

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

**PUBLIC INTEREST LITIGATION NO.93 OF 2003  
WITH  
CIVIL APPLICATION NO.3059 OF 2004  
WITH  
CIVIL APPLICATION NO.575 OF 2004  
WITH  
CIVIL APPLICATION NO.30 OF 2007**

Raheja Vihar Co-op. Hsg. Societies  
Association Ltd.

..Petitioner/Applicant

Versus

Municipal Corporation of Greater Mumbai  
and others

..Respondents

Ms. Soma Singh a/w Mr. Vedant Chhajed, Mr. Netaji Gawade I/by  
M/s. Sanjay Udeshi & Co., Advocates for the Petitioner/Applicant.

Ms. Oorja Dhond I/by A. K. Savla, Advocate for Respondent Nos.1 &  
2 – MCGM.

Mr. M. M. Pabale, AGP for Respondent Nos.3, 6 to 8 - State.

Mr. R. V. Govilkar, Advocate for Respondent No.5.

Ms. Hemlata Jain & Ms. Kirtida Chandarana I/by M/s. Humranwala  
& Co., Advocates for Respondent Nos.9 & 10.

**CORAM : PRADEEP NANDRAJOG, C.J. &  
NITIN JAMDAR, J.**

**DATE : 9<sup>th</sup> AUGUST, 2019**

**P.C.**

1] In the Public Interest Litigation the Petitioner questions  
the actions of Respondent Nos.9 and 10 to quarry a hillock located in

Raheja Vihar Complex in Powai alleging that as per DC Rules 1991 the same was prohibited under Rule 51. Further grievance was to dump the quarry material in a depression stated to be a natural pond on D.P. Road No.9, Off Chandiwali Farm Road, Powai. The prayer made was to stop quarrying and to restore the natural hill.

2] Respondent Nos.9 and 10 were in process of developing the site to construct buildings wherein hillock existed.

3] It is apparent that Respondent Nos.9 and 10 were quarrying mud and stone from the hill to dump the same in the depression; stated to be the pond, thereby resulting in leveling of the land.

4] Status-quo was granted in favour of the Petitioner on 1<sup>st</sup> October 2003 which enure till 28<sup>th</sup> April 2004. On said date noting aforesaid facts, the status-quo granted was vacated giving reasons in paragraphs 17 to 21 as under :-

*“17. Having heard the learned counsel for the parties, in our opinion, this is not a fit case to grant interim relief. Even if it is assumed for the sake of argument at the admission stage that the questions raised by the Petitioner relate to protection of environment, prima facie, the contesting respondent Nos.9 and 10 are right in contending that the members of the Petitioner entered*

*into agreement with them in 1992 or thereafter. So far as relocation of Play Ground (PG) is concerned, action has been taken after obtaining prior permission of the Municipal Authorities in March, 1992. It further appears that respondent Nos.9 and 10 are prima-facie right in relying upon Regulation 11(4) of the Development Control Regulations, 1991. The submission has been made in the light of the language used in the said Regulation in juxtaposition of Regulations 56(3)(e), 57(4)(e) read with 63. It is also the case of respondent Nos.9 and 10 that the hillock is located within those respondents "private holding". The permission of 1992 by the Corporation, therefore, cannot be ignored.*

*18. Regarding dumping of mud quarried from the site into natural pond on D.P. Road 9, Off Chandivli Farm Road, Powai, the allegation has been emphatically denied. It is also stated by respondent Nos.9 and 10 that for the first time a case had been put forward in 2003-04 by the Petitioner, though most of them are at the place since more than a decade. It is also the case of respondent Nos.9 and 10 that the pond is located at a distance of over one kilometer from Raheja Vihar. That pond also lies within the "private holding" of other party*

*which is guarded by a watchman.*

*19. Regarding contravention of the Trees Act, the said contention had been taken by the petitioner at a belated stage. In the affidavit in reply, however, the respondent Nos.9 and 10 have stated that Municipal Corporation vide its letter dated 9<sup>th</sup> September, 1993 certified that "there were no trees standing" on CTS Nos. mentioned therein. On the contrary, the case of respondent Nos.9 and 10 is that they had planted a large number of trees on the said property and not on hillock. A plan duly certified by Municipal Corporation in 2001 goes to show the location of trees planted by the respondents on the property. It further shows that no trees were there as late as in 2001 on the area comprising the hillock.*

*20. From the affidavit in reply on behalf of the Corporation also, it is clear that permission of shifting Play Ground was granted under Regulation 11(4) of the Development Control Regulations, 1991 in 1992. In view of the affidavits by respondent-Corporation as well as respondent Nos.9 and 10, it cannot be said that a case has been made out for grant of interim relief.*

*21. For the foregoing reasons, in our opinion, interim relief prayed by the petitioner cannot be granted, and*

*hence, interim relief is refused. Status quo granted on October 1, 2003 and operative till today is hereby vacated. It is, however, clarified that all actions which will be taken will be subject to final outcome of the petition.*

*Parties to act on an ordinary copy of this judgment duly authenticated by the Associate/Private Secretary.”*

5] Today, the matter comes up before this Bench on above captioned three Civil Applications listed.

6] Vide Civil Application No.3059 of 2004 prayer made is to direct first and second Respondents to give inspection of the documents listed in prayer clause 18(a)(i) to (iii) and Respondent Nos.9 and 10 to give inspection of the documents as per prayer clause 18(b)(i) and (ii). Prayer made in Civil Application No.575 of 2004 is to direct Respondent Nos.9 and 10 to install water sprinkling system on the hillock and take preventive measures to ensure that mud which flows from the hillock does not pile and create a dump. Prayer made in Civil Application No.30 of 2007 is to fix the Petition for disposal on an early date.

7] It is to be regretted that on account of docket explosion in this Court, the three Civil Applications could not be taken up for hearing.

8] Learned counsel for the Petitioner as also Respondent Nos.9 and 10 do not dispute that the development work by Respondent Nos.9 and 10 is completed and that part of the hillock still exists and in respect of the hillock, as stated by Respondent Nos.9 and 10 in the counter affidavit, the hillock continues to exist but made esthetically beautiful. The reply of Respondent Nos.9 and 10 was that the hillock was still there and was of little utility to the Respondents. Under a fine park concept, only 30% of the top of the hill was flattened with access made from the base of the hill to reach the flattened top. No commercial or residential building was intended to be constructed on said part of the beautified hill.

9] The works have been completed. Status-quo ante cannot be restored. If the Petitioner has any grievance, civil action could be resorted to.

10] Thus, we dispose of the Public Interest Litigation as also the three Civil Applications moved therein as infructuous.

**NITIN JAMDAR, J**

**CHIEF JUSTICE**