



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

PUBLIC INTEREST LITIGATION NO. 35 OF 2023

Shamsher Ahmed Shaikh & Ors. Petitioners

Vs.

Municipal Corporation of
Greater Mumbai & Ors. Respondents

Mr. Altaf Khan for the Petitioners

Mr. Ram Apte, Senior Advocate with Ms. Oorja Dhond I/b. Mr. S.
K. Sonawane for Respondent Nos.1 to 6 - Municipal Corporation

Mr. Abhay L. Patki, Addl. Government Pleader for Respondent
Nos.7 to 10 – State

Ms.Dhruti Kapadia for Respondent No.12 - SRA

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : AUGUST 22, 2023

P.C.

1. This Public Interest Litigation Petition (for short the **PIL
Petition**) concerns itself with the ever shrinking space for burial
in the cemeteries at certain places in Mumbai.

2. The Municipal Corporation of Greater Mumbai (for short **the
MCGM**) proposed three cemeteries, viz. (1) Deonar Cemetery
(2) Rafi Nagar Cemetery; and (3) Cemetery at a land owned by
the Union Carbide India Ltd. / M/s. Oswal Agro Mills Ltd.

3. The cemeteries proposed at the aforesaid places were parts of Excluded Part in the Development Plan of the area and accordingly, a proposal was made by the Municipal Commissioner vide his letter dated 8th June 2021 to the State Government in the Department of Urban Development to sanction the said Excluded Parts as reserved / earmarked for cemeteries. The Government considered the said proposal and sanctioned all the said Excluded Parts for cemetery by means of Notifications dated 31st May 2022 and 12th September 2022. However, so far as Deonar cemetery is concerned, the State Government, vide corrigendum Notification dated 14th November 2022 deleted the same from reservation. As regards Rafi Nagar Cemetery, it was noticed that on the said space there lies 30 mtr. high municipal solid waste, removal of which shall require an estimated sum of Rs.200 crores and accordingly, it was decided by the Corporation to find an alternative location. The third proposed cemetery is at a land owned by the Union Carbide India Ltd. / M/s. Oswal Agro Mills Ltd.

4. For a Municipal body as also the State Government, there cannot be any engagement more urgent than finding appropriate space for burial of dead. We may, at this juncture, refer to the

statutory provision contained in Section 436 of the Mumbai Municipal Corporation Act, 1888 which casts a duty upon the Municipal Commissioner to provide a fit and convenient place for disposal of the dead in case the existing places at any time appeared to be insufficient. The said provision uses the word "shall" and thus, makes it mandatory upon the Commissioner to find other convenient places for the purpose. Section 436 is extracted hereinbelow:

"436. Provision of new places for disposal of the dead : *If the existing places for the disposal of the dead shall at any time appear to be insufficient, or if any such place is closed under the provisions of section 438, the Commissioner shall, with the sanction of the Corporation, provide other fit and convenient places for the said purpose, either within or without Brihan Mumbai, and shall cause the same to be registered in the register kept under section 435, and shall deposit in the municipal office, at the time of registration of each place so provided, a plan thereof showing the extent and boundaries of the same and bearing the signature of the municipal city engineer."*

5. As far as the Slum Rehabilitation Authority is concerned, on affidavit, it has been stated on behalf of the Authority that as regards Deonar cemetery under the Rehabilitation Scheme, an area of 2264.74 sq.mtr. has already been earmarked for cemetery.

6. In the aforesaid facts, we call upon the State Government in the Department of Urban Development, to file an affidavit

giving reasons as to why at Deonar, the space which was earlier reserved for cemetery, has been deleted.

7. The affidavit to be filed by the State shall also spell out the steps taken by the State Government to ensure that the general populace of the city is provided adequate space for the dead being given a dignified last rites.

8. We also call upon the Municipal Commissioner or any higher level officer who would be nominated by the Commissioner of the MCGM to file an affidavit stating therein as to what steps have been taken for relocating Rafi Nagar cemetery and to acquire the land owned by the Union Carbide India Ltd. / M/s.Oswal Agro Mills Ltd. for setting up the cemetery.

9. The affidavits of the Authorities, as aforesaid, shall be filed within two weeks after serving a copy thereof upon the learned Counsel for the Petitioner.

10. Stand over to 5th September 2023, high on board.

(ARIF S. DOCTOR,J)

(CHIEF JUSTICE)