

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

PUBLIC INTEREST LITIGATION NO. 157 OF 2015

Shri Harish Mahadu Kanaskar. .. Petitioner
Vs
State of Maharashtra & ors. .. Respondents

Mr.Rahul Kadam, for the Petitioner.

Ms.M.P.Thakur – AGP, for Respondent – State.

Mr.Mihir Raut i/b Mr.N.P.Deshpande, for Respondent No.3.

Ms.S.U.Deshmukh, for Respondent No.5.

Mr.Sagar Kursija i/b Mr.T.D.Deshmukh, for Respondent Nos.6 to 11, 13, 14, 16.

*CORAM : DR.MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.*

DATE : NOVEMBER 3, 2017.

P.C.:

Heard Mr.Kadam, learned counsel for the Petitioner and Ms.Thakur, learned AGP for Respondent-State, Mr.Raut, learned counsel for Respondent No.3 and Mr.Kursija, for Respondent Nos.6 to 11, 13, 14, 16.

2. This petition which is filed in purported public interest seeks direction for demolition of construction now styled as Ideal market as undertaken by respondent Nos. 6 to 16.

3. The Petitioner, in paragraph no.11 of the petition, has made the following averments -

*'11. The Petitioner states that, thus he had booked two shops one in his name and other in his wife name in the said project to run his business and thus the Respondent No.6 to 16 initially executed a notary agreement of one shop and thus Petitioner paid an amount of 2.5 lakh by cheque and the other amount by cash and thus in all total around 8.5 lakh was given by the petitioner. The Petitioner states that, thus in due course the Petitioner was put into the possession of the two shops. True copy of the said agreement is enclosed herewith along with One photograph of the said building as an by way of **Annexure C Colly.**'*

4. Mr.Kadam contends that the Petitioner, has come with clean hands and has disclosed having purchased premises in the Ideal Market which, the Petitioner, now terms as an illegal construction. Mr.Kadam submits that if the Respondent Nos.4 to 16 are permitted to sell the other premises in Ideal Market then, many innocent purchasers will suffer. Mr.Kadam submits that it is for this reason that the present Public Interest Litigation has been instituted seeking action against the illegal construction.

5. In the peculiar facts of the present case, we must say that the Petitioner does not inspire any confidence as a proper relater to pilot a public interest litigation. The Petitioner has himself purchased premises at Idea Market, which he now chooses to call an illegal

construction. The Petitioner has not made any statement that he has vacated the premises in Ideal Market and thereafter complained to the authorities that such construction is an illegal construction. The Petitioner, whilst continuing to enjoy possession of the premises in the construction, which he now describes as an illegal construction, cannot, institute a public interest litigation to seek demolition.

6. Mr. Kadam submits that the Petitioner is genuinely concerned that the prospective purchasers are not prejudiced by purchase of premises at Ideal Market. The prospective purchasers, if any, can hardly be described as some poor or indigent persons, who cannot take care of their own commercial interests. There is no good reason indicated by the Petitioner as to why he is espousing the cause of such prospective purchasers of the very structure. We also fail to appreciate as to why no other persons in the locality have filed any complaints regards the construction or why the Petitioner did nothing until construction was completed and thereafter, purchased premises in this construction before instituting the present public interest litigation. All these factors are sufficient to dismiss the present public interest litigation.

7. For the aforesaid reasons, we dismiss this public interest litigation. There shall however, be no order as to costs.

M.S.SONAK, J.

CHIEF JUSTICE