

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY:**  
**NAGPUR BENCH : NAGPUR**  
**Writ Petition Nos.3901 of 2011**  
**[Digambar Haribhau Pajgade & two others Vs. The Chief Secretary,**  
**Govt. of Mah. & others]**

**AND**  
**Civil Application [CAW] No. 1389 of 2015**  
**IN**  
**Writ Petition Nos.2757 of 2010 & 3901 of 2011**  
**[Digambar Haribhau Pajgade & two others Vs. The Chief Secretary,**  
**Govt. of Mah. & others]**

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Office Notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's orders

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**Writ Petition No. 3901 of 2011 :**

Mr. D.H. Pajgade, Petitioner No.1-in-person.  
Mr. S.B. Wahane, Adv., for petitioner nos. 2 and 3.  
Ms. Mehta, AGP for respondent nos. 1 to 3, 7 to 9 and 11.  
Mr. Firdos Mirza, Adv., for respondent nos. 2 and 4.

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**CORAM : A. B. CHAUDHARI AND  
P.N. DESHMUKH, JJ.**

**DATE : 04th March, 2016**

Writ Petition No. 3901 of 2011 has been filed by the three petitioners for quashing the Administrative Order dated 9th June, 2010 declining to register Writ Petition No. 2757 of 2010 filed by them as a Public Interest Litigation Petition.

Petitioner No.1, Shri Digambar Haribhau

Pajgade, is an activist, while Petitioner Nos. 2 and 3 are the plot owners in the layout by name “Darda Nagar Layout”, Wadgaon Road, Yavatmal.

Petitioner Nos. 2 and 3 have contended that they are the plot owners in the said layout with residential houses, and have a grievance that in the open spaces meant for use and enjoyment by the plot holders of the layout, a school was constructed depriving of their right to use and enjoyment of open spaces admeasuring about 76,000 sq. ft., and 69,800 sq. ft. To our mind, this grievance cannot be said to be partaking the character of a Public Interest Litigation Petition, because the petitioner nos. 2 and 3 are personally interested in having the use and enjoyment of the open spaces for themselves. That is a private dispute. Hence, the petitioner nos. 2 and 3 are allowed to institute a fresh lis, if they are so advised, in accordance with law. All the points raised in this petition are kept open.

There is an objection taken by the respondents that this petition filed by them, i.e., petitioner nos. 2 and 3, would be hit by the principles of *res judicata*. We are unable to make adjudication on that aspect, nor we express any opinion on any of the points in relation to petitioner nos. 2 and 3 in opposition or in their favour. We, therefore, make it clear to the contesting parties to this petition that the petitioners 2 and 3 may institute the lis as per the liberty granted by this Court, if they so desire, without prejudice to the rights of the parties to

raise all the contentions/objections in accordance with law.

In so far as Public Interest Litigation is concerned, we record our reasons hereafter for not registering his lis as Public Interest Litigation.

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**Civil Application No. 1389 of 2015**  
**IN**  
**Writ Petition Nos. 2757/10 & 3901/11**

Mr. D.H. Pajgade, Petitioner No.1-in-person in both the Writ Petitions.  
 Mr. S.B. Wahane, Adv., for petitioner Nos. 2 and 3.  
 Ms. Mehta, AGP for respondent nos. 1 to 3, 7,8 and 11.  
 Mr. Firdos Mirza, Adv., for respondent no.6.

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Heard Mr. Digambar Haribhau Pajgade, the petitioner no.1-in-person.

On 24th June, 2015, this Court made the following common order in Writ Petition Nos. 3901 of 2011 and 2757 of 2010:-

“By this petition, the petitioners have sought certain directions to the State and its authorities to take action against the respondent no.4 for the illegalities and irregularities committed by the respondent no.4 in respect of certain plots and constructions made at Wadgaon in Yavatmal district.

This Court had declined to register this writ petition as a public interest litigation. The petitioner no.1 is appearing in person since long. We find, after hearing the

learned counsel for the respondents and the petitioner no.1 in person for some time, that the petitioner no.1 does not have a *locus standi* to file the petition. The petition presented by the petitioner no.1 cannot be entertained.

We have not considered whether the Writ Petition is tenable at the behest of the petitioner nos. 2 and 3 and whether they have *locus standi* to file the petition as we do not wish to entertain the petitioner no.1 in person, who is appearing in the matter on the past several dates of hearing. It would be necessary to delete the name of the petitioner no.1 from the array of the petitioners as he does not have the *locus standi*. The petitioner no.1, therefore, cannot appear in person on behalf of the petitioner nos.2 and 3. Either of the petitioner nos.2 and 3, may argue the petition in person or appoint an advocate for arguing the same.

At this stage, the petitioner no.1, who appears in person seeks two weeks time to engage a counsel to represent the petitioner nos.2 and 3.

We make it clear that we have not considered the question whether the petitioner nos.2 and 3 have *locus standi* to file the petition or not. However, we grant two weeks time to the petitioner nos.2 and 3 by way of a last chance to engage a counsel. In case, the counsel is not engaged and the petitioner nos.2 and 3 do not work out the writ petition on the next date of hearing, this Court would proceed to decide the same in the absence of the petitioners. We have granted two weeks time to the petitioners by way of last chance, as we find from the previous orders that

time was granted to the counsel for the petitioners to make an alternate arrangement.

Stand over to 08.07.2015. ”

This Civil Application No. 1389 of 2015 is for recalling of the part of order dated 24th June, 2015 pertaining to petitioner no.1, Digambar Pajgade, for the reasons mentioned in paras 2 to 5 of this application.

The order dated 24th June, 2015 shows that it is held that petitioner no.1, Digambar Pachgade, does not have locus standi to file the petition. In our opinion, this order dated 24th June, 2010 will have to be recalled. The order holding that the petitioner, Digambar, has no locus standi is without any reasons, which is an error apparent on the face of record. The next grievance made by him is that the Presiding Judge should have recused instead of making the order on 24th June, 2015 with reference to appearances of Advocates in Criminal Application No. 542 of 2011.

We think, it is not necessary to consider the averments in the application, as we are recalling the order dated 24th June, 2015. Mr. Mirza has opposed the application vehemently, and upon perusal of the reply filed by Mr. Mirza to this application, we think, the objections raised by the respondents are untenable.

Having thus, recalled the part of the order dated

24th June, 2015 in relation to petitioner, Digambar, we proceed to re-hear Writ Petition No. 2557 of 2010, and record reasons for disposal of both the Writ Petitions, including Writ Petition No. 3901 of 2011. There is a prayer to treat Writ Petition No. 2757 of 2010 as PIL by setting aside the orders made by the Senior Administrative Judge of Nagpur Bench in relation to Writ Petition No. 2757 of 2010 on 9th June, 2010. We have perused the Note dated 9th June, 2010 under the signature of the Senior Administrative Judge at the Nagpur Bench. In effect, the Note states that it is for the Court to decide whether to treat the cause as PIL or not. It is in that context, we have heard the petitioner, Mr. Digambar, with reference to both these Writ Petitions.

He submitted that there is “MPLADS Fund” to be utilized by a Member of Parliament and there are large number of restrictions/prohibitions put by the Rajya Sabha as well as the Govt., in the matter of utilization of this fund. He invited our attention to the various prohibitions, i.e., List of Works prohibited under “MPLADS Fund” [page 188 of Writ Petition no. 3901 of 2011]. We have gone through all these prohibitions mentioned. He contended that though there was a prohibition to name the assets after any person, the respondent no.4, Shri Vijay Darda, Member of Parliament, had named some assets in the name of his blood relatives and spent money over his own school run by his own Trust, he being a Member of Managing Committee of the Trust and the Institutions. He,

therefore, submitted that there are violations of these prohibitions by the Respondent No.4, Member of Parliament, and that is why this should be treated as a Public Interest Litigation for issuing directions for taking action against the Member of Parliament concerned and for recovery of money etc. He also contended that the open spaces in the layout, namely Darda Nagar Layout on Wadgaon Road, were encroached and a school was constructed having a G + 2 school building in the year 2001. The plot owners have a right over the open spaces in their layout.

Per contra, Mr. Mirza, learned counsel for the respondent no.6 invited our attention to the reply bearing Stamp No. 3359/16 dated 2nd March, 2016 filed by respondent nos. 4,5 and 6. We quote paras 32 to 36 there from which read as under:-

“32. That though the respondent no.6 has entered into the land in question and have constructed the School Building after obtaining proper sanction from the Planning Authority, but has the open space in the layout has decreased to some extent, it has made available an area admeasuring 29000 sq.ft., comprising of 9 plots bearing Plot Nos. 209, 210, 211, 212, 288, 289, 290, 291 and 292 out of Field Survey No. 17/1, 17/2 and 18/2. The respondent no.6 Society has made available this land free of cost to the State Govt., in lieu of the constructed area which comes to 29,047 sq.fts. Though a representation dated 8.6.2009, the respondent no.6 requested the State Govt., to accept the said land and treat it as open space by making minor correction to the N.A. Order. Copy of the representation

dated 8.6.2009 is annexed herewith and marked as Annexure-23.

33. That in addition to the above 29000 sq. fts., land, approximately 15000 sq. fts., land behind the School Building is available for the owners of the plots for use. This makes the total land available for the plot owners for their enjoyment as open land to 45000 sq.fts. A map for ready reference showing the position of the land is annexed herewith and marked as Annexure.24.

34. That the respondent no.6 Society had maintained the open space and never restricted its use by the plot owners. Even, the Signboard of Playground are affixed by the respondent no.6 Society. It has constructed the boundary wall only in order to safeguard the land from encroachments and misuse. It has maintained a beautiful Playground for various Sports activities and it proposes a Jogging Part with a Garden in the 15000 sq. fts., area situated across the road made available free of cost for use and enjoyment of the owners of the plots in the layout in question.

35. That it is humbly submitted that the respondent no.6 Society has created noteworthy infrastructure for the School. In short period the School managed by respondent no.6 Society has created a name for itself and is producing brilliant Students. In the Pre-Primary School (Balwadi) situated at Survey Nos. 20/1 and 21/1, 512 students are studying in the present 2015-16 Session out of which 106 Students are wards of the residents of Darda Nagar area. A chart showing details of the students is annexed herewith and marked as Annexure-25.

36. That in the Yavatmal Public School

which is situated at Survey Nos. 17/1, 17/2 and 18/2, 1443 students are studying at present, out of these 111 are wards of the residents of Darda Nagar. A chart showing the details of the Students is annexed herewith and marked as Annexure-26."

Mr. Mirza, the learned counsel for the respondents, contended that alternate open spaces almost equivalent to construction made, are being offered for being given to the plot owners.

What we find from the above paragraphs is that the respondents have offered the plots and open areas to the plot owners as mentioned in para 33 of the reply, but have still retained the ownership though they have allowed use and enjoyment of the open spaces. Mr. Mirza in that context made a categorical statement on instructions from his clients, respondents, that the ownership of the spaces about which there is a mention in para 33, would also be conferred on the plot holders of this layout and the respondents would request the Collector to follow the appropriate procedure for conferral of ownership rights of the plots and spaces indicated in paras 32, 33 and 34, as per the provisions of law. We think, the statement can be accepted.

In so far as the submissions regarding alleged misconduct and recovery of money from the Member of Parliament, as argued by Mr. Digambar Pachgade is concerned, we are of the considered opinion that it is for the Hon'ble Chairman of the Rajya Sabha, to

consider any such request. In the light of the doctrine of 'Separation of Powers', we think, we should not cross the "Laxman Rekha" in exercise of our power under Article 226 of the Constitution of India in the matter. Needless to say, the petitioner, Shri Digambar, obviously will have a liberty to pursue any such course of action, namely for his grievances against the Member of Parliament. But then, in the light of our self-imposed rule and respecting the doctrine of 'Separation of Powers', we think, there would be no point in registering the petition filed by Mr. Digambar Pachgade as the Public Interest Litigation.

In the result, we make the following order:-

### **ORDER**

- [a]** Writ Petition No. 2757 of 2010 as well as Writ Petition No. 3901 of 2011 are disposed of, reserving a liberty in favour of Petitioner No.1, Mr. Digambar Haribhau Pajgade, to take such course as is available in law in the light of the observations made in this order.
- [b]** The counsel for the respondent nos. 4, 5 and 6, Mr. F.T. Mirza, shall file an Affidavit and Undertaking to this Court in these Writ Petitions about conferral of ownership of the open spaces mentioned in paras 33 to

34 of the Affidavit-in-Reply bearing Stamp No. 3359/16 dated 2nd March, 2016, within two weeks from today. Failure to file affidavit shall amount of disobedience of this order.

**[c]** Writ Petition Nos. 2757 of 2010 and 3901/2011 are, thus, **disposed of**.

**Judge**

**Judge**

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