

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

PUBLIC INTEREST LITIGATION NO. 75 OF 2012

Nilesh Ramji Machhi and Ors.	}	Petitioners
versus		
Harishwar Harishchandra	}	
Mistry and Ors.	}	Respondents

Mr.Ajay Varma for the petitioners.

Mr.Nitin V. Gangal with Ms.Prerna Shukla and
Ms.Namita Mestry for respondent no.1.

Mr.Anil V. Anturkar-Senior Advocate with Ms.Kalyani
Tulankar I/b. Mr.Sugandh Deshmukh for respondent
no.2.

Mr.B.V.Samant-AGP for respondent nos. 4 to 7 (State).

**CORAM :- S. C. DHARMADHIKARI &
R. I. CHAGLA, JJ.**

DATED :- NOVEMBER 6, 2019

P.C. :-

1. Heard.

2. If a mobile tower is directed to be demolished because there was no prior permission sought by the planning authority, then, it is evident that during its subsistence, or even thereafter, now a permission will have to be sought. It is a construction activity covered by section 44 of the Maharashtra Regional and Town Planning Act, 1966. The word “development”, as defined in that

legislation, postulates a permission to carry out the same. If that is not obtained, the development can be proceeded against by the planning authority and when it so proceeds, during the subsistence of the notice issued in that behalf, an application for retaining can also be made by the person carrying out such development. Today, it is conceded by the second respondent that a development permission would have to be obtained. In these circumstances, the public interest litigation has served its purpose. It is disposed of accordingly.

3. If the authority in-charge of granting permission is the Grampanchayat, then, obviously, under the Maharashtra Village Panchayat Act, 1959 the permission will have to be obtained from such panchayat. If that is obtained, all the more we cannot proceed against this mobile tower.

(R.I.CHAGLA, J.)

(S.C.DHARMADHIKARI, J.)