] | |
| | (Since deceased) through legal heir |] | |
| | Mr. Sharandevsingh Shivsingh Gill |] | |
| | Age:- 41 years, Occ:- Business, |] | ...Petitioner. |
| | R/o. Old Deolali Naka, Ideal Hospital, |] | |
| | Dwarka, Nashik. |] | |

Versus

- | | | | |
|----|-------------------------------------|---|-----------------|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |
| | Encroachment Department, |] | |
| | Nashik Municipal Corporation |] | |
| | having his office at : |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 3] | State of Maharashtra |] | ...Respondents. |

WITH
WRIT PETITION NO. 7084 OF 2023.

- | | | | |
|----|---------------------------------------|---|----------------|
| 1] | Shabbir Mulla Yusuf Ali Dahodwala, |] | |
| | Age:- 57 years, Occ- Business, |] | |
| | R/o.Plot No.65, Golden Park, Singapur |] | |
| | Garden, Takali Road Nashik. |] | ...Petitioner. |

Versus

- | | | | |
|----|-------------------------------------|---|--|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |
| | Encroachment Department, |] | |
| | Nashik Municipal Corporation |] | |
| | having his office at : |] | |
| | Rajiv Gandhi Bhavan, |] | |

- | | | | |
|----|--------------------------|---|------------------------|
| | Sharanpur Road, Nashik. |] | |
| 3] | The State of Maharashtra |] | ...Respondents. |

WITH
WRIT PETITION NO. 7082 OF 2023.

- | | | | |
|----|-------------------------------------|---|-----------------------|
| 1] | Mr. Shivsingh Hazarasingh Gill |] | |
| | (Since deceased) through legal heir |] | |
| | Mr. Sharandevsingh Shivsingh Gill |] | |
| | Age:- 41 years, Occ:-Business, |] | |
| | R/o. New Mohinder Punjab Hotel, |] | |
| | Old Deolali Naka, Ideal Hospital, |] | |
| | Dwarka, Nashik. |] | ...Petitioner. |

Versus

- | | | | |
|----|-------------------------------------|---|------------------------|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |
| | Encroachment Department, |] | |
| | Nashik Municipal Corporation |] | |
| | having his office at : |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 3] | The State of Maharashtra |] | ...Respondents. |

WITH
WRIT PETITION NO. 7100 OF 2023.

- | | | | |
|----|-----------------------------------|---|-----------------------|
| 1] | Mr. Gulam Dastagir Abdul Gaffar |] | |
| | Age:- 57 years, Occ:- Business, |] | |
| | R/o. I.D. Hospital Compound, |] | |
| | Near Dwarka Circle, Service Road, |] | |
| | Nashik. |] | ...Petitioner. |

Versus

- | | | | |
|----|-------------------------------------|---|--|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |

- 2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
3] State of Maharashtra] **...Respondents.**

WITH
WRIT PETITION NO. 7096 OF 2023.

- 1] Sukhmani Motors through its]
Manager- Mr. Damanjit Singh Kanwarji]
Singh Chadha, Age:-32 years, Occ-Business,]
R/o. I.D. Hospital Compound,]
Near Dwarka Circle, Service Road,]
Nashik.] **...Petitioner.**

Versus

- 1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
3] State of Maharashtra] **...Respondents.**

WITH
WRIT PETITION NO. 7091 OF 2023.

- 1] Mr. Dattatray Murlidhar Jadhav,]
Age:-57 years, Occ-Business,]
R/o.C-1 Lingayat Colony,]
Shriram Setu Society, Behind Hotel]
Siddharth, Pune Road, Nashik.] **...Petitioner.**

Versus

- 1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]

- | | | | |
|----|------------------------------|---|-----------------|
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |
| | Encroachment Department, |] | |
| | Nashik Municipal Corporation |] | |
| | having his office at : |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 3] | The State of Maharashtra |] | ...Respondents. |

WITH
WRIT PETITION NO. 7099 OF 2023.

- | | | | |
|----|-----------------------------------|---|----------------|
| 1] | Mr. Karansingh Shivsingh Gill |] | |
| | Age: 45 years, Occ: Business, |] | |
| | R/o I.D. Hospital Compound, |] | |
| | Near Dwarka Circle, Service Road, |] | |
| | Nashik. |] | ...Petitioner. |

Versus

- | | | | |
|----|-------------------------------------|---|-----------------|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |
| | Encroachment Department, |] | |
| | Nashik Municipal Corporation |] | |
| | having his office at : |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | ...Respondents. |

WITH
WRIT PETITION NO. 7097 OF 2023.

- | | | | |
|----|-------------------------------------|---|----------------|
| 1] | Mr. Hazarsingh Sohansingh Nagi |] | |
| | (Since deceased through legal heir) |] | |
| | Mr. Kuldeepsingh Hazarsingh Nagi |] | |
| | Age:- 59 years, Occ:-Business, |] | |
| | R/o. KS Engineering Works, |] | |
| | Old Deolali Naka, Ideal Hospital, |] | |
| | Dwarka, Nashik. |] | ...Petitioner. |

Versus

- | | | |
|----|-------------------------------------|-------------------|
| 1] | Nashik Municipal Corporation, |] |
| | Through its Municipal Commissioner, |] |
| | Presently the Administrator, |] |
| | Rajiv Gandhi Bhavan, |] |
| | Sharanpur Road, Nashik. |] |
| 2] | The Deputy Commissioner, |] |
| | Encroachment Department, |] |
| | Nashik Municipal Corporation |] |
| | having his office at : |] |
| | Rajiv Gandhi Bhavan, |] |
| | Sharanpur Road, Nashik. |] |
| 3] | The State of Maharashtra |] ...Respondents. |

WITH

WRIT PETITION NO. 7098 OF 2023.

- | | | |
|----|-----------------------------------|------------------|
| 1] | Sukhmani Motors through its |] |
| | Manager- |] |
| | Mr. Damanjit Kanwarjit Chadha/ |] |
| | Arvind Kaur Chandok |] |
| | Age:- 32 years, Occ:-Business, |] |
| | R/o. I.D. Hospital Compound, |] |
| | Near Dwarka Circle, Service Road, |] |
| | Nashik. |] ...Petitioner. |

Versus

- | | | |
|----|-------------------------------------|-------------------|
| 1] | Nashik Municipal Corporation, |] |
| | Through its Municipal Commissioner, |] |
| | Presently the Administrator, |] |
| | Rajiv Gandhi Bhavan, |] |
| | Sharanpur Road, Nashik. |] |
| 2] | The Deputy Commissioner, |] |
| | Encroachment Department, |] |
| | Nashik Municipal Corporation |] |
| | having his office at : |] |
| | Rajiv Gandhi Bhavan, |] |
| | Sharanpur Road, Nashik. |] |
| 3] | The State of Maharashtra |] ...Respondents. |

WITH

WRIT PETITION NO. 7093 OF 2023.

- 1] Mr. Tandeshwari Mununi Chandran]
Age:- 62 years, Occ:- Business,]
R/o. Laxmi Tyre Works,]
Old Deolali Naka, Ideal Hospital,]
Dwarka, Nashik] **...Petitioner.**

Versus

- 1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
3] The State of Maharashtra] **...Respondents.**

WITH

WRIT PETITION NO. 7101 OF 2023.

- 1] Mr. Prashant Ramesh Ghayal]
Age:- 50 years, Occ:- Business,]
R/o I.D. Hospital Compound,]
Near Dwarka Circle, Service Road,]
Nashik.] **...Petitioner.**

Versus

- 1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
3] The State of Maharashtra] **...Respondents.**

WITH
WRIT PETITION NO. 7094 OF 2023.

- | | | | |
|----|----------------------------------------|---|-----------------------|
| 1] | Mr. Jaspalsingh Tarvindarsingh Chandok |] | |
| | Age:- 62 years, Occ:-Business, |] | |
| | R/o I.D. Hospital Compound, |] | |
| | Near Dwarka Circle, Service Road, |] | |
| | Nashik |] | ...Petitioner. |

Versus

- | | | | |
|----|-------------------------------------|---|------------------------|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |
| | Encroachment Department, |] | |
| | Nashik Municipal Corporation |] | |
| | having his office at : |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 3] | The State of Maharashtra |] | ...Respondents. |

WITH
WRIT PETITION NO. 7085 OF 2023.

- | | | | |
|----|-------------------------------------------|---|--|
| 1] | Akhilakh Jahiruddin Shaikh (deceased) |] | |
| | Through his legal heirs: |] | |
| | 1] Shaikh Ifjul Rehman |] | |
| | Age:- 48 years, Occ:- Business, |] | |
| | R/o. Gausia Manzil, Vinay Nagar, |] | |
| | Near Dwarka Circle, Service Road, Nashik. |] | |
| | |] | |
| | 2] Shaikh Saida Firdaus Shakir |] | |
| | Age:-46 years, Occ:- Household, |] | |
| | R/o. Aurangabad. |] | |
| | |] | |
| | 3] Shaikh Noorjanha Rais |] | |
| | Age:- 44 years, Occ:-Household, |] | |
| | |] | |
| | 4] Shaikh Israt Amin |] | |
| | Age:- 42 years, Occ:- Household, |] | |
| | Sr.No. 3 & 4 R/o. Pipliya Mandi, |] | |
| | Mandsour, Madhya Pradesh. |] | |

5] Shaikh Mohammad Ziyaur Rehman
Age:- 40 years, Occ:- Business,

6] Shaikh Mohammad Khalil Rehman
Age:- 37 years, Occ:- Business,
Sr.No. 5 & 6 R/o Gausia Manzil,
Vinay Nagar, Nashik.

7] Shaikh Shabana Hussain
Age:- 35 years, Occ:-Business,
R/o. Wadalgaon, Dist. Nashik

...Petitioner.

Versus

1] Nashik Municipal Corporation,
Through its Municipal Commissioner,
Presently the Administrator,
Rajiv Gandhi Bhavan,
Sharanpur Road, Nashik.

2] The Deputy Commissioner,
Encroachment Department,
Nashik Municipal Corporation
having his office at :
Rajiv Gandhi Bhavan,
Sharanpur Road, Nashik.

3] The State of Maharashtra

...Respondents.

WITH

WRIT PETITION NO. 1761 OF 2023.

1] Mr. Shrikant Khandu Dhinde
Age:- 49, Occ:-Business
R/at:- Old Deolali Naka, I.D. Hospital
Pune Road, Nashik 422011

...Petitioner.

Versus

1] Nashik Municipal Corporation,
Through its Municipal Commissioner,
Presently the Administrator,
Rajiv Gandhi Bhavan,
Sharanpur Road, Nashik.

2] The Deputy Commissioner,
Encroachment Department,
Nashik Municipal Corporation
having his office at :

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|----|--------------------------|---|-----------------|
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 3] | The State of Maharashtra |] | ...Respondents. |

WITH
WRIT PETITION NO. 1753 OF 2023.

- | | | | |
|----|--------------------------------------|---|----------------|
| 1] | Mr. Shaikh Faridabi Mohammad |] | |
| | Age:- 66, Occ:- Business |] | |
| | R/at:- Old Deoli Naka, I.D. Hospital |] | |
| | Pune Road, Nashik 422011 |] | ...Petitioner. |

Versus

- | | | | |
|----|-------------------------------------|---|-----------------|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |
| | Encroachment Department, |] | |
| | Nashik Municipal Corporation |] | |
| | having his office at : |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 3] | The State of Maharashtra |] | ...Respondents. |

WITH
WRIT PETITION NO. 1763 OF 2023.

- | | | | |
|----|----------------------------------------|---|----------------|
| 1] | Mr. Ramchandra Damodar Ghadge |] | |
| | Age:- 60, Occ:-Business, |] | |
| | R/at:- Old Deolali Naka, I.D. Hospital |] | |
| | Pune Road, Nashik 422011 |] | ...Petitioner. |

Versus

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|----|-------------------------------------|---|--|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |
| | Encroachment Department, |] | |
| | Nashik Municipal Corporation |] | |
| | having his office at : |] | |

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|----|--------------------------|---|-----------------|
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 3] | The State of Maharashtra |] | ...Respondents. |

WITH
WRIT PETITION NO. 7087 OF 2023.

- | | | | |
|----|----------------------------------------|---|----------------|
| 1] | Mr. Ratanlal Dagdu Sharma, |] | |
| | Age:-64 years, Occ- Business, |] | |
| | R/o. Parshuram Puriya, Ideal Hospital, |] | |
| | Pakhal Road, Dwarka, Nashik |] | ...Petitioner. |

Versus

- | | | | |
|----|-------------------------------------|---|-----------------|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |
| | Encroachment Department, |] | |
| | Nashik Municipal Corporation |] | |
| | having his office at : |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 3] | The State of Maharashtra |] | ...Respondents. |

WITH
WRIT PETITION NO. 7092 OF 2023.

- | | | | |
|----|-----------------------------------|---|----------------|
| 1] | Mr. Shriram Pundlik Shinde |] | |
| | Age:- 63 years, Occ:- Business, |] | |
| | R/o. Shinde Motorcycle works, |] | |
| | Old Deolali Naka, Ideal Hospital, |] | |
| | Dwarka, Nashik. |] | ...Petitioner. |

Versus

- | | | | |
|----|-------------------------------------|---|--|
| 1] | Nashik Municipal Corporation, |] | |
| | Through its Municipal Commissioner, |] | |
| | Presently the Administrator, |] | |
| | Rajiv Gandhi Bhavan, |] | |
| | Sharanpur Road, Nashik. |] | |
| 2] | The Deputy Commissioner, |] | |

- Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
3] The State of Maharashtra] **...Respondents.**

WITH
WRIT PETITION NO. 1749 OF 2023.

- 1] Mr. Shantaram Govind Karad]
Age: 66 Years, Occ: Business]
R/at:- Old Deolali Naka, I.D. Hospital]
Pune Road, Nashik 422011] **...Petitioner.**

Versus

- 1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
3] The State of Maharashtra] **...Respondents.**

WITH
WRIT PETITION NO. 7086 OF 2023.

- 1] Amarjeetsingh Kuldeepsing Baji, Since]
(Deceased through Legal Heir)]
Upkar Kaur Baji]
Age: 50 years, Occ-]
Room No. N-4 K-35 Old Cidco Nashik] **...Petitioner.**

Versus

- 1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]

2] The State of Maharashtra] ...Respondents.

WITH
WRIT PETITION NO. 7095 OF 2023.

1] Mr. Harpalsingh Amarjeetsingh]
Age:- 81 years, Occ:-Business]
R/o. Nashik Motors,]
Old Deolali Naka, Ideal Hospital,]
Dwarka, Nashik] ...Petitioner.

Versus

1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
3] The State of Maharashtra] ...Respondents.

WITH
WRIT PETITION NO. 1760 OF 2023.

1] Mr. Vilas Daguji Mandlik]
Age: 48, Occ:- Business,]
R/at:- Old Deolali Naka, I.D. Hospital]
Pune Road, Nashik 422011] ...Petitioner.

Versus

1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]

- Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
3] The State of Maharashtra] ...Respondents.

WITH
WRIT PETITION NO. 1757 OF 2023.

- 1] Mr. Suresh Haribhau Palekar]
Age:- 59, Occ: Business]
R/at:- Old Deolali Naka, I.D. Hospital Pune]
Road, Nashik 422011] ...Petitioner.

Versus

- 1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
3] The State of Maharashtra] ...Respondents.

WITH
WRIT PETITION NO. 1755 OF 2023.

- 1] Mr. Mujahiddin Shaikh Mohammad]
Age:- 38, Occ: Business]
R/at:- Old Deolali Naka, I.D. Hospital Pune]
Road, Nashik 422011] ...Petitioner.

Versus

- 1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]

- Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
3] The State of Maharashtra] ...Respondents.

WITH
WRIT PETITION NO. 1756 OF 2023.

- 1] Mrs. Manjushree Hari Bhadke]
Age:- 45, Occ: Business]
R/at:- Old Deolali Naka, I.D. Hospital Pune]
Road, Nashik 422011] ...Petitioner.

Versus

- 1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
3] The State of Maharashtra] ...Respondents.

WITH
WRIT PETITION NO. 1758 OF 2023.

- 1] Mr. Shashikant Polad Sonawane]
Age:- 53, Occ: Business]
R/at:- Old Deolali Naka, I.D. Hospital Pune]
Road, Nashik 422011] ...Petitioner.

Versus

- 1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]

- having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
3] The State of Maharashtra] **...Respondents.**

WITH
WRIT PETITION NO. 1754 OF 2023.

- 1] Mr. Dyaneshwar Pralhad Patil]
Age:- 48, Occ: Business]
R/at:- Old Deolali Naka, I.D. Hospital Pune]
Road, Nashik 422011] **...Petitioner.**

Versus

- 1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
3] The State of Maharashtra] **...Respondents.**

WITH
WRIT PETITION NO. 7090 OF 2023.

- 1] Tejindarsing AmarjeetSingh Baji,]
Age:35 years, Occ- Business,]
Room No. N-4 K-35 Old Cidco]
Nashik] **...Petitioner.**

Versus

- 1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
2] The Deputy Commissioner,]
Encroachment Department,]

- Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
3] The State of Maharashtra] ...Respondents.

WITH
WRIT PETITION NO. 7089 OF 2023.

- 1] Mr. Satpalsingh Gurubakshingh Chondok]
Age:- 57, Occ: Business]
R/at:- Old I.D. Hospital Compound, Near]
Dwarka Circle, Service Road, Nashik.] ...Petitioner.

Versus

- 1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.] ...Respondents.

WITH
WRIT PETITION NO. 7091 OF 2023.

- 1] Mr. Surjitsingh Labhsingh Sethi (deceased)]
Through his legal heirs:]
1] Surnidrajit Kaur Sethi]
Age: 70 years, Occ:-Household,]
2] Rablin Kaur Sethi]
Age 47 years, Occ:- Household,]
Both R/o. Gumathi No.5, Kanpur (U.P)]
3] Ramnitsingh Surjitsingh Sethi]
Age:45 years, Occ:- Business]
4] Harjitsingh Surjitsingh Sethi]
Age: 42 years, Occ: Household, Sr.No. 1,3 &]

4 R/o. Bhavsar Bhavan, Govind Nagar,]
Nashik] ...Petitioner.

Versus

- 1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
- 2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
- 3] The State of Maharashtra] ...Respondents.

WITH

WRIT PETITION NO. 7083 OF 2023.

- 1] Mr. Gangadhar Karbhari Karpe]
Age:- 72, Occ: Business,]
R/at:- Hotel Gajanan Maharaj, Old Deolali]
Naka, I.D. Hospital Dwarka, Nashik 422011] ...Petitioner.

Versus

- 1] Nashik Municipal Corporation,]
Through its Municipal Commissioner,]
Presently the Administrator,]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
- 2] The Deputy Commissioner,]
Encroachment Department,]
Nashik Municipal Corporation]
having his office at :]
Rajiv Gandhi Bhavan,]
Sharanpur Road, Nashik.]
- 3] The State of Maharashtra] ...Respondents.

WITH

WRIT PETITION NO. 7088 OF 2023.

- 1] Curvindersingh Narendrsingh Baji,]

Age: 46 years, Occ:-Business,]
R/o N-4, K-35, Old Cidco Nashik] **...Petitioner.**

Versus

- | | | |
|----|-------------------------------------|--------------------------|
| 1] | Nashik Municipal Corporation, |] |
| | Through its Municipal Commissioner, |] |
| | Presently the Administrator, |] |
| | Rajiv Gandhi Bhavan, |] |
| | Sharanpur Road, Nashik. |] |
| 2] | The Deputy Commissioner, |] |
| | Encroachment Department, |] |
| | Nashik Municipal Corporation |] |
| | having his office at : |] |
| | Rajiv Gandhi Bhavan, |] |
| | Sharanpur Road, Nashik. |] |
| 3] | The State of Maharashtra |] ...Respondents. |

Mr. G. S. Godbole, Senior Advocate along with Mr. Chetan R. Nagare for the Petitioners in WP Nos. 1750, 1749, 1763, 1754, 1753, 1757, 1756, 1755, 1761, 1760, 1759, 1762, 1752, 1751, 1758 and 1827 of 2023.

Mr. Mahendra Agvekar, Shraddha Chavan i/b Sachin Gorwadkar for the Petitioners in WP Nos. 7092, 7095, 7097, 7093, 7081, 7082, 7083 of 2023

Mr. Sanjeev M. Gorwadkar, Senior Advocate a/w Mr. Gurudas S. Gorwadkar for the Petitioners in WP Nos. 7101, 7094, 7089, 7098, 7096, 7099, 7013, 7095, 7100, 7102, and 1413 of 2023.

Mr. Sandeep Shinde i/b Ergo Juris for the Petitioner in WP Nos. 7079, 7087, 7084, 7086, 7088, 7090, 7091 of 2023.

Ms. M. P. Thakur, AGP for the State.

Mr. M.L. Patil for Respondents-Corporation.

Coram : Sharmila U. Deshmukh, J.

Reserved on : July 8, 2024

Pronounced on : September 12, 2024.

Judgment :

- 1. Rule.** Rule made returnable forthwith and by consent taken up

for final hearing.

2. This group of petitions challenges the Judgment dated 5th January, 2023 passed by the Appellate Court under Section 81-F of the Maharashtra Municipal Corporation Act [for short "the Corporation Act"] preferred against the order passed by the Deputy Commissioner of Nashik Municipal Corporation under Section 81-B of the Corporation Act. Though in some of the Petitions, the date of the show cause notice issued by the Respondent Corporation is different and in some other Petitions there were civil suits filed by the allottees claiming injunction, the individual facts are not required to be taken into consideration. The grounds on which the show cause notices have been issued are identical and identical orders were passed by the Respondent Corporation. Common submissions were advanced and the Petitions are being disposed of by this common judgment.

3. By consent Writ Petition No.7079 of 2023 and Writ Petition No. 7099 of 2023 were taken up as lead Petitions and referred to during the arguments.

FACTUAL MATRIX:

4. The Petitioners claim to be allottees and lessees of open plot of land of differing sizes owned by Nashik Municipal Council, now Nashik Municipal Corporation, situated at Survey No.489 having Final Plot No.282 and are carrying on business since the year 1973 from the

shops constructed thereon. The Petitioners claim to be regularly paying property taxes in respect of the said plots and are also having individual electricity connections and the shop establishment license etc.

5. In the year 1992 as there was an apprehension of demolition of the suit premises at the hands of Nashik Municipal Corporation, some of the Petitioners in these group of Petitions had instituted civil proceedings seeking declaration of occupation and for perpetual injunction and the plaint was rejected under Order 7 Rule 11 of CPC. The suits came to be restored by the Appellate Court and the order of restoration was challenged before this Court which was disposed of vide order dated 30th June, 2016 in view of the pendency of the challenge to the notices which were in the meantime issued by the Corporation.

6. In or about the year 2015, the Respondent-Corporation issued show-cause notices which in some cases were issued on 22nd May, 2015 and in some cases on 2nd June, 2015 to the individual allottees under Section 81-B, 229, 230, 231, 232 and 478 of the Corporation Act directing the Petitioner to show cause against the proposed action of eviction as the subject premises was required for road widening and making available necessary development infrastructure in public interest. The Petitioners submitted their individual explanations to

the show-cause notice issued by the Respondent-Corporation *inter alia* contending that the premises was not situated on the junction or in the way of national highway but is located on service road and there is no proposal for widening of service road.

7. The Respondents fixed the date of hearing and adjournment was sought by the Petitioners and on the adjourned date the Petitioners were absent. Vide order dated 4th December, 2015, the Respondents passed order of eviction for the reason stated in the show cause notice.

8. The order of eviction came to be challenged by the Petitioners under Section 81-F of the Corporation Act before the District Court, Nashik. Vide judgment dated 30th May 2019, the District Court allowed the Appeal holding that there was no documentary evidence produced by the Corporation to support the reason stated in the show cause notice and mere contention that the premises is required in public interest is not sufficient. It further held that the notice dated 4th December, 2015 was illegal and invalid. It further held that there was no reasoned order passed by the Commissioner recording his satisfaction that the premises is required in public interest, that no reasonable opportunity of being heard was given to the Petitioners and remanded the matter to the Deputy Commissioner to give appropriate opportunity to parties, to permit them to produce

documentary evidence, hear the arguments and decide afresh.

9. After remand, hearing was conducted and vide order dated 29th February 2020, Respondent No.2 held that the explanation tendered is not satisfactory and the premises is required by the Corporation in public interest for development and passed the order directing the Petitioners to vacate and hand over the premises within a period of 15 days.

10. Appeals under Section 81-F of the Corporation Act was filed by the Petitioners before the District Judge. By the impugned Judgment dated 5th January 2023, the District Judge rejected the appeals filed by the Petitioners and confirmed the eviction orders passed by the Respondent-Corporation.

SUBMISSIONS :

11. Mr. S. M. Gorwadkar, learned Senior Advocate appearing for some of the Petitioners submits that after remand there was no fresh show-cause notice issued. He submits that in the earlier round of litigation, there is a specific finding of the District Judge that the show-cause notice issued by the Municipal Commissioner is illegal and invalid and therefore fresh proceedings based on the same show cause notice could not have been initiated. He would further submit that the Deputy Commissioner's order of 29th February 2020 merely reproduced the contents of show-cause notice without recording any

reasons. Drawing support from the decision of Apex Court in ***Mahabir Prasad Santosh Kumar v. State of U.P. [1966 ALL LJ 173]***, he submits that the Apex Court has elaborated on the significance of recording of reasons while passing quasi judicial orders.

12. He submits that no regulations have been framed prescribing the manner in which the inquiries are to be conducted under Section 81-I of the Corporation Act and under Section 81-B, the Deputy Commissioner exercises quasi judicial powers and therefore recording of reasons is necessary. He would further submit that the Appellate Court has proceeded on completely erroneous ground of unlawful occupation of the Petitioners. He submits that it is well settled that the order cannot travel beyond the show-cause notice. He submits that the Appellate Court has rendered factually incorrect finding of the Petitioners being unlawful occupant without there being any such case pleaded by the Respondent-Corporation. He submits that in absence of any such case in the show cause notice, the Petitioners could not have met the case of unauthorised occupation.

13. Mr. Godbole, learned Senior Advocate appearing for some of the Petitioners would submit that the Appellate Court remanded the matter for the reason that no documentary evidence was produced by the Corporation and there was no reasoned order. He submits that no fresh notice was issued after remand and the second order dated 29th

February, 2020 is ad verbatim reproduction of earlier order. He submits that in the Affidavit in reply the Corporation for the first time has supplemented the grounds of eviction which is impermissible.

14. Drawing attention of this Court to the judgment in RCA No.419 of 2015, Mr. Godbole submits that despite the findings in earlier round of litigation about non production of documentary evidence by Municipal Corporation to support the case in show cause notice, after remand Municipal Corporation did not produce any documentary evidence. He would further submit that the Appellate Court had specifically held that the Commissioner is required to pass a reasoned order and despite the finding there is no reasoned order passed by Corporation. He submits that there was no fresh notice and no material placed on record and as the same position existed even in the second round of litigation, the order cannot be upheld by applying principles of *res judicata*.

15. Pointing out to the order of Appellate Court after remand, he submits that the Appellate Court has gone into the issue of unauthorised occupation by considering the statutory provisions in respect of lease agreements which is beyond the show cause notice. In support, he relies upon following decisions:

- [a] ***Canara Bank v. N.G. Subbaraya Setty [(2018) 16 SCC 228];***
- [b] ***M/s. M. P. S. Kumar v. State of U.P. [1970 (1) SCC 764];***

- [c] ***Babubhai & Co. v. State of Gujarat [(1985) 2 SCC 732]; and***
[d] ***Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405].***

16. Mr. Shinde, learned counsel appearing for the Petitioner in Writ Petition No. 7079 of 2023 would point out the reply filed to the show-cause notice specifically stating that the land was not required for traffic congestion but for building commercial complex and has referred to the public notice inviting tenders. He submits that the Corporation has passed the resolution annexed at page 74 of the petition resolving to build commercial complex on BOTT basis at the same place where the structures of Petitioners are erected. He would further point out the affidavit-in-reply filed on behalf of the Municipal Corporation where in paragraph 6 it is pleaded that the Corporation proposes to construct the building to accommodate the Corporation's Nashik East Division office on the same plot No. 282 and for that the Corporation needs possession of the plot. He submits that it is therefore clear that the notices are malafidely issued giving reasons of traffic congestion to demonstrate public purpose.

17. Mr. Mahendra Agvekar, learned counsel appearing for the Petitioner in Writ Petition No.7092 of 2023 submits that the Petitioner therein had filed a suit for permanent injunction where the trial Court had come to a finding that the Corporation has accepted

the right of Petitioner herein as lessee. He submits that finding of the trial Court was that the Municipal Corporation had decided to build a shopping complex at the place which in the first instance was let to the Petitioner as it was a neglected area. He submits that the trial Court has held that the suit property is in possession of plaintiff since the last 15 to 20 years and after the expiration of lease the Respondent-Corporation continued to accept different taxes from the Petitioners and renewed their various licenses and therefore it cannot be said that the occupation of Petitioners is unauthorised. He submits that the suit was decreed restraining the Corporation from obstructing the peaceful possession of Petitioners herein. He submits that the appeal filed against the said judgment was modified however the Corporation was restrained from dispossessing the Petitioners except by procedure established by law. He submits that the provisions of Section 81 of the Corporation Act is not applicable to tenants. He further referred to the Google Map and would submit that there is already a subway in existence and therefore there is no question of any traffic congestion.

18. *Per contra* Mr. M. L. Patil, learned counsel appearing for the Respondent-Corporation would submit that the undisputed fact is that Final Plot No.282 belongs to and is under the ownership of Corporation. He submits that the allotment was made by the Nashik

Municipal Council and under Section 92 of Corporation Act, the lease can be only for period of 9 years and the Petitioners continued in possession even after expiry of lease. He submits that in relation to public properties no party can enter upon, use or remain on the same without authority of law and there is no concept of deemed renewal in respect of the Corporation premises. He submits that there are no valid and subsisting lease agreements in favour of occupiers. He refers to Section 81-A which defines unauthorised occupation and Section 81-B(1)(a) and (c) of Corporation Act and submits that procedure is set out in Sub-Section 2 of Section 81-B. He submits that the quit notice issued by the Deputy Commissioner upon reaching a satisfaction that the possession of plot is required in public interest is an administrative decision and thus there is no requirement of giving reasons. He submits that the provisions of Chapter VIII-A cannot be interpreted to mean that judicial or quasi judicial inquiry must be followed before satisfaction is reached by the Commissioner. As an alternative submission, Mr. Patil contends that that as the occupiers have no legal right to remain in possession the only conclusion which is possible is that the premises is required by Corporation in public interest for development and it will be a useless formality to remand the matter for fresh hearing.

19. He has taken this Court through the order dated 2nd June 2015

and would submit that the order specifically notes that the occupiers are on temporary basis on daily licence fees and the finding that the premises are required in public interest to decongest the traffic. He submits that sufficient reasons are given in the said order which is an administrative in nature. Pointing out to the order dated 4th December 2015 he submits that the same was final order and taking into consideration the public purpose the order of eviction was passed. He submits that after remand hearing was given to the Petitioners and there is specific finding recorded by the Commissioner that the explanation tendered by the Petitioners is not satisfactory and as such the order of eviction has been passed.

20. He has taken this Court in detail through the findings of the Appellate Court and would submit that the Appellate Court has rightly noted that if the Deputy Commissioner is satisfied that the occupation is in unauthorised occupation, then order of eviction is required to be followed. He submits that it is nobody's case that the principles of natural justice were not followed and the occupiers were fully aware of the case against them that the premises were required by the Corporation for the reason stated in the notices and as such no prejudice was suffered by the occupiers. He submits that the decision of Commissioner being an administrative decision, cannot be interfered with in exercise of power under Article 227 of the

Constitution of India. He submits that the only requirement is of subjective satisfaction that the premises is required for the purpose of development. In support of his submissions, he relies upon following decisions:

- [a] ***Renuka Dhanrajgir Batlivala vs Municipal Corporation of Greater Mumbai [(2019) 4 AIR (Bom) 250];***
- [b] ***Ramchandra vs Pune Municipal Corpn. [2013 (1) Mh.L.J. 245];***
- [c] ***Badrilal vs Municipal Corpn. Of Indore [(1973) 2 SCC 388];***
- [d] ***Bhagabandas Agarwalla vs Bhagwandas Kanu [(1977) 2 SCC 646];***
- [e] ***Ahmedabad Municipal Corpn. Vs Ramanlal Govindram [(1975) 1 SCC 778];***
- [f] ***Maria Margarida Sequeira Fernandes vs Erasmo Jack De Sequeira [(2012) 5 SCC 370];***
- [g] ***Province of Bombay vs Khushaldas S. Advani [(1950) SCC 551];***
- [h] ***Patel Gandadal Somnath vs State of Gujarat [(1962) SCC OnLine Guj 64];***
- [i] ***Dr.Abraham Patani of Mumbai vs State of Maharashtra [(2022) SCC OnLine SC 1143];***
- [j] ***V.T. Khanzode vs Reserve Bank of India [(1982) 2 SCC 7];***
- [k] ***Prabhudas vs M.C. Bhadrawati [2003 (1) Mh.L.J. 275];***
- [l] ***State Bank of Patiala vs S K Sharma [(1996) 3 SCC 364];***
- [m] ***M.C. Mehta vs Union of India [(1999) 6 SCC 237];***
- [n] ***Ashok Kumar Sonkar vs Union of India [(2007) 4 SCC 54];***
- [o] ***Canara Bank vs V.K. Awasthy [(2005) 6 SCC 321]; and***
- [p] ***M.J. Sivani vs State of Karnataka [(1995) 6 SCC 289]***

21. In rejoinder, Mr. Sandeep Shinde, learned counsel appearing for the Petitioners in Writ Petition No 7079 of 2024 submits that under the provisions of Section 81-B of the Corporation Act, the inquiry is

quasi judicial inquiry which requires reasons to be recorded before passing of the order. He submits that the ground for eviction for decongestion of traffic cannot co-exist with the ground of development of property. He submits that for the first time before this Court it is argued that the possession of Petitioners is illegal. He submits that irrespective of whether the order is administrative or quasi judicial order there is a requirement of giving reasons. He submits that there is no finality attached to the order passed by the Corporation as the remedy of appeal is available. He submits that the same is a *lis* between the authority and the Petitioners. He submits that the letters of National Highway Authority are not part of record and for the first time the same have been produced.

REASONS AND ANALYSIS :

STATUTORY FRAMEWORK:

22. The statutory provisions governing the eviction of persons from Corporation premises is contained in Chapter VIII-A of the Corporation Act which was introduced by Amendment Act 8 of 1970. Section 81-A defines the expression "Commissioner", "Corporation Premises", "Regulations" and "unauthorised occupation". Section 81-B deals with power to evict persons from Corporation premises and reads thus :

81-B. Power to evict persons from Corporation premises. -

(1) Where the Commissioner is satisfied, -

(a) that the person authorised to occupy any Corporation premises has, whether before or after the commencement of the Bombay Provincial Municipal Corporations (Second Amendment) Act, 1969,-

(i) not paid for a period of more than two months, the rent or taxes lawfully due from him in respect of such premises; or

(ii) sub-let, contrary to the terms and conditions of his occupation, the whole or any part of such premises; or

(iii) committed, or is committing, such acts of waste as are likely to diminish materially the value of impair substantially the utility, of the premises; or

(iv) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises;

(b) that any person is in unauthorised occupation of any Corporation premises,

(c) that any Corporation premises in the occupation of any person are required by the Corporation in public interest,

the Commissioner may, by notice served by post, or by affixing a copy of it on the outer door or some other conspicuous part of such premises, or in such other manner as may be provided for by regulations, order that person, as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice.

(2) Before an order under sub-section (1) is made

against any person, the Commissioner shall issue, in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

The notice shall, -

(a) specify the grounds on which the order of eviction is proposed to be made, and

(b) require all persons concerned, that is to say, all persons who are or may be in occupation or, of claim interest in, the Corporation premises, to show cause against the proposed order, on or before such date as is specified in the notice.

If such person makes an application to the Commissioner for the extension of the period specified in the notice, the Commissioner, may grant the same on such terms as to payment and recovery of the amount claimed in the notice, as he deems fit.

Any written statement put in by any person and documents produced, in pursuance of the notice, shall be filed with the record of the case, and such person shall be entitled to appear before the Commissioner by advocate, attorney or other legal practitioner.

The notice to be served under this sub-section shall be served in the manner provided for the service of a notice under sub-section (1); and thereupon, the notice shall be deemed to have been duly given to all persons concerned.

(3) If any person refuses or fails to comply with an order made under subsection (1), the Commissioner may evict that person and any other person who obstructs him and take possession of the premises; and may for that purpose use such force as may be necessary.

(4) The Commissioner may, after giving fourteen clear days' notice to the person from whom possession, of the

Corporation premises has been taken under subsection (3) and after publishing such notice in the Official Gazette and in at least one newspaper circulating in the locality, remove or cause to be removed, or dispose of by public auction any property remaining on such premises. Such notice shall be served in the manner provided for the service of a notice under sub-section (1).

(5) Where the property is sold under sub-section (4), the sale proceeds shall, after deducting the expenses of sale, be paid to such person or persons as may appear to the Commissioner to be entitled to the same :

Provided that, where the Commissioner is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, he shall refer such dispute to a Civil Court of competent jurisdiction, and the decision of the Court thereon shall be final.

(6) If a person, who has been ordered to vacate any premises under sub-clause (i) to (iv) of clause (a) of sub-section (1), within one month of the date of service of the notice, or such longer time as the Commissioner may allow, pays to the Commissioner the rent and taxes in arrears, or as the case may be, carries out or otherwise complies with the terms contravened by him to the satisfaction of the Commissioner, the Commissioner shall on such terms, if any (including the payment of any sum by way of damages or compensation for the contravention aforesaid), in lieu of evicting such person under sub-section (3) cancel his order made under sub-section (1); and thereupon such person shall continue to hold the premises on the same terms on which he held them immediately before such notice was served on him.

23. Section 81-C and Section 81-D deal with the recovery of rent or damages as arrears of property tax. Section 81-E provides that the

Commissioner for purpose of inquiry under this Chapter has the same powers as vested in the Civil Court when trying the suit in respect of summoning and enforcing attendance of persons and examination on oath, discovery and production of documents and any other matter prescribed by regulations under Section 81-I. Admittedly there are no regulations framed under Section 81-I. Section 81-F provides for Appeals to the District Judge and Section 81-G gives finality to the orders except as provided in the Chapter.

24. The provisions of Chapter VIII-A are a complete code in itself setting out the summary procedure for eviction of persons from Corporation premises. The statutory scheme of Section 81-B of the Corporation Act is that upon satisfaction of the Commissioner of the existence of grounds stated in clauses (a), (b) and (c), the direction can be passed for eviction of the person within a period of one month from the date of service of notice. Before ordering eviction, Sub-Section (2) of Section 81-B of the Corporation Act mandates issuance of notice upon all persons concerned to show cause against the proposed order of eviction. Significantly, the show cause notice is required to specify the grounds of proposed eviction to which the noticee is entitled to put in his written statement and produce documents and be represented by legal counsel.

SHOW CAUSE NOTICE:

25. The power to evict can be exercised on the grounds specified in clauses (a), (b) and (c) of Section 81-B(1) which are separate and distinct grounds. There was no fresh show cause notice issued by the Corporation after remand of the matter by the Appellate Court. The show cause notice of the year 2015 sets out that there are arrears of license fee as of 31st March, 2015, that there is heavy congestion in Dwarka area and for decongestion of traffic and to carry out further development in the said area, it is necessary for the said area to be vacated and that there would be increase in traffic and pedestrian movement during the Kumbh Mela of 2015-2016.

26. The contents of the show cause notice would indicate two grounds i.e. arrears of license fee as on 31st March, 2015 and requirement of the premises in public interest.

27. As far as the ground of Section 81-B(1)(a)(i) of non payment of rent for more than two months is concerned, the reply to the show cause notice filed by the Petitioners states that the license fees had been subsequently paid and Mr. Patil appearing for the Corporation has not disputed the said position. In view thereof, the only ground subsisting for consideration is clause (c) of Sub Section (1) of Section 81-B i.e. requirement of premises in public interest.

ORDER OF DEPUTY COMMISSIONER DATED 29TH FEBRUARY, 2020:

28. The statutory scheme of Section 81-B places the burden upon

the noticee to show cause against the proposed order of eviction. Section 81-B refers to various grounds on which eviction can be proposed. Where the eviction is proposed on ground (a) of Sub Section (1) of Section 81-B, the burden will be upon the noticee to necessarily produce the material to demonstrate that there is no breach by the noticee. Similarly in case of ground (b), the burden will be upon the noticee to show his authorisation to occupy the Corporation premises. In such cases, it is open for the Corporation to lead rebuttal evidence. However where ground (c) is concerned, as the requirement is shown of public interest, after the cause is shown by the noticee by way of written statement and evidence if any, it is for the Corporation to lead rebuttal evidence and produce material to show the public interest. A literal interpretation of the statutory provision that it is only for the noticee to show cause would lead to a situation where in case of ground (c) of Sub Section (1) of Section 81-B, the Corporation can simply direct eviction without producing any material in support of the ground of eviction in public interest. The facts necessitating the requirement in public interest is within the knowledge of the Corporation and the burden to prove the negative cannot be imposed on the noticee.

29. The show cause notice indicates that the public interest involved in the requisition of the premises is the decongestion of the

traffic, for road widening and for development of the premises by providing necessary infrastructure. The cause shown by the Petitioner in Writ Petition No 7099 of 2023 is that the Petitioner's premises is not situated at the junction of the area known as Dwarka nor adjacent to the National Highway, that there is no traffic congestion in the said area, there is no proposed development works as per the DP Plan, that the premises is situated on service road and there is no proposal for road widening of the service road, that there is distance of about 20 feet between the premises and service road which can be used for road widening. It was necessary for the Corporation to bring material on record to dispute the cause shown by the noticee against the proposed eviction.

30. In the order dated 29th February, 2020 there is no discussion on the cause shown by the Petitioner. After reproducing the contents of show cause notice, the Commissioner has in cryptic one paragraph held that the explanation submitted is not satisfactory and the premises is required in public interest. The order is a non speaking order and there is no discussion or finding on the explanation submitted by the Petitioners.

ORDER DATED 29TH FEBRUARY, 2020 IS ADMINISTRATIVE OR QUASI JUDICIAL:

31. Mr. Patil would labour on the point that the inquiry

contemplated under Chapter VIII-A is not a judicial or quasi judicial inquiry and the order passed under Section 81-B being an administrative order, there is no requirement of giving reasons and mere recording of satisfaction meets the mandate of Section 81-B.

32. The issue whether the decision is judicial or administrative does not present much difficulty where the *lis* is between two parties which the authority is called upon to decide. However the absence of contesting parties would not categorise the decision of the authority as administrative if the provisions cast a duty to act judicially.

33. In ***Jaswant Sugar Mills Ltd Meerut v. Lakshmichand and Others [1963 AIR SC 677]*** the Apex Court was considering the issue of entertaining an appeal against direction passed by the Conciliation Officer under U.P. Industrial Disputes Act, 1947. The Apex Court held in paragraph 13 as under:

"To make a decision or an act judicial the following criteria must be satisfied:

(1) it is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of preexisting legal rule.

(2) it declares right or imposes upon parties obligations affecting their civil rights

(3) that the investigating is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact and if the dispute be on question of law on the presentation of legal argument and a decision resulting in disposal of the matter on findings based upon those questions of fact and law."

34. In *Indian National Congress (I) v. Institute of Social Welfare & Ors (AIR 2002 S.C 2158)*, the Apex Court held thus:

"20.....The dictionary meaning of the word quasi is 'not exactly' and it is just in between a judicial and administrative function. It is true, in many cases, the statutory authorities were held to be quasi-judicial authorities and decisions rendered by them were regarded as quasi judicial, where there were contest between the two contending parties and the statutory authority was required to adjudicate upon the rights of the parties. In Cooper vs. Wilson (1937) 2 KB 309, it is stated that "the definition of a quasi-judicial decision clearly suggests that there must be two or more contending parties and an outside authority to decide those disputes". In view of the aforesaid statement of law, where there are two or more parties contesting each other's claim and the statutory authority is required to adjudicate the rival claims between the parties, such a statutory authority was held to be quasi-judicial and decision rendered by it as a quasi-judicial order. Thus, where there is a lis or two contesting parties making rival claims and the statutory authority under the statutory provision is required to decide such a dispute, in the absence of any other attributes of a quasi-judicial authority, such a statutory authority is quasi-judicial authority.

21. *But there are cases where there is no lis or two contending parties before a statutory authority yet such a statutory authority has been held to be quasi-judicial and decision rendered by it as quasi-judicial decision when such a statutory authority is required to act judicially. In Queen vs. Dublin Corporation (1878) 2 Ir. R. 371, it was held thus :*

"In this connection the term judicial does not necessarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law, but for purpose of this question, a judicial act seems to be an act done by competent authority upon consideration of facts and circumstances and imposing liability or affecting the rights. And if there be a body empowered by law to enquire into facts, makes estimates to impose a rate on a district, it would seem to me that the acts of such a body involving such consequence would be judicial acts."

22. *Atkin L.J. as he then was, in Rex vs. Electricity Commissioners (1924) 1 KB 171 stated that when any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, such body of persons is a quasi-judicial body and decision given by them is a quasi-judicial decision. In the said decision, there was no contest or lis between the two contending parties before the*

Commissioner. The Commissioner, after making an enquiry and hearing the objections was required to pass order. In nutshell, what was held in the aforesaid decision was, where a statutory authority is empowered to take a decision which affects the rights of persons and such an authority under the relevant law required to make an enquiry and hear the parties, such authority is quasi-judicial and decision rendered by it is a quasi-judicial act. (Emphasis supplied)

23. In **Province of Bombay vs. Kusaldas S Advani** [AIR 1950 SC 222], it was held thus :

"(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act ; and

(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

In other words, while the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially."

24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforestated decisions are these :

Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.

25. *Applying the aforesaid principle, we are of the view that the presence of a lis or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi judicial authority. However, in the absence of a lis before a statutory authority, the authority would be quasi-judicial authority if it is required to act judicially."*

35. In the case of ***A.K.Kraipak v. Union of India [AIR 1970 S.C. 150]***, the Apex Court observed thus:

"13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change....."

36. Applying the above tests laid by the Apex Court, if the provisions contained in Chapter VIII-A are examined, the satisfaction of the Deputy Commissioner is dependent upon the result of investigation into questions of fact as to the breach of terms of the

occupation, or the unauthorised occupation of the person where the eviction is proposed on clause (a) and (b) of sub section (1) of Section 81-B and in case of clause (c) about the requirement of the premises in public interest. Before arriving at the satisfaction, notice has to be issued to specifically show cause against the proposed order of eviction which show cause notice must set out the distinct ground on which eviction is proposed. The satisfaction of the Deputy Commissioner is based on the investigation of facts *qua* the grounds specified in the show cause notice after giving an opportunity to the noticee right of legal representation and an opportunity to file their reply and produce documents. Section 81-E vests in the Commissioner the power of Civil Court while holding an inquiry such as summoning and enforcing attendance of any person and examining him on oath and discovery and production of documents. The satisfaction is not subjective satisfaction nor the personal opinion of the Deputy Commissioner and the soundness of the satisfaction is subject to being tested in appeal proceedings under Section 81-F.

37. The non acceptance of the cause shown by the noticee entails the consequence of eviction of the noticee. Although no regulations have been framed prescribing the manner of holding inquiry under Chapter VIII-A, the fact that the noticee is entitled to put in his explanation supported by documents and be represented by legal

counsel indicates that the eviction cannot be at the *ipsi dixit* of the Commissioner and he has to consider the material produced on record before recording satisfaction that the person is required to be evicted.

38. The procedure set out imposes a duty to act judicially while examining the cause shown by the noticee against the proposed order of eviction by considering the material produced on record by the noticee and in my view, the power exercised is not purely an administrative power but a quasi judicial power. Although the provisions of Section 81 B does not expressly set out the obligation to pass a reasoned order, the fact that the noticee is called upon to show cause against the proposed action of eviction on the grounds stated in the notice, the right to the noticee to place written statement and documents implies that the duty is on the authority to record reasons on the cause shown by the noticee.

39. A similarity can be drawn between the provisions of Chapter VIII-A and provisions of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 vesting the power in the Estate Officer to evict unauthorised occupants from public premises if the Estate Officer has reason to believe that any person is in unauthorised occupation of public premises. The said Act provides for similar procedure of issuance of show cause notice specifying the grounds of eviction and

calling upon the noticee to show cause against the proposed eviction and to produce evidence in support of his case. Section 5 of Public Premises Act provides that if after considering the cause shown and evidence produced the Estate Officer is satisfied that that public premises are in unauthorised occupation the Estate Officer shall make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated. It is settled that the Estate Officer exercises quasi judicial powers while adjudicating the cause shown by the noticee.

40. In my view, considering the above, there is no doubt that under Section 81-B the Deputy Commissioner exercises quasi judicial powers as there is an implicit duty on the Deputy Commissioner to act judicially while arriving at the satisfaction of the existence of the conditions of clause (a) to (c) of sub section (1) of Section 81-B and to conform to the rules of reason and justice.

DUTY TO RECORD REASONS:

41. Even if it is accepted that the Deputy Commissioner under Section 81-B exercises administrative powers, the desirability to record reasons cannot be wished away. The Hon'ble Supreme Court of India in the case of *Union of India v. E.G. Nambudiri* [1991 (2) S.L.R. 675], while considering the desirability of administrative authorities recording reasons held as under:-

"Where an administrative authority is required to act judicially it is also under an obligation to record reasons. But every administrative authority is not under any legal obligation to record reasons for its decision, although, it is always desirable to record reasons to avoid any suspicion. Where a statute requires an authority though acting administratively to record reasons, it is mandatory for the authority to pass speaking orders and in the absence of reasons the order would be rendered illegal. But in the absence of any statutory or administrative requirement to record reasons, the order of the administrative authority is not rendered illegal for absence of reasons. If any challenge is made to the validity of an order on the ground of it being arbitrary or malafide, it is always open to the authority concerned to place reasons before the Court which may have persuaded it to pass the orders. Such reasons must already exist on records as it is not permissible to the authority to support the order by reasons not contained in the records.

42. In *M/s Kranti Associates Pvt Ltd vs Masood Ahmad Khan [(2010) 9 SCC 496]*, the Apex Court in the context of dismissal of the revision by the National Commission without recording any reason under the Consumer Protection Act considered catena of decisions and summarizing the discussion in paragraph 47 as under :

- "a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- b. A quasi-judicial authority must record reasons in support of its conclusions.*
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles*

of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to [Article 6](#) of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

43. In *Rajeev Suri v. Delhi Development Authority* [2021 SCC

Online SC 7] the Apex Court held thus in paragraph 410 to 413:

"410. Had it been a case of any other administrative committee required to adjudicate upon the rights of individuals, merely because it is not mandatory to record reasons would not absolve it of the requirement of objective consideration of the proposal. The ultimate enquiry is of application of mind and a reasoned order is merely one element in this enquiry. In a given case, the Court can still advert to other elements of the decision-making process to weigh the factum of application of mind. The test to be applied in such a case would be of a reasonable link between the material placed before the decision-making body and the conclusion reached in consideration thereof. The Court may decide in the context of overall circumstances of the case and a sole element (of no reasons or lack of elaborate reasons) cannot be enough to make or break the decision as long as judicial mind is convinced of substantial application of mind from other circumstances. Even in common law jurisprudence, there is no absolute requirement of reasoned order in all decisions. In R. V. Secy. Of State for Trade & Industry, ex p Lonrho Plc., it was contended that the decision is not based on convincing reasons and therefore, must be declared as illegal. The House of Lords refused to entertain this contention and noted that mere absence of reasons would not render the decision as irrational. Lord Keith, in his opinion, noted that the only significance of absence of reasons would be that if circumstances overwhelmingly point towards a different conclusion that the one reached by the body, it would be fatal. He noted thus: (WLR pp. 539-40)

"The absence of reasons for a decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker who has given no reasons cannot complain if the court draws the inference that he had no rational reason for his decision."

411. In Administrative Law, P.P. Craig notes that it is relevant to consider the context in which decision operates thus:

"The court will consider the nature of the decision maker, the context in which it operates and whether the provision of reasons is required on grounds of fairness."

Mr. Craig also refers to R. v. Ministry of Defence, ex p. Murray wherein certain principles relating to duty of reasons were elaborated. Lord Bingham, C.J., in his opinion, observed that the requirement of giving reasons may be outweighed by concerns of public interest in certain cases, for instance, when it would unduly burden the decision maker. We are not importing any rider of public interest to negate the requirement of reasons; however, the above exposition is useful to understand the effect of absence of reasons on an otherwise legal, rational and just decision.

412. *Notably, this Court in Maharashtra State Board and in Mahabir Jute Mills noted that if the function/decision of the Government is administrative, in law, ordinarily there is no requirement to be accompanied by a statement of reasons unless there is an express statutory requirement in that regard. Again, in Sarat Kumar Dash, the Court observed that in the field of administrative action, the reasons are link between maker of the order or the author of the decision and the order itself. The record can be called to consider whether the author had given due consideration to the facts placed before him before he arrives at the decision.*

413. *Therefore, the requirement of reasons in cases which do not demand it in an express manner is based on desirability and the same is advised to the extent possible without impinging upon the character of the decision-making body and needs of administrative efficiency.*

44. In *National Highways Authority of India v. Madhukar Kumar*

[2021 SCC Online SC 791], the Apex Court held in paragraphs 70 to 73

as under:

"70.....It is, at this juncture, we may also notice that the duty to give reasons, would arise even in the case of administrative action, where legal rights are at stake and the administrative action adversely affects legal rights. There may be something in the nature or the context, under which, the administrative action is taken, which may necessitate the authority being forthcoming with rational reasons. There are other decisions, which essentially belong more to the realm of

executive policy-making, which ordinarily may not require the furnishing of reasons.

71. *The advantages, undoubtedly, of introducing a reasons driven regime, are as follows. Persons, who may have a right or an interest, would know, what are the reasons which impelled the Administrator to take a particular decision. Judicial review, in India, which encompasses the wide contours of public interest litigation as well, would receive immeasurable assistance, if the reasons for particular decisions, are articulated to the extent possible. The giving of reasons also has a disciplining effect on the Administrator. This is for the reason that the reasons would capture the thought process, which culminated in the decision and it would help the Administrator steer clear of the vices of illegality, irrationality and also disproportionality. Reasons could help establish application of mind. Conversely, the absence of reasons may unerringly point to non-application of mind. The duty to act fairly, may require reasons to be recorded but the said duty, though there is a general duty on all state players to act fairly, may have its underpinnings, ultimately in legal rights.*

72. *It is one thing to say that there should be reasons, which persuaded the Administrator to take a particular decision and a different thing to find that the reasons must be incorporated in a decision. The question, relating to duty to communicate such a decision, would arise to be considered in different situations, having regard to the impact, which it, in law, produces. In fact, the second proviso to Rule 17 of the Rules, provides not only for there being reasons, but the reasons for refusal to permit barricades, must be communicated. If the law provides for a duty to record reasons in writing, undoubtedly, it must be followed and it would amount to the violation of the Statute, if it were not followed. Even if, there is no duty to record reasons or support an order with reasons, there cannot be any doubt that, for every decision, there would be and there must be, a reason.*

73. *The Constitution does not contemplate any Public Authority, exercising power with caprice or without any rationale. But here again, in the absence of the duty to record reasons, the court is not to be clothed with power to strike down administrative action for the mere reason that no reasons are to be found recorded. In certain situations, the reason for a particular decision, may be gleaned from the pleadings of the Authority, when the matter is tested in a court. From the materials, including the file noting's, which are made available, the court may conclude that there were reasons and the action was not illegal or arbitrary. From admitted facts, the court may conclude that there was*

sufficient justification, and the mere absence of reasons, would not be sufficient to invalidate the action of the Public Authority. Thus, reasons may, in certain situations, have to be recorded in the order. In other contexts, it would suffice that the reasons are to be found in the files. The court may, when there is no duty to record reasons, support an administrative decision, with reference to the pleadings aided by materials."

45. The decision of Lord Denning M.R. in ***Breen vs Amalgamated Engg. Union (1971) 2 QB 175***, which has shaped the judicial pronouncements on the subject has held that "the giving of reasons is one of the fundamentals of good administration".

46. From the judicial pronouncements noted above, it is evident that even though statute may not enjoin the administrative authority to give reasons for its decision, it is desirable that the order should contain reasons which disclose the application of mind by the authority. In the present case, the Deputy Commissioner ordered eviction of persons from the Corporation premises which as alleged may be unauthorised in continuity but was authorised at the inception. The consequences which would ensue is the removal of person from the premises occupied by them for decades. To my mind, upon reading of the Section 81-B(2), in the procedure set out therein mandating the issuance of show cause notice specifying the ground and permitting the noticee to object to the same by putting in written statement, filing documents and being represented by legal counsel, is implicit the duty on the administrative authority to record reasons

for rejecting the cause shown by the noticee. The provision of Appeal under Section 81-F strengthens the reading of an obligation of recording reasons as it would fulfill the objective of assisting the Appellate Authority while reviewing the decision.

47. Viewed in either case scenario, in event the order of Deputy Commissioner is quasi judicial order, the recording of reasons is a must. If the order is considered an administrative order, the statute impliedly casts an obligation to record reasons and even if it does not impose such an obligation, the judicial pronouncements makes it imperative that the order should be indicative of the application of mind. As legal rights of the noticee were at stake, it was necessary to pass a reasoned order.

48. Accepting the case of the Corporation at the highest that the order being administrative order there was no necessity of recording reasons in the order, as held by Apex Court in ***National Highways Authority of India & Ors vs Madhukar Kumar & Ors*** (supra) even if there is no duty to record reasons or support an order with reasons, there cannot be any doubt that, for every decision there would be and must be, a reason. From the materials, including the file notings, which are made available, the court may conclude that there were reasons and the action was not illegal or arbitrary. Reasons may, in certain situations, have to be recorded in the order. In other contexts, it

would suffice that the reasons are to be found in the files. The court may, when there is no duty to record reasons, support an administrative decision with reference to pleadings aided by material.

49. In the Affidavit in reply filed by the Corporation, the order of 29th February, 2020 is sought to be substantiated by relying on the communication issued by the Senior Police Inspector, the notice issued by Highway Administrator and GM (T) and Project Director PIU-Nashik of National Highway in the year 2019 to the occupiers and to the Corporation proposing extension and seeking removal of the unauthorised occupants. These documents are of the year 2019 whereas the show cause notice had been issued in the year 2015. These documents are not shown to be part of the office record placed for consideration before the Deputy Commissioner. No office notings have been produced to demonstrate reasons and to substantiate the action of eviction. In ***Mohinder Singh Gill vs Chief Election Commr***(supra), the Apex Court has held that when the statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In the present case, it is clear case of the validity of the order being supplemented by fresh reasons. In my opinion, the order dated 29th February, 2020 being a non reasoned order and absent any material demonstrated

from the office records to disclose the reasons to support the order of eviction, is legally unsustainable.

VALIDITY OF THE IMPUGNED JUDGMENT DATED 5TH JANUARY, 2023:

50. The District Court has fallen in error by failing to notice that the ground of proposed eviction was the requirement of premises in public interest and not ground of unauthorised occupation. Where the order of eviction is proposed on ground (a) or (b) of Sub Section (1) of Section 81, then the noticee is required to discharge the burden and thereafter the Corporation may lead evidence in rebuttal. The District Court has upheld the ground of requirement of premises in public interest on the basis of the unauthorised occupation of the Petitioners. When the show cause notice did not specify any such ground of unauthorised occupation, the District Court could not have gone into the issue of lease, the period of lease etc and hold that in absence of lease agreement the status of Petitioners cannot be lessee or tenant and as there is no legal relationship the occupation of the Petitioners is unauthorised.

51. The inquiry contemplated is whether the satisfaction has been properly recorded by the Commissioner *qua* the order of eviction on the specified ground. The District Court rendered the fallacious finding on the foundation of unauthorised occupation which was never the case in the show cause notice and therefore the Petitioners

were not expected to show cause against the proposed order of eviction on the basis of unauthorised occupation. Once the show-cause notice proposes the order of eviction to be passed for the reason that the premises is required for the public interest, no other ground for eviction can be permitted to be set out. The whole purpose of Sub Section (2) of Section 81-B is to make the noticee known of the ground that he has to meet and the noticee must know the specific particulars of the ground on which eviction is proposed to effectively show cause. Where no such ground of unauthorised occupation is specified in the show cause notice, the findings of the District Court upholding the order of eviction for the reason that the Petitioners are in unauthorised occupation and thereby supporting the requirement of premises in public interest is clearly unsustainable.

52. It is not even the case of Respondent-Corporation as disclosed from the show-cause notice or order that the eviction is proposed as the Petitioners are in unauthorised occupation of corporation premises. The entire tenor of Appellate Court's judgment is that the occupation of Petitioners is unauthorised and that merely depositing of monthly licence fee or taxes in the absence of lease agreement do not create any legal relationship. In paragraph 31 after holding so, the Appellate Court has held that the Corporation is in need of corporation premises for the public purpose and has therefore

accepted the case of Corporation that the premises is required for public interest. Perusal of the findings in paragraph 31 of the order of District Judge would show that the findings are totally disjunctive. What was required to be examined was whether the cause shown by the Petitioners against their proposed eviction for the reason that the corporation premises are required in public interest is valid or not. The Appellate Court has come to a finding that the Petitioners are in unauthorised occupation as they have exceeded the period of lease and thus in the absence of any legal right of the Petitioners in the premises, the requirement for public interest stands satisfied. The reasons given by the Appellate Court are in respect of unauthorised occupation and the finding is that the Corporation is in need of premises in the public interest. It is therefore clear that the Appellate Court has failed to notice the specific grounds of eviction and has in the absence of any ground of unauthorised occupation dismissed the appeal filed by the Petitioners.

53. The District Court has held that it is not necessary for the Deputy Commissioner to have an elaborate discussion on all point and pass an order on all the points in dispute. The finding is contrary to the position of law discussed above.

APPLICABILITY OF PRINCIPLE OF RES JUDICATA:

54. The submission of Mr. Godbole is that earlier order passed by

the Appellate Authority operates as *res judicata* as there was no fresh show cause notice issued, no documentary evidence produced by the Corporation and no reasoned order. The order of 29th February, 2020 when juxtaposed with the previous order of 4th December, 2015 would indicate that the same is ad verbatim reproduction of the earlier order of 4th December, 2015 reproducing the contents of the show cause notice.

55. In the earlier round of litigation, the order of 4th December, 2015 was under challenge. Specific issue was framed in RCA No 439 of 2015 on the legality and validity of notice issued under Section 81-B without mentioning the date of notice. The Appellate Court considered Section 81-B and held that after hearing the parties, the Commissioner has to pass the order under sub section (1) of Section 81-B to vacate the premises within one month of date of service of notice. The Appellate Court held that the final order passed on 4th December, 2015 directed the Petitioners to restore the possession within 7 days from date of order and therefore held that the notice dated 4th December, 2015 issued by Municipal Commissioner appears to be illegal and invalid.

56. The basis on which the notice has been rendered invalid and illegal is the time of seven days granted to restore possession. There is specific reference to Section 81-B(1) and the time limit of one

month mentioned in Section 81-B(1) with the observation that the final order directs restoration of possession within 7 days. It is therefore clear that the Appellate Court held the notice ordering restoration of possession dated 4th December, 2015 as invalid and illegal and not the show cause notice dated 2nd June, 2015.

57. The Apex Court in ***Canara Bank vs N.G. Subbaraya Setty*** (supra), has held that one of the exception to the principle of *res-judicata* is that an erroneous judgment on question of law, which sanctions something that is illegal also cannot be allowed to operate as *res judicata*. The Apex Court noted the decision in ***Mathura Prasad Bajoo Jaiswal vs Dossibai N.B. Jeejeebhoy (1970) 1 SCC 613*** where the Apex Court has held that the previous decision on a matter in issue alone is *res judicata*: the reasons for the decision are not *res judicata*. The decision on the matter in issue alone being *res judicata*, the reasons given by the Appellate Court in the earlier round of litigation of the non production of documentary evidence and no reasoned order to support the quashing and setting aside the order dated 4th December, 2015 would not constitute *res judicata*.

JUDGMENTS CITED:

58. Coming to the decisions cited by Mr. Patil, the decisions of ***Renuka Dhanrajgri Batlivala vs Municipal Corporation of Greater Mumbai*** (supra), ***Ramchandra vs Pune Municipal Corporation*** (supra)

and ***Badrilal vs Municipal Corporation of Indore*** (supra) were rendered in the context of unauthorised occupation due to non renewal of lease. As in the present case, the ground specified in the show cause notice was requirement in public interest, the said decisions are inapplicable to the facts of the instant case.

59. As far as decision of ***Bhagabandas Agarwalla vs Bhagwandas Kanu*** (supra) is concerned, the decision is on the validity of notice to quit given under Section 106 of Transfer of Property Act, 1882. The decision of ***The Ahmedabad Municipal Corporation v. Ramanlal Govindram*** (supra) considers whether vires of statutory provisions of Bombay Provincial Municipal Corporation (Gujarat Amendment) Act, 1963. The relevancy of the said decisions is not pointed out to this Court.

60. Next comes the decision of ***Maria Magardia Sequiera Fernandes*** (supra) which is rendered in different factual scenario as to the rights under Specific Relief Act and is inapplicable to the present case.

61. The decision of ***Province of Bombay vs Khushaldas*** (supra) was in the context of challenge to order of requisition of certain premises. The decision of ***Patel Gandlal Somnath*** (supra) was considering whether the inquiry by a statutory body can be said to be quasi judicial inquiry as opposed to an administrative inquiry in the context of Land

Acquisition Act, 1894. The Apex Court in both decisions considered the entire law on the subject of the tests to be applied to be determine whether the order is quasi judicial or only administrative. There is no quarrel with the proposition of law laid down by the Apex Court. I have already dealt with the issue whether the Deputy Commissioner exercises administrative or quasi judicial powers.

62. The decision in ***Dr. Abraham Patani of Mumbai*** (supra) held public interest to override private interest. There is no dispute about the proposition but its applicability in the present case depended upon a reasoned order being passed by the Deputy Commissioner which was not done and the decision does not assist the case of the Petitioner.

63. The judgment in the case of ***V.T. Khanzode vs Reserve Bank of India*** (supra) was on the issue of regulations required to be framed governing the terms and conditions of bank staff. The relevancy of the said decision is not shown to this Court especially when there was no argument canvassed *qua* the absence of framing of regulations by either of the parties.

64. The next decision is in the case of ***Prabhudas vs M.C. Bhadrawati*** (supra) on the scope of powers of High Court under Article 227 of the Constitution of India. The Apex Court has held that the power under Article 227 of the Constitution can be exercised to

correct the error of law that is manifest on the face of record. In that context, it would be opposite to refer to the recent decision of the Apex Court in the case of ***Garment Craft v. Prakash Chand Goyal*** [2022 SCC Online SC 29] where the Apex Court has held that the jurisdiction exercised under Article 227 of the Constitution is in the nature of correctional jurisdiction to set right the grave dereliction of duty or flagrant abuse and violation of the fundamental principles of law or justice. The power under Article 227 of the Constitution needs to be exercised sparingly and in appropriate cases like when there is no evidence to justify the decision or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the Court or Tribunal has come to. It is axiomatic that such discretionary power must be exercised to ensure that there is no miscarriage of justice. In the present case, in the light of discussion above this is a fit case to exercise the jurisdiction under Article 227 of the Constitution of India as the impugned order results in miscarriage of justice inasmuch as the Petitioners are liable to be evicted from the premises which they are occupying for decades by virtue of the order passed by the Deputy Commissioner, which is completely devoid of reasons.

65. The decision in the case of ***State Bank of Patiala vs S K Sharma*** (supra) was pressed into service by Mr. Patil to substantiate the submission that unless there is prejudice shown, violation of principles

of natural justice or any procedural provision does not vitiate the order. In the present case, the violation is not of procedure, neither of the principles of natural justice and therefore this decision is inapplicable to the present case.

66. The next decisions are of ***M. C. Mehta v. Union of India*** (supra) ***Ashok Kumar Sonkar v Union of India*** (supra) and ***Canara Bank v. V.K. Awasthy*** (supra) which decisions are on the issue that remand of the matter would be an useless formality. Since this Court is not inclined to remand the matter as the order of Deputy Commissioner dated 29th February 2020 has been held to be unsustainable, there is no question of remand.

67. The next decision relied upon by Mr. Patil is in the case of ***M.J. Sivani v. State of Karnataka*** (supra), which in fact assists the case of Petitioners as it holds that the administrative order may itself contain the reasons or the file may disclose the reasons to arrive at the decision showing application of mind to the facts in issue and that appropriate brief reasons though not like a judgment is a necessary concomitant for a valid order in support of action / decision taken by the authority or the instrumentality of State. Even if it is held that the order of Deputy Commissioner is an administrative order as the same does not contain any reasons, neither the file record has been shown to disclose the reasons for arriving at the decision, the observations in

the case of ***M.J. Sivani vs State of Karnataka*** (supra) in fact assist the case of Petitioners.

CONCLUSION:

68. The order of Deputy Commissioner dated 29th February, 2020 does not record any reason for ordering eviction of the Petitioners. The power exercised by the authority under Chapter VIII-A of Corporation Act is quasi judicial mandating reasons to be recorded. Even if it is accepted that the power was purely administrative, the order may not contain reasons but it is necessary to demonstrate from the materials, including the file notings, that there were reasons and the action was not illegal or arbitrary. As the same was not done, the order dated 29th February, 2020 is not legal and valid.

69. The findings of the District Court, in the absence of any ground of unauthorised occupation as ground of eviction specified in the show cause notice, upholding the order of eviction for the reason that the Petitioners are in unauthorised occupation and thereby supporting the requirement of premises in public interest is legally unsustainable. As the impugned judgment of the District Court and the order dated 29th February 2020 passed by the Deputy Commissioner have resulted in miscarriage of justice, in my opinion, this is the fit case for exercise of jurisdiction under Article 227 of the Constitution of India.

70. In light of the above, the order dated 29th February, 2020 and the impugned judgment dated 5th January, 2023 are hereby quashed and set aside. Petitions succeed. Rule is made absolute in the above terms.

[Sharmila U. Deshmukh, J.]