

RAKESH SHARMA & ORS.

v.

STATE OF M.P. & ORS.

(Civil Appeal Nos. 7520-23 of 2011)

AUGUST 30, 2011

[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

Constitution of India, 1950 – Article 226 – Allegations of illegal encroachments/constructions by Municipal Corporation on footpaths and public streets in the market – Notices to shopkeepers that they were in illegal occupation of the front portion of their shop – Filing of public interest litigation and writ petitions – High Court disposed of the writ petitions and issued various directions to the Municipal Corporation for construction of a new market complex – Legality of – Held: High Court did not overstep its legitimate and legal jurisdiction while continuing to pass order after order constituting a Committee to supervise the construction of the shopping complex – Such directions can be issued by the High Court while exercising its powers under Article 226 – High Court passed various orders on the basis of consensus of the parties, more particularly, with the consent of the shopkeepers – Committee was appointed and a direction was issued for providing alternate place to shopkeepers till new construction was completed in the existing place – Also, the High Court took into consideration the objections and suggestions of the Director, Town and Country Planning Department; the Commissioner, Municipal Corporation; and the Principal Secretary, Housing Development – The directions by the High Court safeguards not only the interest of the Municipal Corporation, general public but also all the shopkeepers who are running their business in the market – Thus, directions issued in the final order by the High Court cannot be faulted with – Town planning – Urban Development.

A The State Government constructed 'G' market in Gwalior with 250 shops. The shop covering 60 sq.ft. size was given to 252 incumbents of the market. Each shop covers 60 sq.ft. space plus 30 sq.ft. verandah, in total 90 sq.ft. area. It is alleged that there was encroachment and erection of wooden stalls by the Municipal Corporation over the land of the Madhya Pradesh Housing Board in 'N' Market. A public interest litigation was filed. The High Court directed the Municipal Corporation to remove the said structures and issued several directions. Pursuant thereto, the Municipal Corporation issued notices to the appellants alleging that they were in illegal occupancy of the front portion of their shops and directed them to remove the alleged encroachments. The shopkeepers of 'G' Market and others filed writ petitions before the High Court. Thereafter, Special Leave Petitions were filed and the same were disposed of, by directing the High Court to dispose of the writ petitions. The High Court passed various orders and thereafter, disposed of the writ petitions and issued various directions to the Municipal Corporation, Gwalior for construction of a new market complex. Therefore, the appellants filed the instant appeals.

F The question which arose for consideration in these appeals whether the High Court overstepped its legitimate and legal jurisdiction while continuing to pass order after order constituting a Committee to supervise the construction of the shopping complex and any such directions can at all be issued by the High Court while exercising its powers under Article 226 of the Constitution of India.

Dismissing the appeals, the Court

H HELD: 1.1 It is abundantly clear that from time to time, on different occasions with the consent of the parties, the construction of new Gandhi Market was

discussed and a Committee was constituted after the order dated 20.04.2007. The High Court, on different occasions, took into consideration the objections and suggestions of the Director, Town and Country Planning Department, the Commissioner, Municipal Corporation, Principal Secretary, Housing Development and passed an order on 18.05.2007. The same order has been reiterated in the subsequent order dated 20.07.2007. [Paras 24 and 25] [369-E-G; 370-D]

1.2 If the various orders passed by the High Court are analysed, it would not be possible to conclude that the High Court over stepped its limit while giving directions in para 8 of the impugned order. The High Court rightly observed that it is the duty and responsibility of the Public Department of the State Government, Municipal Corporation to take all endeavour to save the town of Gwalior from encroachments and also easing the public utility system. The materials placed by the Municipal Corporation clearly show that Gandhi Market which is primarily a cloth market is established in the year 1952 is now in a very haphazard condition causing difficulty in the movement of public as well as of vehicles. It was highlighted that in the day time as well as in the evening busy time, it takes hours together for the vehicles to pass from that area. Photographs were also shown to the Court. It is impossible for the public to even walk on the street. The shop keepers are dumping their products upon the street which is not permissible. The public are prevented from using the foot path/pavement meant for them. In such circumstances, a decision was taken to construct a multi-level parking-cum-commercial complex. In this process of construction, it was planned to shift temporarily the present shop keepers to some other nearby places. It is further seen that the present commercial area of the appellants/shop keepers is 60 sq. ft. which has been converted by encroaching the area of

A verandah and converted the same into 90 sq. ft area. The new shop of 60 sq. ft. size is to be given to 252 present incumbents of Gandhi Market. It is highlighted that to construct the building to the height of 12.5 metres having 3 layers of basement for parking, the ground floor shall have 252 shops which shall be allotted to the present incumbents of Gandhi Market and other floors shall be at the disposal of Municipal Corporation, Gwalior. [Paras 26 and 27] [370-G-H; 371-A-F]

1.3 In view of the various orders passed by the High Court on the basis of consensus of the parties, more particularly, with the consent of the shop keepers, a Committee was appointed and a direction was issued for providing alternate place to the shop keepers till new construction being completed in the existing place and all of them were assured of accommodation in the ground floor of the new market complex, the ultimate directions issued in the final order dated 18.01.2008 by the High Court cannot be faulted with. [Para 28] [371-G-H; 372-A]

1.4 Admittedly, one application was rejected on 05.05.2006 and it is not clear how the other applications were kept pending even after disposal of main writ petitions. About the amount deposited by the shop keepers, both the senior counsel appearing for the Municipal Corporation submitted that the said amount was not towards adjustment of construction charges but the same would be adjusted towards future licence fees. In the light of the same, there is no substance in the contention relating to filing of applications about various orders passed by the High Court. The counsel for the Municipal Corporation rightly pointed out that even after the so-called applications, the consent to the process of a new market place continued and this is evident from the orders of the High Court dated 02.03.2007, 20.04.2007 and 04.05.2007. It is also brought to the notice that some

applications that were made in June/July to recall the order dated 04.05.2007 were not pressed. In view of the same, the claim of the appellants cannot be accepted. [Para 29] [372-B-F] A

1.5 Various directions in the impugned order of the High Court cannot be faulted with. It safeguards not only the interest of the Municipal Corporation, general public but also all the 252 shop keepers who are running their business in the Gandhi Market. Further, it was not disputed before the High Court that Gandhi Market became quite old and market is fully congested and there is no space for parking. That was the reason the High Court specifically recorded the finding in para 7 of the judgment which is endorsed. Though an argument was advanced that the permission granted by Joint Director, Town and Country Planning, Gwalior in his proceeding dated 05.12.2007 to the Commissioner, Municipal Corporation, Gwalior regarding reconstruction of Gandhi Market, Gwalior was objected to by the Director and further approval of the State Government is required, inasmuch as the Joint Director is the officer competent, there is hope and trust that no fresh construction would be carried out without the authority of the person concerned and contrary to the statutory provisions/regulations. [Para 31] [372-H; 373-A; 373-D-F] B C D E

1.6 The respondents, particularly, the Municipal Corporation, Gwalior and the officers concerned are directed to implement the directions of the High Court within the parameters of the statutory provisions considering the interest of the general public as well all the shop keepers of the existing market. [Para 32] [373-G-H; 374-A] F G

A From the Judgment & Order dated 18.01.2008 of the High Court of Judicature of Madhya Pradesh, Jabalpur, Bench at Gwalior in Writ Petition No. 1873, 1878 and 2101 of 2003 and 310 of 1999.

B Sunil Gupta, K.K. Venugopal, Rajiv Dhawan, Nisha Bagchi, Anupam Srivastava, Vikas Mehta, M.P. Jha, P.D. Bidua, Ram Ekbal Roy, Harshvardhan Jha, Vikas Upadhyay, B.S. Banthia for the appearing parties.

C The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1 . Leave granted.

D 2. These appeals are directed against the judgment and final order dated 18.01.2008 passed by the High Court of Judicature of Madhya Pradesh, Jabalpur, Bench at Gwalior in Writ Petition Nos. 1873, 1878 and 2101 of 2003 and 310 of 1999 whereby the High Court disposed of the writ petitions and issued various directions to the Municipal Corporation, Gwalior in paragraph 8 of the impugned order for construction of a market complex known as "New Gandhi Market Building".

E 3. **Brief facts:**

F (a) According to the appellants-shopkeepers, after the partition of the country, in the year 1952, the Government constructed Gandhi Market in Gwalior with 250 shops and allotted them to the appellants herein, who were migrated to India from Pakistan at the time of partition, as tenants/licensees. Each shop covers 60 sq.ft. space + 30 sq.ft. Verandah, in total 90 sq.ft. area and has in front a 5 ft. wide footpath and then a public road. In the year 1975, notice was issued by the

G Municipal Corporation of Gwalior to the shopkeepers proposing to increase the rent from Rs.7/- to Rs.220/- per month. However, on 18.03.1977, the State of Madhya Pradesh as well as the Municipal Corporation, Gwalior agreed to increase the rent only by 7% from the original rent and also

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clarified that the enhanced rent would cover area in front of the shops and no additional charges were to be paid in that respect. On 24.05.1994, the Municipal Corporation passed Resolution No.40 by which, area of the shop was treated as 90 sq. ft. including the verandah. A

(b) On 28.02.1999, a public interest litigation petition, being Writ Petition No. 310 of 1999 was filed by a lawyer, G.S. Tomar, against encroachment and erection of wooden stalls by the Municipal Corporation over the land of the Madhya Pradesh Housing Board in Nazar Bagh Market, which is described as "the heart of the city". By order dated 15.12.2000, the High Court directed that the said structures erected by the Municipal Corporation would be removed. The petition was listed before the Division Bench on various dates and several directions were issued by the High Court. Thereafter, on 04.02.2003, the High Court directed the Municipal Corporation to furnish information regarding the steps being taken to remove encroachments on public streets. In May/June, 2003, the Municipal Corporation issued notices to the appellants alleging that they were in illegal occupancy of the front portion of their shops and directed them to remove the alleged encroachments with the threat for demolition of offending construction, if any. Consequently, the shopkeepers of Gandhi Market filed petitions before the High Court praying that they have not made any encroachment of the Verandah. The shopkeepers of various markets also filed writ petitions before the High Court. All the petitions were directed to be listed along with Writ Petition No. 310 of 1999. B C D E F

(c) During the pendency of the writ petitions, the High Court, by order dated 04.07.2003, appointed District Judge (Vigilance) as a Local Commissioner in respect of the illegal encroachments and constructions and directed the Municipal Corporation to continue with the removal of encroachment from the footpaths and public streets which were identified by the District Judge (Vigilance). It further directed that objections, if G H

A any, would be submitted to the District Judge.

(d) Against the order dated 04.07.2003, some of the shopkeepers of other markets filed Special Leave Petition No. 12446 of 2003 before this Court wherein this Court issued notice and stayed the demolition until further orders.

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(e) On 25.08.2003, the Local Commissioner submitted his report before the High Court and the High Court directed that it may not be open to the parties to raise any further objections to the report. Against the said order, the appellants herein filed

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S.L.Ps. before this Court which were directed to be tagged with the earlier S.L.P.(C) No. 12446 of 2003. This Court disposed of all the petitions on 25.10.2004 by directing the High Court to dispose of the writ petitions as expeditiously as possible after taking into consideration the objections of the appellants

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and directed to maintain the status quo as on that date till the disposal of the writ petitions.

(f) On 19.01.2005, the High Court directed the Municipal Corporation to submit a plan and map for development of Gandhi Market as a shopping complex having first and second floor and a parking area. As the appellants agreed to pay Rs.1 lakh each in four instalments for construction of the first floor shops, the High Court further directed that the amounts deposited by the shopkeepers would be kept in a separate fund by the Corporation and its use would be considered at the

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time of final hearing.

(g) On 08.07.2005, the High Court directed that since the shopkeepers have not deposited the remaining three instalments, they shall pay the same and clarified that in default, the Municipal Corporation is at liberty to remove the shopkeepers who are not willing to deposit their instalments. On 24.03.2006, the High Court further directed that the Municipal Corporation shall auction the shops excluding verandah by an auction notice for the Court to know the actual

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rental value and submit the price offered and the valuation

report of each shop. In pursuance of the said order, the Municipal Corporation published notice but no one applied for the same. A

(h) Against the order dated 24.03.2006, the shopkeepers filed applications before the High Court for recalling the order and for refund of the amount deposited by them with interest and the same were dismissed by the High Court on 05.05.2006. Since the shopkeepers were not willing for the reconstruction of the market, the petitions were directed to be listed along with W.P.(C) No. 310 of 1999. The Commissioner was also required to give a proposal for reconstruction. By the impugned order dated 18.01.2008, the High Court disposed of all the writ petitions with various directions as found in paragraph 8 of the impugned order. B C

(i) Aggrieved by the said order, the appellants-shopkeepers have filed these appeals by way of special leave petitions before this Court. D

4. Heard Mr. Sunil Gupta, learned senior counsel for the appellants, Mr. K.K. Venugopal and Dr. Rajiv Dhavan, learned senior counsel for the Municipal Corporation, Gwalior and Mr. Vikas Upadhyay, learned counsel for the State of M.P. E

5 According to Mr. Sunil Gupta, learned senior counsel for the appellants, several interim orders and the impugned final order of the High Court are wholly outside the legitimate scope and jurisdiction of PIL as stipulated in various decisions of this Court. He further contended that the directions of the High Court by which the appellants-shopkeepers have to vacate their legally rented shops for construction of a new 7-storey shopping complex in their place are opposed to and outside the legitimate jurisdiction of a writ court under Article 226 of the Constitution. He also contended that the High Court overstepped its jurisdiction while continuing to pass order after order constituting a Committee to supervise the construction of shopping complex and requiring various authorities to H

A facilitate by sanctioning necessary permission and so on.

B 6. On the other hand, Mr. K.K. Venugopal and Dr. Rajiv Dhavan, learned senior counsel for the Municipal Corporation submitted that at every stage even at the time of passing various directions, the appellants consented the same and taking note of the interest of all the shopkeepers and for the convenience of the general public making provision for parking etc., the High Court issued various directions which are not only consented by the shopkeepers but also in consonance with the decisions of the Town and Country Planning Department as well as the State Government. They also submitted that by the impugned directions, the appellants-shopkeepers are not going to loose anything, on the other hand, the Municipal Corporation has assured that they will be provided alternate accommodation till the completion of the fresh construction and after new construction, they will be provided convenient shops in the ground floor itself with more facility for parking, accordingly, they prayed for dismissal of all the above appeals as devoid of any merits.

E 7. We have carefully considered the rival submissions, impugned order of the High Court including various orders passed, statutory provisions and all other relevant materials.

F 8. In order to consider the issues raised above, it is relevant to note the ultimate directions issued by the High Court. It is useful to mention that the High Court has considered the issue not only in the PIL filed by an advocate of the local Bar but also heard and decided three writ petitions filed by 252 shopkeepers having their business in the market in question.

G 9. The following directions in paragraph 8 of the impugned order are relevant. They are as follows:

H "8. As we have directed through interim orders and the Town and Country Planning vide order dated 5.12.2007 has granted permission for construction of new shopping

complex of seven storeys, with three underground storeys of parking area, in the interest of all, this petition and connected petitions are disposed of finally with the following directions: A

1. That now the respondent No.2 Municipal Corporation shall construct new Gandhi Market Building as per the permission granted by the Town and Country Planning Department, Gwalior as well as by the State Government. B

2. That the aforesaid construction shall be supervised by the Committee constituted by this Court vide interim order dated 20.4.2007. Committee and Corporation will ensure the construction of the new building for the commercial market and will see that the tenders are invited timely and agency is fixed for the purpose of construction. Whenever agency shall be fixed by the Corporation for the purpose of construction, then after entering into agreement with the agency but before issuing the work order, the Committee will give notice to the shopkeepers for vacating the shops and within a period of two months, shopkeepers shall vacate the shops. The shopkeepers will not raise any objection on any alternative site granted by the Municipal Corporation for running the business and will not delay in vacating the shops. After taking over the possession, the agency will start the work and see that the construction upto ground floor level is completed within a period of one year and thereafter shops are allotted to the old shopkeepers positively within a period of 18 months on the outer limit. C
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3. That the ground floor shops shall be allotted to the shopkeepers, those who will deposit the balance H

A amount of three instalments and shall also enter into an agreement with the Corporation.

B 4. That the Corporation shall be free to allot the shops of first, second and third floor on fair and auction basis under the supervision of the Committee. Other terms and conditions of the allotment shall be settled by the Corporation and the Committee. So far as the participation of the representatives of the shopkeepers in the Committee, that shall be limited only for the ground floor shop.

C 5. Municipal Corporation shall be free to fix the fresh rent/licence fee of the new shops, which shall be allotted to the existing shopkeepers. The Commissioner, Municipal Corporation and Committee shall submit quarterly progress report in the Court.”

E 10. The whole controversy involved in these appeals is about the order dated 18.01.2008 passed by the High Court in the said writ petitions. The question for consideration before this Court is whether the High Court overstepped in its legitimate and legal jurisdiction while continuing to pass order after order constituting a Committee to supervise the construction of the shopping complex and any such directions can at all be issued by the High Court while exercising its powers under Article 226 of the Constitution of India.

G 11. The Municipal Corporation, Gwalior before the High Court as well as in this Court furnished necessary details about their stand. It is seen that a Writ Petition No. 310 of 1999 filed by Advocate G.S. Tomar was pending consideration in which the encroachment caused on the public way belonging to the M.P. Housing Board in Najjar Bagh market situated at Maharaj Bada where the Municipal Corporation raised certain wooden stall pucca structure and was going to auction the same but H subsequently under the orders of the Court in miscellaneous

petitions, the petitioner confined the issue only to the question relating to encroachment in Gandhi Market, Gwalior. It was stated in the writ petition that the shopkeepers of Gandhi Market have encroached upon the verandah which was constructed in front of the shops for the use of public and the prayer was made that the aforesaid verandah which has been encroached upon by the shopkeepers may be removed. While so, in the other writ petitions, all the shopkeepers have stated that they have not made any encroachment of the verandah. When, on earlier occasion, this Court was approached by the parties with regard to certain interim directions, this Court requested the High Court to dispose of the main writ petitions at an early date. Pursuant to the same, all the writ petitions were heard on several occasions and before passing a final order, several interim orders/directions were issued.

12. At the foremost, Mr. Gupta submitted that they were not parties in the writ petition filed as PIL, hence without affording opportunity, various directions have been issued. Inasmuch as almost all the shop keepers have filed three writ petitions conveying their stand and admittedly all those writ petitions were heard along PIL (Writ Petition No. 310 of 1999), the said objection is liable to be rejected.

Consent by the shop keepers:

13. Though Mr. Gupta, learned senior counsel for the appellants vehemently contended that the High Court has exceeded its jurisdiction while considering the writ petitions filed under Article 226, Mr. K.K. Venugopal and Dr. Rajiv Dhavan, learned senior counsel for the Municipal Corporation while refuting the above contention pointed out that several orders were passed by the High Court on the basis of the consent given by the shopkeepers. On 09.01.2005, the High Court passed the following order:

"During course of arguments, counsel for the petitioners suggested that each shop keeper will deposit Rs. One Lac

- A with the Municipal Corporation, Gwalior in four monthly installments, First Installment shall be paid next month and thereafter other installments shall be paid every month in the Municipal Corporation.
- B Counsel for the Municipal Corporation submits that they will prepare a map for development of Gandhi Market and will prepare a good shopping complex having first and second floor. Plan shall also include parking area. It is also suggested by the Municipal Corporation that the shopping complex shall be prepared in such a manner that existing shop keepers will not be dispossessed till first floor is completed. However, exact plan will be submitted by them within one month.
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- D Petitioners have also agreed that they will not keep of their goods on the footpath and the footpath will be kept clear. They have further agreed that there shall be no encroachment on the footpath including hangings on the footpath. Respondents shall ensure that no vehicles are parked on the footpath.
- E Counsel for the petitioners also submitted that they will move an application before the Apex Court for extension of time for decision of the petition.
- F It is, therefore, directed that the amount so deposited by the shopkeepers shall be kept in a separate fund by the Municipal Corporation and its use shall be considered at the time of final hearing.”
- G 14. Again on 19.01.2005, the High Court passed the following order:
- H “Shopkeepers of Gandhi Market have discussed the matter amongst themselves and have decided to deposit Rs. One Lac each with Municipal Corporation which shall be deposited by them in four equal monthly installments. Similarly, shop keepers of Victoria Market and the market

nearby the Town Hall have agreed to deposit Rs. 50,000/ A
- each in two installments with Municipal Corporation,
Gwalior.

It is directed that the amount so deposited by the shop B
keepers shall be kept in a separate fund by the Municipal
Corporation and its use shall be considered at the time of
final hearing.

Respondent- Municipal Corporation has submitted that C
they will prepare a plan for development of these markets
as a shopping complex with the assistance of Town
Planner and ensure that there is no traffic congestion in
the area and shall also prepare parking place so that
citizens have no inconvenience on the public streets.

Shop keepers have assured that there will be no D
encroachment on the footpath and the respondents will be
at liberty to remove the encroachment, if found on the
footpath. They shall also ensure that footpath is not
obstructed by any vehicle.

Counsel for the petitioners before the Apex Court submit E
they will be moving an application in the Apex Court for
extension of time for disposal of the petition.

As prayed, list this petition for further orders next month F
alongwith other connected petitions.”

15. Thereafter, the High Court, on 11.03.2005, passed the
following order:

“Shri Bhardwaj stated that as per undertaking given by the G
shop keepers of Gandhi Market an amount of Rs.
62,27,000/- has been deposited with the Municipal
Corporation, Gwalior. Counsel for the shop keepers
submits that efforts are being made to pay future
installments. He further submits that if the map prepared

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A by the Municipal Corporation for development and beautification of the market, as ordered earlier by this Court, is produced and after going through the map, shop keepers will be in a position to raise further funds and deposit other installments as undertaken by them earlier.

B Shri Bidua, counsel for the Municipal Corporation, Gwalior has informed that the finalization of map is at the final stage and is likely to be finalized by the end of next week. He submits that plan for development will be ready within a week or ten days.

C Since there is likelihood of amicable settlement in the matter, we post this case after two weeks. On that date, map approved by the Municipal Corporation for development of Gandhi Market shall be produced in the Court for perusal.

D Shri Bhardwaj has mentioned that in view of further development in the case they have already approached the Apex Court for extension of time for deciding the petitions as the dispute is being settled between the Municipal Corporation and the shop keepers. He has also stated that there is every possibility that the application for extension of time will be heard in the next week.”

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F 16. From the above orders, it is clear that with the consent of the parties, the order of construction of new market was passed and maps were prepared.

G 17. Again, by order dated 06.05.2005, the High Court has specifically mentioned “the scheme for development of the market shall also be finalized in consultation with the shopkeepers”. The same reads as under:-

“Today counsel for Municipal Corporation intimated that maps for Gandhi Market have been prepared by the Architect and accepted by Municipal Corporation.

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Said maps be shown to the shop keepers or representatives of shop keepers. The scheme for development of the market shall also be finalized in consultation with the shop keepers. A

Counsel for the parties state that they will sit together and negotiate the matter.” B

18. Thereafter, on 08.07.2005, the High Court passed the following order:

“As agreed by the shopkeepers on 19.01.2005, that they will deposit Rs. One lac with the Municipal Corporation, Gwalior in four equal monthly instalments, they have deposited only one instalment and remaining three instalments at the rate of Rs.25,000/- per month have not been deposited. Maps have been prepared by the Municipal Corporation which have been shown to the representatives of the shopkeepers. Now the shopkeepers state that all the shopkeepers want to see the maps and CD prepared for construction of the market. Municipal Corporation has no objection in showing the entire plan to them. However, the shopkeepers are directed to deposit the second instalment within fifteen days and thereafter remaining instalments be paid in equal instalments every fifteen days and after deposit of second instalment those shop keepers who have deposited the second instalment will be entitled to see the maps CDs and, the Municipal Corporation will be at liberty to remove those shop keepers who are not willing to deposit their instalments. However, before passing any order of removal, Municipal Corporation shall examine their encroachments and other factors and submit report before this Court.” C
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19. The same order has been reiterated on 24.03.2006 which is as follows:-

“Shopkeepers are not ready to honour their offer given H

A before this Court and they are not prepared to pay the amount of premium as agreed by them on 19.01.2005. They have deposited only one installment of Rs. 25,000/- and they have not deposited the remaining three installments. Though, vide order dated 08.07.2005, the shopkeepers were directed to deposit the second installment, but they have not done so, which shows that the shopkeepers are not willing to cooperate and now they have applied for exemption.

B In the circumstances, petition is required to be heard finally.

C In the meantime, the Municipal Corporation shall auction the shops, which shall not be finalized, so that the court will be in a position to know the actual rental value of each shop. The auction shall be for the area of shop only and the encroached verandah shall not be auctioned which shall be clarified in the auction notice and the Corporation will be at liberty to remove the encroached area.

D List the petition finally before appropriate Bench, as prayed for by the counsel for the petitioners, in the week commencing 1st May, 2006. It is directed that before the date of hearing, Municipal Corporation shall submit the price offered for each shop and the State shall also submit the valuation report of each shop.”

E 20. On 09.02.2007, the Court recorded that:

F “Shri Bidua (counsel for Respondent No.2) prays for time to submit verification report of the photographs filed by Shri V.K. Bharadwaj counsel for intervenors and shopkeepers and to submit report about closing of verandah against the shops.”

G 21. Again, on 02.03.2007, the High Court passed a brief order which is as follows:

H “With the consent of the parties, it is directed that Shri

Sharma, Commissioner, Municipal Corporation will complete the inviting process of tenders for the construction of new market building at the place of old Gandhi Market on or before 09.03.2007.”

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22. The order dated 20.04.2007 is very relevant which reads as under:-

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“For the construction of new market building at the place of old Gandhi Market, the shop keepers have consented.”
“Today, the Municipal Corporation has filed a compliance report”. With a view to complete the project and to remove the day to day hurdles with the consent of the parties, we constitute a Committee comprising of

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23. The following noting in the order dated 04.05.2007 by the High Court is also relevant which reads as under:-

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“Shri Raja Sharma, learned counsel appearing for the shop keepers submitted that the shop keepers will not raise any objection before the Committee-regarding the construction of the market.”

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24. It is abundantly clear that from time to time, on different occasions with the consent of the parties, the construction of new Gandhi Market was discussed and a Committee was constituted after the order dated 20.04.2007.

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25. The High Court, on different occasions, took into consideration the objections and suggestions of the Director, Town and Country Planning Department, the Commissioner, Municipal Corporation, Principal Secretary, Housing Development and passed an order on 18.05.2007 which is as follows:-

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“Today progress report along with minutes of the meeting of the Committee dated 14.05.2007 has been filed, which is taken on record and Corporation has also produced copy of letter dated 15.05.2007 written by Joint Director,

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A Town and Country Planning Department to the Director for seeking permission from the State. It is submitted that the Architect has already submitted map as per advice of the Joint Director, Town and Country Planning Department and the matter has been referred to the Government for permission. So far as the question of permission upto the height of 24 meter is concerned, that shall be obtained by the Municipal Corporation and not by the Contractor. The Committee has fixed the next date of meeting of 5th June, 2007. List this case on 6th July, 2007. In the meantime, the State Government shall take a decision on the permission and the Committee shall also finalize the map and issue the tenders for fixing the agency etc. During this period every effort should be made to complete the formalities and process of inviting tenders should also be started so that the construction plan may be prepared. Next progress report shall be submitted on 6th July, 2007.

The same order has been reiterated in the subsequent order dated 20.07.2007. On 27.07.2007, the High Court passed the following which reads thus:-

E “It is directed that Shri Batham will continue to co-ordinate between the authorities and will see that the inspection and report is submitted by the School of Planning and Architecture, New Delhi as early as possible and the consent is obtained from the Department of Town and Country Planning as well as the State Government. He will also submit the reply of the queries and fulfill all the conditions which are necessary for the approval of the project. The Corporation is directed to submit the further progress report on 10.08.2007.

26. If we analyze the above-mentioned and various other orders, it would not be possible to conclude that the High Court over stepped its limit while giving directions in para 8 of the impugned order. As rightly observed by the High Court, it is the

■ duty and responsibility of the Public Department of the State Government, Municipal Corporation to take all endeavour to save the town of Gwalior from encroachments and also easing the public utility system. The materials placed by the Municipal Corporation clearly show that Gandhi Market which is primarily a cloth market is established in the year 1952 is now in a very haphazard condition causing difficulty in the movement of public as well as of vehicles. It was highlighted that in the day time as well as in the evening busy time, it takes hours together for the vehicles to pass from that area. Photographs were also shown to us. It is impossible for the public to even walk on the street. The shop keepers are dumping their products upon the street which is not permissible. The public are prevented from using the foot path/pavement meant for them. In such circumstances, a decision was taken to construct a multi-level parking-cum-commercial complex. In this process of construction, it was planned to shift temporarily the present shop keepers to some other nearby places.

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27. It is further seen that the present commercial area of the appellants/shop keepers is 60 sq. ft. which has been converted by encroaching the area of verandah and converted the same into 90 sq. ft area. The new shop of 60 sq. ft. size is to be given to 252 present incumbents of Gandhi Market. It is highlighted that to construct the building to the height of 12.5 metres having 3 layers of basement for parking, the ground floor shall have 252 shops which shall be allotted to the present incumbents of Gandhi Market and other floors shall be at the disposal of Municipal Corporation, Gwalior.

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28. In view of the various orders passed by the High Court on the basis of consensus of the parties, more particularly, with the consent of the shop keepers, a Committee was appointed and a direction was issued for providing alternate place to the shop keepers till new construction being completed in the existing place and all of them were assured of accommodation in the ground floor of the new market complex, we are of the

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A view that the ultimate directions issued in the final order dated 18.01.2008 by the High Court cannot be faulted with.

B 29. The next submission of Mr. Gupta relates to applications filed by the appellants before the High Court for recalling the order dated 24.03.2006 and also seeking clarification on the same order as well as another application for refund of the amount deposited. Admittedly, one application was rejected on 05.05.2006 and it is not clear how the other applications are kept pending even after disposal of main writ petitions. About the amount deposited by the shop keepers, C both the senior counsel appearing for the Municipal Corporation submitted that the said amount was not towards adjustment of construction charges but the same would be adjusted towards future licence fees. In the light of the same, there is no substance in the contention relating to filing of applications about various D orders passed by the High Court. As rightly pointed out by Dr. Rajiv Dhavan, learned senior counsel for the Municipal Corporation even after the so-called applications, the consent to the process of a new market place continued and this is evident from the orders of the High Court dated 02.03.2007, E 20.04.2007 and 04.05.2007. It is also brought to our notice that some applications that were made in June/July to recall the order dated 04.05.2007 were not pressed. In view of the same, we are unable to accept the claim of the learned senior counsel for the appellants.

F 30. In view of our factual conclusion based on the materials placed by both the parties as well as various orders of the High Court, we feel that there is no need to advert to various decisions relied on by the learned senior counsel for the G appellants.

H 31. In the light of the above discussion, we are satisfied that various directions in para 8 of the impugned order of the High Court cannot be faulted with and according to us it safeguards not only the interest of the Municipal Corporation, H general public but also all the 252 shop keepers who are

running their business in the Gandhi Market. Further, it was not
disputed before the High Court that Gandhi Market became
quite old and market is fully congested and there is no space
for parking. That was the reason the High Court specifically
recorded a finding in para 7 that:

“..... under changed circumstances that all the parties
including the shop keepers have agreed for construction
of new Gandhi Market building in the place of old Gandhi
Market building. This Court has already in the interest of
all the parties and the citizens of Gwalior City, directed
through interim orders for construction of a new market
building and has also constituted a Committee to see that
new Gandhi Market building is constructed and after
construction, the existing shop keepers were also settled
therein.”

We fully endorse the above view. Though an argument was
advanced that the permission granted by Joint Director, Town
and Country Planning, Gwalior in his proceeding dated
05.12.2007 to the Commissioner, Municipal Corporation,
Gwalior regarding reconstruction of Gandhi Market, Gwalior
was objected to by the Director and further approval of the State
Government is required, inasmuch as the Joint Director is the
officer competent, we hope and trust that no fresh construction
would be carried out without the authority of the person
concerned and contrary to the statutory provisions/regulations,
accordingly, we reject the said contention also.

32. Under these circumstances, we are unable to agree
with any one of the submissions made by the appellants, on
the other hand, we are in entire agreement with the stand of
the respondents and reasonings and conclusion arrived at by
the High Court. We direct the respondents, particularly, the
Municipal Corporation, Gwalior and the officers concerned to
implement the directions of the High Court within the
parameters of the statutory provisions considering the interest
of the general public as well all the shop keepers of the existing

- A** market. In view of the disposal of the civil appeals, Municipal Corporation is free to proceed with the construction as directed in the impugned order of the High Court and in the light of the above observations, as early as possible, and we also direct that all the directions of the High Court shall be adhered to. It
- B** is further directed that as soon as construction up to ground floor level is completed along with the required parking facilities at the basement level those shops are to be allotted to the old shop keepers in the Gandhi Market within a period of six months after completion of such construction, unless an
- C** individual shop keeper becomes ineligible for the known reason.

33. Consequently, all the appeals fail and are accordingly dismissed. In view of the same, interim stay granted by this Court on 17.10.2008 shall stand vacated. No order as to costs.

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N.J.

Appeals dismissed.