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WP-37128-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANDEEP N. BHATT

ON THE 9th OF SEPTEMBER, 2026

WRIT PETITION No. 37147 of 2026

*SHAHI MASJID WAQF PANCHAYAT MOCHIYAAN THROUGH ITS
AUTHORISED REPRESENTATIVE ASHFAQ AHMAD AND OTHERS*

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

*Shri Jagdish Baheti, Shri Aaditya Dubey and Shri Prabuddha Singh,
Advocate for the petitioners.*

*Ms. Sonal Gupta, Advocate alongwith Shri Shrey Raj Saxena, Dy. AG
for the respondent/State.*

*Shri Rishi Tiwari, Advocate for the respondent/Municipal
Corporation.*

AND

WRIT PETITION No. 37128 of 2026

*SHAHI MASJID WAQF PANCH MOCHIYAN THROUGH ITS
PRESIDENT ARSHAN HUSSAIN*

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Shri Syed Ashhar Ali Warsi, Advocate(through VC) for the petitioner.



*Ms. Sonal Gupta, Advocate alongwith Shri Shrey Raj Saxena, Dy. AG
for the respondent/State.*

Shri Rishi Tiwari, Advocate for the respondent/Municipal Corporation.

.....
ORDER

Both these petitions have been filed by two different sets of petitioners who claim an interest in the religious place and are administering the affairs of the Masjid, which is registered as a Waqf property. The petitioners challenge the impugned action of the respondent Corporation in issuing a notice for the demolition of a portion of the Masjid for the purpose of road widening to the extent of 15 meters. It is contended that the property in question is an ancient structure that has existed for generations. The proposed demolition would tear down a portion of the prayer hall (Jamat Khana) of the mosque, a 120-foot-tall minaret, and the Mazhar Chouk Shahi. The petitioners further submit that the impugned action of the respondent authority as well as the State violates their fundamental rights guaranteed under Articles 14, 25, and 26 of the Constitution of India.

2. For consideration of both the petitions, which are essentially challenging the same action of the respondent(s), both the matters are heard together and decided by way of a common order.

3. The followings prayer have been sought by the petitioners in W.P. No.37147 of 2026 :



Reliefs :-

In view of the facts and circumstances mentioned above, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a. Issue a Writ in the nature of Certiorari or any other appropriate writ, order, or direction, quashing the impugned notices dated 14.08.2026, 25.08.2026, 27.08.2026 and the final notice/order dated 01.09.2026 (Annexure P-1 Colly) issued by Respondent Nos. 3 and 4 as being arbitrary, illegal, unconstitutional, and void ab initio;

b. Issue a Writ in the nature of Mandamus or any other appropriate writ, order, or direction, commanding the Respondent Nos. 1 to 5, their agents, servants, and employees to forbear from taking any coercive action, including demolition of any part of the Shahi Masjid, situated at Municipal No. 524, Khasra No. 2072, Chatri Chowk, Ujjain, pursuant to the impugned notices;

c. Pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice.

4. The prayers sought in connected W.P. No.37128 of 2026 is as follows :-

*Reliefs :**In view of the facts and circumstances mentioned above, it is most respectfully prayed that this Hon'ble Court may be pleased to*

a. Issue a Writ in the nature of Certiorari or any other appropriate writ, order, or direction, quashing the impugned notices dated 14.08.2026, 25.08.2026, 27.08.2026 and the final notice/order dated 01.09.2026 (Annexure P-1 Colly) issued by Respondent Nos. 3 and 4 as being arbitrary, illegal, unconstitutional, and void ab initid,

b. Issue a Writ in the nature of Mandamus or any other appropriate. writ, order, or direction, commanding the Respondent Nos. 1 105, their agents, servants, and employees to forbear from taking any coercive action, including demolition of any part of the Shahi Masjid, situated at Municipal No. 524, Khasra No. 2072, Chatri Chowk, Ujjain, pursuant to the impugned notices,

c. Pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice.



5. Learned counsel appearing for the petitioner in **W.P. No. 37147 of 2026** submitted a detailed historical background of the matter and drew the attention of this Court to various photographs of the subject property. It is submitted that the property is registered as a **Waqf property** and features a tall minaret, a prayer hall, and a Dargah in its front portion facing the road. The petitioner is aggrieved by the Municipal Corporation's proposal to demolish a portion of the prayer hall, minaret, and Dargah for the purpose of road widening. It is contended that under **Article 25 of the Constitution of India**, such religious properties are constitutionally protected and must be preserved. Furthermore, learned counsel for the petitioner pointed out that there are other properties in the immediate vicinity that the Corporation has left untouched. The petitioner contends that, as evident from the photographs, those adjacent properties are also required to be demolished to achieve the intended widening of the road. However, the Corporation has purportedly exempted them under the pretext that they are historical structures requiring preservation, a stance the petitioner challenges as discriminatory. He has further submitted that a clear distinction exists between private property and properties of religious or historical significance. He contends that while executing statutory actions, enforcement must primarily target private properties, and as far as practicable, religious and historical structures should remain untouched. In support of this contention, he places reliance on the Division Bench judgment of the Gujarat High Court in *Gulam Kadar Ahmadbhai Menon and Others vs. Surat Municipal Corporation and others* [AIR 1998 Gujarat 234], more particularly, by referring to para - 19 and 32 of the said judgment. He submits that the impugned action of the respondent is not only in violation of



the principles of natural justice but also violative of Articles 25 and 26 of the Constitution of India. This is because the proposed demolition targets the core religious infrastructure of the Shahi Masjid, including the prayer halls (*Jamat Khana*), the *Wazoo* facility required for ritual ablution, and the 120-feet tall minaret used for the *Azan*.

6. He has further submitted that Offering congregational Namaaz is an essential and integral tenet of Islam, and the destruction of the prayer halls directly obstructs and extinguishes this right for thousands of worshippers and in view of the judgment of the Hon'ble Apex Court in *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282, word "religion" encompasses practices integral to the faith, and any interference therewith is unconstitutional. He has further referred to the judgment in the case of *Syed Mohd. Salie Labbai v. Mohd. Hanifa*, [AIR 1976 SC 1569], by contending that the purported public interest of road widening cannot be invoked to override the fundamental right of the community to freely profess and practice their religion in a centuries-old place of worship. He has further submitted that Article 25 of the Constitution of India guarantees to all persons the fundamental right to freely profess, practice, and propagate religion, subject only to public order, morality, and health. He submits that the petitioner - Mosque, is a place of worship where approximately 5,000 followers of Islam congregate daily offers Namaaz. Further, by referring to the judgment in the case of *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615, wherein the Hon'ble Apex Court has reiterated that freedom of



conscience and the right to practice religion cannot be curtailed except on grounds expressly provided in the Constitution. He has further submitted that if the proposed road line (15 meter) is enforced by the Respondent Corporation, a portion of the substantial part of prayer hall (Jamat Khana) of the mosque will be demolished.

7. Learned counsel for the petitioner has further submitted that the Corporation has not properly followed Section 322 or 323 of the M.P. Municipal Corporation Act, 1956(in short ... "the Act"), whereby for the demolition of an existing structure, a mandatory notice and procedure under Section 322 or Section 323 of the Act is an indispensable prerequisite. He further submits that in the present case, the respondents have only issued a notice under Section 305 of the Act which pertains to the vesting of land for a public street. He has also relied on the judgment reported in the case of *Ahmedabad St. Xavier College Society v. State of Gujarat*, [AIR 1974 SC 1389] for the purpose of submission that the action of the respondent is not in accordance with law. He has further submitted that by referring to the judgment reported in *In Re Manoj Tiberwal Akash*, 2024 SCC OnLine SC 3210, whereby the Apex Court mandated a strict procedure involving proper demarcation based on official records, issuance of written notices, adjudication of objections through a reasoned order, and lawful acquisition of land. He submitted that the respondents have flouted every single one of these safeguards. Lastly, he has submitted that the action of the respondents is illegal and violates Article 300A of the Constitution of India as Section 387 of the M.P. Municipal Corporation Act, 1956 provides for



compensation. Furthermore, Rule 61 of the Madhya Pradesh Bhumi Vikas Rules, 2012, explicitly states that the FAR is an option available only when a landowner voluntarily surrenders land. Therefore, he has submitted that the impugned notices were issued without serving the Madhya Pradesh Waqf Board/respondent no.6 which is a statutory supervisor and custodian of all Waqf properties in the state under the Waqf Act, 1995 and, therefore, he has submitted that the impugned action of respondents/authority is bad in eye of law and required to be interfered with.

8. Learned counsel for the petitioners in W.P. No.37128 Of 2026 while adopting the arguments advanced by the learned counsel for the other petitioners, further contended that the respondent authority acted in gross violation of the law. He submitted that the record clearly indicates the subject property is a Waqf property, yet the respondent Corporation initiated the impugned action without issuing the requisite notice to the Waqf Board, rendering the action legally unsustainable.

9. He further submitted that the **Ujjain Development Master Plan, 2035**, relied upon by the respondents, does not demand verbatim or rigid implementation. Rather, the statutory framework allows for necessary alterations to the master plan based on ground realities and the actual situation on-site. He has further submitted that there are certain alternative like garden, which is available nearby vicinity and some learned property is available just opposite the mosque can also be utilised and the land of such properties can utilised for widening of the road without disturbing the



premises of mosque. He has also submitted that no proper notice is issued and therefore prayed that the petition is required to be allowed as the action of the respondents are violative of Article 14, 25, 26 and 300A of the Constitution of India.

10. He has further submitted that there are certain **alternatives, such as a garden** which is available in the nearby vicinity, and **some vacant property** available just opposite the mosque **that** can also be **utilized**. Furthermore, the land of **such** properties can **be utilized for widening** of the road without disturbing the premises of **the** mosque. He has also submitted that no proper notice **was** issued and therefore prayed that the petition **be** allowed, as the **actions** of the respondents are violative of **Articles** 14, 25, 26 and 300A of the Constitution of India.

11. Learned counsel for the Madhya Pradesh Waqf Board/respondent no.6 has also supported the contentions raised by the petitioner and has relied on judgment recorded in *In Re Manoj Tiberwal Akash(Supra)*, by referring to para 29 and 30 of that judgment. He has further submitted that the respondent, Corporation or State are acting in arbitrary and unjust manner and violation of Article 14 of the Constitution of India as they are not taking action on against all such religious institutions and therefore required to be dismissed.

12. Learned counsel for the respondent Corporation has submitted that he has filed caveat and yesterday only the notices are issued and reply is prepared and is filed today before the Court by taking permission of the



Court by giving chronology of the events in para - 9 of his reply.

13. Learned counsel further submitted a preliminary objection regarding the maintainability of the writ petition. He stated that **W.P. No. 37128/2026** was filed by one Mr. Arshad Hussain in his capacity as President of the petitioner, whereas **W.P. No. 37147/2026** was filed by other office-bearers of the petitioner claiming to be its authorised representatives. Therefore, it appears that Mr. Arshad Hussain is no longer the President of the petitioner, as a new committee/institution was constituted by the **M.P. Waqf Board on 19.08.2026**, rendering him incompetent to file the present petition. He further submitted that, as per the **Ujjain Development Plan, 2035**, a 15-metre-wide road is to be constructed from **Kanthal Chouraha to Gopal Mandir**. The respondent/Corporation is currently in the process of widening important roads across Ujjain City. The subject construction is situated on **Gopal Mandir Road**, which is a prominent *Peshwai* and *Shahi Sawari Marg* that connects Gopal Mandir to the **Mahakal Mandir**, and further extends to the banks of the **River Kshipra**. During festivals, lakhs of devotees commute along this road, which is located in the heart of the city. Since crores of devotees are expected to visit the city, the widening of the road is in a larger public interest. He also submitted that, along this stretch of approximately 1.5 kilometres, almost all obstructing structures have already been removed, except for the subject construction and the structure situated directly opposite to it. He has further submitted that the proposed widening of road is necessary therefore being done so as to maintain sufficient space for smooth movement of traffic and to avoid any congestion at the time of Shahi Sawari,



Peshwai and even at the time of Simhastha 2028. He has submitted that the petitioners are unnecessarily trying to give a religious colour to the road widening process which is highly condemnable. He submits that the objection regarding *Sati* gate where the construction is not removed by Corporation, such objection is misleading as the subject-construction is situated near Sati Gate which is of historical and religious importance in the name of Mata Sati and her Shakti Peeth. The subject road is being constructed in such a manner that, the carriage way is available on both sides as well as from the middle of the gate of the Sati Gate. Thus, since, there is passage through the Sati Gate as also on either side, it does not cause obstruction. Moreover, the available width of road at Sati Gate is more than that prescribed in the Master Plan.

14. Learned counsel has further submitted that the notices ought to have been issued to Waqf Board, Bhopal, that contention is misleading as in response to the notices issued by the Corporation, several replies were submitted. On 18.08.2026, a reply was filed by Arshad Hussain, the alleged Manager of the Shahi Masjid Waqf Panchayat Mochiyan. Thereafter, a detailed reply has been filed by the Shahi Masjid Intezamiya Committee Wagf Panch Mochiyan, through its President Abdul Mannan Rehmani (R/4) on 21.08.2026. He has further submitted that in another reply filed by Abdul Mannan Rehmani, it was categorically mentioned that he is President of the Waqf. Moreover, another reply has also been submitted by the committee on 02.09.2026 wherein it was submitted by Arshad Hussain that notices should be issued in the name of Arshad Hussain. He has further submitted that by



way of impugned order, only obstructing portion is being removed and the petitioner has been offered FAR as compensation and in the alternative T.D.R is being offered. It is also pertinent to mention that the subject road has been declared as generating area under the T.D.R Policy. He has further submitted that the subject road is being constructed as per the master plan, 2035. Moreover, it is pertinent to note that all the constructions and religious places causing a hindrance in the road widening process are being treated equally and are being removed in the larger public interest. About 80 religious structures are being shifted/removed across the city for the road widening as per the master plan. Moreover, 11 religious structures - 10 temples and 01 mosque have already been removed on the subject road. He has further submitted that a very small portion of the petitioner's total area and more particularly from the construction is being removed and as per the master plan, it does not even amount to 10% of the total construction. It is also submitted that only the obstructing portion will be removed by the answering respondent from the property in question. He has further submitted that the proposal to acquire Chatri-Chowk garden is misconstrued and misleading as it is not affected by the road widening. It has a garden in the middle and there are roads on both sides. He has further submitted that the contentions regarding the revenue entries and payment of municipal tax is also misconstrued as there is no application of promissory estoppel. He has further submitted that the master plan was approved after duly considering objection raised and same is binding upon answering respondent. He has referred to S.305 of the 1956 Act and also relied on the judgment *Suresh Singh Kushwah Vs. Municipal Corporation Gwalior and another reported in*



2006 (3) MPLJ 412. He has also relied on the judgment of Division Bench of this Court in W.A No.873/2014 for consideration of his contention of about Article 300-A of the Constitution of India and according to Article 300-A of the Constitution the respondent Corporation has initiated the process of widening of the subject road as per the Ujjain Development Plan of 2035. He has also relied on the judgment of *K.N. Palsikar [Municipal Corpn., Indore v. K.N. Palsikar, AIR 1969 SC 579]*. Lastly, he has relied on the judgment of *Ravindra Ramchandra Waghmare Vs. IMC; (2017) 1 SCC 667* more particularly referring to Para 4, 21, 56, 72 and 86 and contended that the petition is misconceived and required to be dismissed.

15. Counsel for the State has also supported the submission made by the Corporation and further submitted that as per the judgment of Gujarat High Court which is sought to be relied by petitioner para-30 and 31 are relevant for the consideration. he has also relied on the judgment of Allahabad High Court in *Mohammad Ali Khan v. The Special land Acquisition Officer reported in AIR 1978 All 280* by contending that the same question has arisen for consideration of Article 25 of the Constitution more particularly referring to para 9 and 10 of the said judgment. Therefore, he submits that both the petitions are misconceived and required to be dismissed as action taken by the respondents/authorities are in larger public interest for widening of the road for necessary requirement looking to the increasing traffic and also looking to the coming event of Simhastha 2028.

16. I have considered the rival submissions made at the bar, and I have also considered the various judgments cited by the learned counsel for the



parties, as well as the ratio of those judgments. It is fruitful to refer to a few of the judgments cited by the parties for ready reference and detailed consideration of the matter.

17. The judgment which is reported in *In Re Manoj Tiberwal Akash*, the relevant para 29 and 30 is reproduced as under :-

29. The petitioner has alleged that the demolition was a reprisal for a newspaper report which contained allegations of wrongdoing in relation to the construction of the road in question. We need not engage with this aspect, save and except to the extent that it supplies the background to the grievance of the petitioner. In any case, such high-handed and unilateral action by the State Government cannot be countenanced. Justice through bulldozers is unknown to any civilized system of jurisprudence. There is a grave danger that if high handed and unlawful behaviour is permitted by any wing or officer of the state, demolition of citizens' properties will take place as a selective reprisal for extraneous reasons. Citizens' voices cannot be throttled by a threat of destroying their properties and homesteads. The ultimate security which a human being possesses is to the homestead. The law does not undoubtedly condone unlawful occupation of public property and encroachments. There are municipal laws and town-planning legislation which contain adequate provisions for dealing with illegal encroachments. Where such legislation exists the safeguards which are provided in it must be observed. We propose to lay down certain minimum thresholds of procedural safeguards which must be fulfilled before taking action against properties of citizens. The state must follow due process of law before taking action to remove illegal encroachments or unlawfully constructed structures. Bulldozer justice is simply unacceptable under the rule of law. If it were to be permitted the constitutional recognition of the right to property under Article 300A would be reduced to a dead letter. Officials of the state who carry out or sanction such unlawful action must be proceeded against for disciplinary action. Their infractions of law must invite criminal sanctions. Public accountability for public officials must be the norm. Any action in respect of public or private property must be backed by due process of law.

30. Before acting in pursuance of a road widening project, the State or its instrumentalities must:

(i) Ascertain the existing width of the road in terms of official records/maps;

(ii) Carry out a survey/demarcation to ascertain whether there is any encroachment on the existing road with reference to the existing records/maps;



(iii) If an encroachment is found, issue a proper, written notice to the encroachers to remove the encroachment;

(iv) In the event that the noticee raises an objection with regard to the correctness or the validity of the notice, decide the objection by a speaking order in due compliance with the principles of natural justice;

(v) If the objection is rejected, furnish reasonable notice to the person against whom adverse action is proposed and upon the failure of the person concerned to act, proceed in accordance with law, to remove the encroachment unless restrained by an order of the competent authority or court; and

(vi) If the existing width of road including the State land adjoining the road is not sufficient to accommodate the widening of the road, steps must be taken by the State to acquire the land in accordance with law before undertaking the road widening exercise.

It is also relevant to refer to para - 9 and 10 of the Allahabad High Court in *Mohammad Ali Khan(supra)*, which is reproduced as under :-

9. Further, the profession, practice and propagation of religion guaranteed in [Article 25](#) is a personal right which has to be exercised by the individual. It has no nexus with the place or territory where it has to be exercised. A person may go to a particular mosque to offer prayers if it exists, he may go to another mosque if the one in which he offered prayer earlier ceased to exist or he may offer prayers even in his house or elsewhere. Hence, the acquisition of land on which a mosque may exist cannot be held to deprive him of his right to freely practise the religion. A free practice of religion has the idea of practising it anywhere and not its practice in any particular place. After the acquisition of the property the right to use that property for the purpose of offering prayers may be lost, but that does not militate against the guarantee contained in [Article 25](#) of the Constitution.

10. To test the argument about [Article 25](#), we may consider the right of the person to practise his religion in his house or elsewhere. As the prayers can be offered anywhere on earth and a man may be offering prayers in his own house or at some remote place, the right cannot be deemed reasonably to mean that no such place can be acquired. The only reasonable interpretation of [Article 25](#) can be that no law can prohibit the profession, practice or propagation of religion. The law of acquisition cannot be held to be invalid as that relates to land and, not the individual's right to



profess, practise or propagate religion. As the right to practise religion has no nexus with any particular place that right cannot be deemed infringed by acquisition of any particular piece of land which is used as a mosque,

18. It is also relevant to refer to the judgment which is relied upon by the petitioner as well as counsel for the State reported in *Gulam Kadar Ahmadbhai Menon and Others* (supra). Paras 19, 30, 31, and 32 are relevant, which read as under:

19. The Hon'ble Supreme Court has thus without giving any immunity from acquisition to a place of religion worship laid down the following principles;

(1)(a) If the place of worship of any religion has such particular significance for that religion that offering prayers at that particular place of worship is an essential and integral part of that religion, such a place stands on a higher footing and has to be treated differently and more reverentially than other places of worship of that religion.

(b) If the acquisition of such religious place (referred to in (a) above which is on a higher footing) results in extension of right to practice the religion acquisition should not be resorted to.

(2) The question (acquisition) of any other religious place of worship (not referred to in (1) above) is to be made only in unusual and extraordinary situation for a larger national purpose.

30. Since we have already held that it is for the local body to consider the question in the aforesaid proper perspective, we would not have been required to examine the facts of the case on hand. In fact the preliminary contentions of Mr. Desai on the ground of delay, laches and acquiescence and absence of challenge to the decisions taken in 1988 and 1989 were urged as strong enough to justify refusal entertain, the petition itself but as we are told that it is for the first time that a Constitutional Court has been approached for directing the authority to strike a balance between the right of a religious community to its place of worship and the municipal needs of the society at large, we have therefore, thought it fit to overrule the preliminary objections urged by Mr. Desai to demonstrate how the positive concept of secularism can be implemented in the facts of the present case, in order to discharge the duty to do complete justice as observed in the case of [Union of India v. B.C. Chaturvedi](#) (supra) as discussed in para 27 above. We would like to add that in future the balancing act undertaken herein must be left to the local authorities who would undoubtedly show due deference to the places of religious worship as earlier discussed in this judgment.



31. As far as the facts of the present case are concerned, there can be no gainsaying that in view of the increase in the population and traffic including explosion of vehicular traffic in all the growing cities in India, it has become necessary for the local authorities to take up the task of widening roads. The two mosques are situate on a junction of five roads. The width of the existing road is hardly about 40' and the sanctioned road line provides for the road line of 60'. It cannot, therefore, be said that the widening of the road by 20' would not be in public interest or in larger national interest.

32. As far as the minaret of Minarawali Masjid is concerned, the said structure is not being used for offering prayers or worship and therefore, it cannot be considered to be essential or integral part of the prayer much less of the religion nor can it be treated as having such particular significance that it can be permitted to override the wider public interest for the smooth movement of the traffic. In this connection it is necessary to note that the length of the structure supporting the minaret projects 18' into the sanctioned roadline and therefore the remaining portion of the road which would be available would be hardly about 42 feet wide including already existing road of width 40 feet. On a busy intersection of five roads, it can never be said that the widening of the road from 40' to 60' is not justified, though the traffic has increased many fold. In our view if the trustees of the wakf managing Minarawali Masjid are required to remove the minaret portion, and the structure supporting it, it would not adversely affect offering 'prayers within the mosque and in any case the public interest in widening the road overrides the need, if any, of the religion to preserve the minaret.

19. It is also relevant to refer to the judgment of *Ravindra Ramchandra Waghmare(supra)*, more particularly by referring to the 4, 21, 56 , 72 and 86

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4. Under the Jawaharlal Nehru National Urban Renewal Mission, the Central Government had sanctioned the scheme called BRTS corridor for improvement of public transport system at Bhopal in order to avoid hazardous traffic. The Central Sanctioning & Monitoring Committee was constituted by the Ministry of Urban Development which had sanctioned a sum of Rs.357.20 crores for implementation of said scheme. After due sanction by the Committee, NHAI entered into an agreement with Municipal Corporation, Bhopal on 22.9.2009 and handed over particular part of land to it for the purpose of BRTS corridor. For betterment of public transport system 225 low floor buses were also sanctioned by Sanctioning and Monitoring Committee of the Central



Government. For BRTS corridor survey was undertaken by the Expert Committee of the Central Government namely Urban Mass Transit Council of Bhopal City. Plan was duly approved by the State Government and the routes were notified as per Plan by the State Transport Authority. Presently only 1.25 lakh passengers are getting the services of low floor buses. It is not in dispute that most of the BRTS corridor has been constructed and the route from Misrod to Bairagarh is under operation. Buses are plying continuously. The appellants are land- holders in-between Misroad to Ampree Chouraha. The Master Plan was prepared under the provisions of M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 ([Town & Country Planning Act](#)) hereinafter referred to as 'the Act of 1973'. The Development Plan/Master Plan was prepared as per the provisions of [section 18](#) after inviting objections, suggestions. None of the appellants had raised objection when the development plan was prepared. It was finalized and published as per provisions contained in [section 19\(4\)](#).

21. It is apparent that the development plan once prepared is binding upon the development authorities in the planning area as well as on the Municipal Corporation and other local authorities as the case may be. They cannot modify and permit the user in contravention thereof. In other words, restriction is imposed upon the owners on enjoyment of the property in violation of the development plan/regional plan, as the case may be.

56. The submission raised by the appellants that for acquisition of land, sections 78 and 79 should be resorted to for the purposes mentioned in section 305 cannot be accepted for yet another reason, if the provision as to public street is made dependent upon the acquisition of land, the very purpose behind the provisions of section 305 would be frustrated as well as the public interest, there is already a regular line of public street fixed under development plan and is binding under [section 19\(5\)](#) and [section 25](#) of the Act of 1973. Various rights of ownership which ordinarily vest in an owner, are restricted by the regional plan, development plan or the town development scheme, as the case may be. User of the owner's land, property cannot be in derogation to any of them. Development plan is binding upon the Corporation and local authorities and all



concerned including the owners. Though they can transfer the property but subject to such restrictions which the property will carry with it. If the land falls in a regular line of public street, no construction can be raised, no projection can be made by owner whereas it can be removed or set back, as the case may be. In case acquisition is resorted to under sections 78 and 79, public street can never be widened and the entire purpose of preparation of Development Plan shall stand defeated.

72. Land use, development plan and zonal plan provided for the plan at macro-level whereas the town planning scheme is at a micro-level and, thus, would be subject to development plan. It is, therefore, difficult to comprehend that broad based macro-level planning may not at all be in place when a town planning scheme is prepared.

86. Reliance has been placed on [Laxmi Devi v. State of Bihar & Ors.](#) (supra) and [Rajendra Shankar Shukla & Ors. v. State of Chhattisgarh & Ors.](#) (supra). The decision in [Laxmi Devi](#) (supra) is based on the specific provision contained in [section 10A](#) of the Land Acquisition Act which requires compensation to be paid in a case where emergency clause has been invoked. Collector is required to tender payment of 80% of compensation before taking possession of the land. The said provision is not at all attracted to the Act of 1956. As compensation is offered after vesting, is quite reasonable procedure as envisaged by [Article 300A](#) of the Constitution of India, at which point of time it is offered would not make the provision confiscatory or repugnant. The compensation under section 305 or 306 read with section 387 is on the happening of certain exigency, and various factors are taken into consideration for determination of compensation is a quite valid procedure. The Corporation cannot be compelled as per the special scheme of sections 305, 306 and 387 to offer the compensation before removal and vesting. Reliance on the decision in [K.N. Palsikar](#) (supra) so as to contend that the possession should be taken after payment of compensation is totally misplaced. This Court has simply narrated in para 11 what was held by the High Court and the points which were decided were capsualised by this Court in para 12 of the report. The aforesaid question



was neither raised nor decided by this Court. This Court has not laid down any such proposition in [K.N. Palsikar](#) (supra), as canvassed.

20. It is also relevant to refer to relevant portion of judgment cited by the counsel for the respondent corporation *Suresh Singh Kushwah Vs. Municipal Corporation Gwalior*(supra) which reads as under :-

“once the Municipal Corporation has prepared a plan determining the regular line of public street any portion of the building which is projected beyond this line automatically vests in the Corporation in view of section 305 of the Act and, therefore, the Corporation has right to demolish the portion of said building and no proceedings under the Land Acquisition Act are required.”

21. It is also relevant to reproduce the portion of the judgment cited by the respondent corporation in W.A. No.873/2014 wherein it is held as under :-

“..... in view of clear provision contained in Section 305 of the Act vesting of land being automatic and so long the said Section is in the statute book, the appellant’s contention based upon Article 300-A of the Constitution cannot be accepted.”

22. Relevant para of the judgment relied by the respondent Corporation in *Municipality Vs. K.N Palsikar*(supra) is also reproduced as under :-

“ In fact, it seems to us that there is automatic vesting of the land in the Corporation under sec. 305 once the requisite conditions are satisfied.”

23. In view of this, it is also relevant to refer to Articles 14, 25, 26, and 300A of the Constitution of India. It is also relevant to refer to the provisions of



Article 226 of the Constitution of India. Furthermore, it is relevant to refer to Sections 305, 322, and 323 of the M.P. Municipal Corporation Act, 1956.

[305.](#) *Power to regulate line of buildings.*

(1) If any part of a building projects beyond the regular line of a public street, either as existing or as determined for the future or beyond the front of immediately adjoining buildings the Corporation may-

(a) if the projecting part is a verandah, step or some other structure external to the main building, then at any time; or

(b) if the projecting part is not such external structure as aforesaid, then whenever the greater portion of such building or whenever any material portion of such projecting part has been taken down or burned down or has fallen down, require by notice either that the part or some portion of the part projecting beyond the regular line or beyond the front of the immediate adjoining building, shall be removed, or that such building when being rebuilt shall be set back to or towards the said line or front; and the portion of land added to the street by such selling back or removal shall henceforth be deemed to be part of the public street and shall vest in the Corporation :

Provided that the Corporation shall make reasonable compensation to the owner for any damage or loss he may sustain in consequence of his building or any part thereof being setback.

[\(2\)](#) *The Corporation may, on ...*

[322.](#) *[Prohibition of obstruction in streets. [Substituted by M.P. Act No. 16 of 1994.]*

(1) No person shall, except with the written permission of the Commissioner granted in this behalf and in accordance with such conditions including the payment of rent or lee, as he may impose either generally or specially in this behalf :-

(a) erect or set up any wall, fence, rail, post, step, booth or other structure whether fixed or movable or whether of a permanent or temporary nature, or any fixture in or upon any street so as to form an obstruction to, or an encroachment upon, or a projection over, or to occupy any portion of such street, channel, drain, well or tank.



(b) deposit upon any street or upon any open channel, drain or well in any street or upon any public place, any stall, chair, bench box, ladder, bale or other thing whatsoever, so as to form an obstruction thereto or encroachment thereon.

(2) Whoever contravenes any provision of sub-section (1) shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both and with further fine which may extend to one hundred rupees for every day on which such contravention continues after the elate of first conviction for such offence.

(3) Without prejudice to the action under sub-section (2), the Commissioner notwithstanding anything contained in this Act, may after giving such notice as may be prescribed, cause to be removed any obstruction or encroachment as described in clause (a) and (b) of sub-section (1).

(4) Any of the things caused to be removed by the Commissioner under sub-section (3), shall, unless the owner thereof turns up to lake back such things and pays to the Commissioner the charges for the removal and storage of such things, be disposed of by the Commissioner by public auction or in such other manner and within such time as the Commissioner thinks fit.

(5) The Police Officer shall not investigate into the offence under this section except on a report made in writing in this behalf by the Commissioner.]

323. Streets not to be opened or broken up and building materials not to be deposited therein without permission.

(1) Except in such cases as the Government may by general or special order exempt from the operation of this section, no person shall, except with the permission of the Commissioner and in accordance with such terms and conditions, including payment of rent or otherwise, as the Commissioner may impose either generally or in each special case-

(a) open, break up, displace, take up or make any alteration in or cause any injury to, the soil or pavement, or any wall, fence, post, chain or other material or thing forming part of any street or in any open space vested in the Corporation; or

(b) deposit any building material in any street or in any open space vested in the Corporation; or



(c) set up in any street or in any open space vested in the Corporation any scaffold or any temporary erection for the purpose of any work whatever, or any posts, bars, rails, boards or other things by way of enclosure, for the purpose of making mortar or depositing bricks, lime, rubbish or other materials.

(2) Any permission granted under clause (b) or (c) of sub-section (I) shall be terminable at the discretion of the Commissioner on his giving not less than twenty-four hours' written notice of the termination thereof to the person to whom such permission was granted.

(3) The Commissioner may without notice-

(a) cause the soil or pavement or any wall, fence, post, channel or other material forming part of the street to be restored to the condition it was in before any opening or breaking up or displacement, or alteration or damage made or done without the permission of the authority specified in sub-section (1);

(b) cause to be removed any building materials, any scaffold or any temporary erection, or any posts, bars, rails, boards or other things by way of enclosure, which have been deposited or set up in any street or in any open space vested in the Corporation without any permission of the authority specified in sub-section (I) or which, having been deposited or set up with such permission, have not been removed within the period specified in the notice issued under sub-section (2) and recover the costs of such restoration or removal from the offender.

Article 14. Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Editorial Comment - Article 14 rejects any type of discrimination based on caste, race, and religion, place of birth or sex. This Article is having a wide ambit and applicability to safeguard the rights of people residing in India.

This article is divided into two parts:

Equality before the Law: This part of the article indicates that all are to be treated equally in the eyes of the law. This is a negative concept as it implies the absence of any privilege in favor of any person. This is a



substantive part of the article.

Equal protection of the Laws: This part means that the same law will be applied to all the people equally across the society. This is a positive concept as it expects a positive action from the state. This is a procedural part of article 14.

Article 25. Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which maybe associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Article 26. Freedom to manage religious affairs

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and



*(d)to administer such property in accordance with law.Editorial Comment
- Article 26 provides for the freedom to manage the religious affairs of the citizens and is subject to Public order, morality and health.*

Article 26(a) Right to establish and maintain institutions for religious and charitable purposes.The right to establish and maintain religious institutions is given to every religious institution. The word establishes and maintains must be read together. So it is important for a religious institution to first establish a religious institution and only then the right to maintain an institution is to be given to that group. It is to be noted that the right to maintain an institution will also include the right to administer it.

Article 300A. Persons not to be deprived of property save by authority of law

*No person shall be deprived of his property save by authority of law.
[Editorial comment-The Constitution (Forty-Fourth Amendment) Act, 1978, repealed Article 19 (1) (f) and also took out Article 31(1) has been taken out of Part III and made a separate Article 300A in Chapter IV of Part XII. This amendment may have taken away the scope of speedy remedy under Article 32 for the violation of Right to Property because it is no more a Fundamental Right. Making it a legal right under the Constitution serves two purposes: Firstly, it gives emphasis to the value of socialism included in the preamble and secondly, in doing so, it conformed to the doctrine of basic structure of the Constitution.*

24. The above-mentioned factual position and the chronology of events provided by the respondent, which is reproduced by recording the submissions on behalf of the respondent Corporation, clearly indicate that a notice under **Section 305** for the purpose of the **Indore Development Plan, 2035**, was issued by the Corporation to the petitioner. There is no dispute that the property in question is a religious place and has existed for many years. There is also no dispute regarding the aspect that, on the same road, portions



of the constructions of **10 temples and 1 mosque** have already been removed. Furthermore, authorities in the city of Ujjain have taken action against the construction of about **80 religious places** in total. Therefore, it cannot be said that the respondent Corporation is acting in an arbitrary manner or in violation of **Article 14** of the Constitution of India.

25. Considering the chronology of events, the contentions raised by the respondent Corporation clearly indicate that an opportunity of hearing was granted to the office bearers of the petitioner, who claim to be administering the property, and the impugned order was passed only after hearing them. Particularly considering the judgment in *Ravindra Ramchandra Waghmare (Supra)*, such development is in the larger public interest for the widening of a **15-meter road**. For this purpose, a small portion of the petitioner mosque's property is required to be removed, as it is obstructing the road-widening process. There is no doubt about the fact that in a certain situation where the authority, out of the other available options, preserves any property or saves historical or religious property, looking to the photographs and factual scenario in the present matter, it cannot be said that the respondent authority is taking any action in an unfair and biased manner which violates Articles 14, 25, 26, or 300-A. On the contrary, the observations made by the Allahabad High Court, the judgments of the Gujarat High Court cited above, as well as the observations made in the judgment of *Ravindra Ramchandra Waghmare (supra)*, clearly support the case of the respondent corporation.

26. The other contentions sought to be raised by the petitioner, that the respondent can find an alternative route by taking some portion of the land



from the garden, as well as the commercial property situated opposite the mosque, are also not found to be correct. Looking at the situation of the property and the expansion required for the existing road, such contentions are not found to be genuine and are required to be rejected, as there is no scope for opting for such an alternative method under the facts of the present case.

27. Furthermore, there are numerous disputed questions of fact involved in the present matter, including the petitioner's capacity to file this writ petition and their *locus standi*. On that count as well, this Court is not required to exercise its jurisdiction under **Article 226 of the Constitution of India**, keeping in mind the larger public interest. It is a hard reality that with the efflux of time, the population of the city has increased. In view of the provisions of the **Ujjain Development Plan, 2035**, the respondent Corporation is empowered to take action by following the necessary statutory provisions. The Corporation has already taken all necessary actions available under the law while strictly observing the principles of natural justice. Therefore, the actions of the respondent authorities, including the Corporation and the State, cannot be considered arbitrary, unjust, unconstitutional, or violative of **Articles 14, 25, 26, and 300A of the Constitution of India**. Consequently, no case is made out for interference under Article 226 of the Constitution of India.

28. On the contrary, it seems that the petitioners are not cooperating with the process of the widening of the road by raising one or another dispute under the pretext of giving special treatment to the religious place, and also believing that differential treatment is being given to the petitioners. Based



on the above-mentioned discussion, such contentions are found to be incorrect. Therefore, considering the upcoming event of the Simhastha Kumbh, 2028, whereby the expectations of crores of devotees are required to be kept in mind, as well as the need to provide better facilities and to manage the traffic of such events; and considering the situation of the premises in question, which is almost opposite to the Mahakaleshwar Temple and very near to the Kshipra River; and for the consideration of the larger public safety and larger public interest, the action taken by the respondent is found to be after following the necessary provisions of law. Furthermore, the impugned order was passed after considering the objections raised by the petitioner. Therefore, no interference is called for. Both the petitions are found meritless and deserve to be dismissed. Accordingly, they are dismissed.

(SANDEEP N. BHATT)
JUDGE