

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 948 OF 2013**

Rashtriya Samajik Vikas Sanstha

...Petitioner

Versus

State of Maharashtra & 4 Ors.

...Respondents

Mr. A.K. Prajapati, *for the Petitioner.*

Ms. Iman K. Calcuttawala, AGP, with Mr. Mohit Jadhav, AGP,
for Respondent No. 1 -State.

**CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**

DATED: 29th January 2016

PC:-

1. The Petitioner's prayer is that a Writ of Mandamus be issued to the Respondents, and particularly the Mumbai Metropolitan Regional Development Authority ("**MMRDA**") and the Municipal Commissioner of the Municipal Corporation of Greater Mumbai and the Assistant Municipal Commissioner of G/North Ward, Dadar (West), Mumbai, so also Respondent No. 5 commanding them to allow the Petitioner to construct a Public Toilet Block in the area of the Maharashtra Nature Park falling within the jurisdiction of G/North Ward.

2. It is common ground that the Petitioner claims to be a Non-Government Organization doing social work for the good of general public. The Petitioner is represented by its President. The Petitioner states that there is a dire need for a public toilet in the vicinity of Maharashtra Nature Park. There are some slums and tenements around and the people residing therein are suffering for want of a proper public toilet. That also encourages open defecation and which is detrimental to public health.

3. The Petitioner's Advocates places reliance upon the Annexures to the Writ Petition and submits that an entity like the Petitioner can seek such permission and, therefore, that confers a legal right. It is that legal right which has been denied and that is why a Writ of Mandamus can be claimed.

4. We are afraid that we cannot grant any such prayer and issue a Writ or a Command as prayed by the Petitioner. That some other organizations or associations were permitted to set up a public toilet for the use and convenience of occupants and residents, especially in slum colonies does not mean that a public toilet can be allowed to be put up and styled as such by a private entity without any permission in writing nor any order authorizing them. That public sanitation and health is the concern and prime one of the State. The State would be, therefore, definitely aware of its duty and obligation. It would also be aware of the menace of open defecation especially in the area in and around the Maharashtra Nature Park. Therefore, if any public toilet is to be established and that is required to be administered and managed by a Non-Government Organization, the Petitioner can then approach the Government.

We cannot allow the Petitioner to put up a structure styled as a toilet for public use on the basis of pay and use. For that would be allowing the Petitioner to encroach on public land. None can encroach on a public property and in a manner suggested by the Petitioner. Once there is a Nature Park and any facility or amenity as basic as a toilet is required outside the park for the use of the slum dwellers, the State and the Municipal Corporation will provide the same. The Petitioner can complain to them if there is no such facility or that it is lacking. The Writ Petition is dismissed.

5. This order is passed in the light of the clear language of a communication from the Brihan Mumbai Municipal Corporation, a copy of which is at Annexure “H”, dated 2nd July 2012 and equally Annexure “I”, dated 6th July 2012 of the Maharashtra Nature Park Society.

(G. S. PATEL, J.)

(S. C. DHARMADHIKARI, J.)