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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO.110 OF 2017

Uday Govindrao Gaware & anr. ... PETITIONER

**VERSUS**

The State of Maharashtra & ors. ... RESPONDENTS

.....  
Shri A.K. Gawali, Advocate for petitioners  
Shri S.Y. Mahajan, A.G.P. for State  
Shri S.P. Urgunde, Advocate for respondent No.6  
Shri V.J. Dixit, Senior Counsel with  
Shri V.D. Gunale, Advocate for respondent No.7

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CORAM: PRASANNA B. VARALE AND  
MANISH PITALE, JJ.

DATED : 5th SEPTEMBER, 2018.

ORAL ORDER :

1. Heard Mr. Gawali, learned counsel appearing for the petitioners, learned A.G.P. for respondents No.1 to 5, Mr. Urgunde, learned counsel for respondent No.6 and Mr. Dixit, learned Senior Counsel with Mr. V.D. Gunale, learned counsel appearing for respondent No.7. The petitioners submit before this Court that, the respondents No.1 to 6 failed in performing their statutory duty to remove the unauthorised construction carried out on the land admeasuring 18 x 122 ft. situated on the

western side of Latur District Court between the protection wall of the Latur district and the Sub-Jail, Latur. It is submitted that, the petitioners are espousing the cause of public in general.

2. Mr. Dixit, the learned Senior Counsel appearing for respondent No.7 invited our attention to the affidavit-in-reply filed on behalf of respondent No.7. It is submitted that, the petitioner No.2's real brother was party to one proceeding before the learned 5<sup>th</sup> Jt. Civil Judge, Junior Division, Latur in Regular Civil Suit No.381/2008. This was a civil suit instituted at the instance of respondent No.7 against the brother of petitioner No.2 and the Municipal Corporation through the Commissioner of Municipal Corporation, Latur. Mr. Dixit also invited our attention to the description of the property which is stated in the opening second paragraph of the judgment. The learned Senior Counsel further submitted that, there are also certain reservations of respondent No.7 against the petitioner No.1. Mr. Dixit submitted that, it may not be out of place to state that the petitioner No.1 is also having some interest in the strip of land which the petitioner alleged as an encroached land.

3. Be that as it may. What reveals from the perusal of the material placed on record is, the parties are claiming right over the property. On one hand, one party submits that it is the property purchased by it. On the other hand, there is opposition

to this submission. These facts are clearly disputed facts. The parties have also approached the Civil Court for deciding the civil rights of the parties. It is only the competent judicial forum who can deal with this issue and decide the civil rights of the parties. This Court cannot undertake this exercise in a petition styled as "Public Interest Litigation". As these are the issues which prevent us to entertain the petition as "Public Interest Litigation", considering these facts, we are not inclined to entertain the present petition as a "Public Interest Litigation". Accordingly, the Public Interest Litigation is dismissed.

(MANISH PITALE)  
JUDGE

(PRASANNA B. VARALE)  
JUDGE

fmp/-