

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

PUBLIC INTEREST LITIGATION NO. 55 OF 2017

Deepak S. Lande .. Petitioner
V/s.
The State of Maharashtra and ors. .. Respondents.

Mr. Jitendra Mishra for the Petitioner.
Mr. Milind More, AGP for Respondent Nos.1 to 4.
Ms Trupti Puranik for the Respondent – MCGM

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

DATE : 17 NOVEMBER 2017.

P.C.

1. Heard Mr. Mishra, learned counsel for the petitioner.
2. The petitioner, by instituting this purported public interest litigation seeks relief of setting up of special task force to enquire about serious fraud allegedly committed by respondent No.6 in undertaking redevelopment at plot allegedly bearing C.S. No.586 of Mazgaon Division, Mazgaon, Mumbai.
3. The petitioner, in the affidavit has disclosed that he is having a Paan-Beedi shop at Chinchpokali, Mumbai and from which, he earns an annual income of Rs.1,20,000/-. There is an averment that his wife earns monthly income of Rs.1 lakh by giving tuition. Learned counsel for the petitioner however, clarifies that there is

a typing error and the petitioner's wife earns Rs.1 lakh per year. The affidavit also states that the petitioner is a Social Worker and an R.T.I. Activist.

4. In the affidavit filed in support , there is a reference to the petitioner's PAN Card number and Aadhar Card number. This is followed by averments that the PAN Card and Aadhar Card is enclosed along with the affidavit and marked as Exhibit – A and B. However, this portion, has been score of by applying whitener. There appears to be initials.

5. On record, we found yet another affidavit bearing same description, but this time, wordings “*which I enclose herewith as Annexure -A and B*” have been cancelled by ink. We were informed that this was an additional copy of the affidavit, since, the affidavits filed earlier, may not, have been placed in the present file at the relevant time. However, there is no dispute that neither the PAN Card nor Aadhar Card were actually annexed to the affidavit.

6. If the public interest litigation rules require that the documents of identity like PAN Card or Aadhar Card or any other approved identity documents be annexed to the affidavit in support of the public interest litigation, then Registry should scrutinize the petition, its annexures and the affidavit in support thereof to check whether such documents of identity have been annexed or not. If not, timely objection ought to have been raised

requiring the petitioner or his advocate to make good the same within a reasonable time. Accordingly, the Registry is directed to be more careful in future insofar as such compliances are concerned. In this case, since we are otherwise satisfied that this litigation cannot be treated as a *bonafide* public interest litigation, we pursue the matter no further.

7. Although, there are no averments in the public interest litigation, upon a query from the Court, learned counsel for the petitioner, on basis of instructions from the petitioner, who is present in this Court, accepts that the construction on the plot in – question has reached up to 20 storeys. Learned counsel for the petitioner, again, on instructions from the petitioner, states that the petitioner resides at a distance of hardly $\frac{1}{2}$ kilometer from the plot in-question. If this is the position, then there is absolutely no explanation whatsoever for obvious laches involved in the institution of this public interest litigation, which is styled as public interest litigation.

8. The Supreme Court has applied the doctrine of laches to the public interest litigations in *R. and M Trust vs. Koramangla Residents Vigilance Group and ors. - AIR 2005 Supreme Court 894* . In the said case, the construction in-question had started in the year 1987 and had come up to three floors. Thereafter, it was stopped in the year 1988 and resumed in March 1991 after permission was granted. The writ petition was filed in November 1991 when the construction was almost complete. In these

circumstances, the Supreme Court held that the delay in institution of the petition was fatal. The relevant observations in paragraphs 33 to 36 read as follows:

“33. There is no doubt that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. We cannot disturb the third party interest created on account of delay. Even otherwise also why Court should come to rescue of person who is not vigilant of his rights ?

34. We are of the opinion that delay in this case is equally fatal, the construction already started by the appellant in 1987 and building had come up to three floors. Thereafter it was stopped in 1988 and in March, 1991 it resumed after permission was granted. The Writ Petition was filed in November, 1991 meanwhile almost construction was complete. Therefore, delay was fatal in the present case and learned single Judge rightly held it. It was also brought to our notice that 46 multi storey buildings have come up in this area. Learned counsel has produced photographs to show that buildings more than three and four floors have been constructed in and around this area.

35. However, we are satisfied that there is no prohibition under the provisions of the Act and Rules putting the ceiling on construction of the multi- storey building. We are also satisfied that the delay is also fatal in the present case.

36. It was also contended by the learned counsel for the Appellant that the appellant had no locus standi to file this petition as the present association is neither representative association nor a registered body. Therefore, the Court should not have entertained the PIL on behalf of ; such unregistered and unrecognized body. It is true locus in such Public Interest

Litigation is very relevant factor and Court should always inquire into the locus of person before entertaining such petition. We have already observed above that Public Interest Litigation should be entertained in very rare cases.”

9. The petitioner, through his counsel stated that the petitioner will be in a position to deposit an amount of Rs.50,000/- in order to show his *bonafides*. In the facts and circumstances of the present case, we do not regard this offer as *bonafide*. The petitioner has stated that his annual income from Paan Beedi Shop is Rs.1,20,000/-. The petitioner has stated that his wife's annual income is of Rs.1 lakh. The petitioner has stated that he has the family to maintain. In these circumstances, offer to deposit Rs.50,000/- does not appear to be *bonafide*.

10. In a matter of this nature, it cannot be ruled out that the petitioner has been put up as a proxy by private builder or this petition has been filed to practice extortion. It is not possible for us to make any firm observations in this regard. But from all such circumstances, we are not at all satisfied that this is a *bonafide* public interest litigation. If the petitioner, resides hardly at a distance of ½ kilometer from the plot in-question, there is no explanation as to why this petition has been filed after construction of the building has reached upto 20 storeys. There is no explanation in the public interest litigation for this inordinate delay.

11. Accordingly, we dismiss this public interest litigation with costs of Rs.50,000/- payable to the Legal Services Authority. In case, the costs are not deposited by the petitioner, within four weeks from today, Legal Services Authority is at liberty to take steps to recover the same from the petitioner.

12. Though, we dismiss this public interest litigation, we deem it appropriate to direct the Municipal Corporation of Greater Mumbai, Slum Rehabilitation Authority and Maharashtra Housing and Area Development Authority to look into atleast one of the allegation in the public interest litigation namely that permissions for construction have been secured in respect of some other plot and such permissions are sought to be passed off for purposes of putting up construction on the plot in-question. If, there is any merit in this allegation, the parties to take action in accordance with law.

13. The public interest litigation is accordingly, dismissed with costs as aforesaid.

14. Mr. Milind More, learned AGP for Respondent Nos.1 to 4 and Ms Trupti Puranik, learned counsel for the respondent – MCGM take notice of the direction in paragraph 12 of this order.

(M.S.SONAK, J.)

(CHIEF JUSTICE)