

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.62 OF 2013

Sanjay Pandurang Ghadigaonkar	 Petitioner
Vs.	
The State of Maharashtra & Others	 Respondents

None present for the Petitioner.
Mr. P.P. Kakade, GP, with Ms R.A. Salunkhe,
AGP, for Respondent No.1-State.
Mr. Ram S. Apte, Senior Advocate with Mr. Ajit
R. Pitale & Mr. Amey Pitale for Respondent
Nos.2, 3 & 6.

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

DATE : NOVEMBER 04, 2019

P.C:

1. Though this petition was treated as a PIL, this Court was constrained to dismiss it for want of assistance by the PIL petitioner and his Advocate.

2. Later on, it appears that this Court was persuaded to pass an order on 31-1-2013. That order reads as under:-

“The grievance of the Petitioner, amongst others, appears to be that the Respondent No.1 has failed to consider the representations made by the Petitioner, from time to time, which pertains to the serious illegality reported in the said representations, on the basis of which, superseding and/or dissolving the Thane Municipal Corporation is warranted. However,

these representations have remained undecided since 11th November, 2009, 17th September, 2010 and 23rd September, 2010.

2) We are of the opinion that if the said representations are decided one way or the other and appropriate directions are issued, it will not be necessary for this Court to examine any other relief in this Petition.

3) In the circumstances, while issuing notice in this Petition, we direct the Secretary of Urban Development Department, Government of Maharashtra to decide the pending representations dated 11th November, 2009, 17th September, 2010 and 23rd September, 2010, expeditiously, in accordance with law, before the returnable date and report compliance in that behalf.

4) The notice is made returnable on 11th March, 2013.

5) We are of the opinion that the matter must proceed as Public Interest Litigation because of the nature of issues in this Petition.

6) Copy of this order be forwarded to the Secretary, Urban Development Department, Government of Maharashtra, forthwith."

3. Post this order, the petition was again taken as PIL and treated as such. We have been noticing that such petitions are filed to settle political or private scores essentially. The intention is not to assist the Court in resolving the issue of unauthorised construction or rampant illegal construction activity. On 21-4-2014, on this petition, an order was passed by this Court. In that order it is observed that, this is a public interest litigation raising issues in connection with implementation/operation of Section 12 of The Maharashtra Municipal Corporations Act, 1949 ("**Act of 1949**"). This Court

was persuaded to note that, the Commissioner is in receipt of number of applications for making a reference to the learned Judge in accordance with Section 12 of the Act of 1949. However, the Commissioner has not taken action on these applications or they are kept pending. Later on a follow up order was passed on 17-6-2014. It also appears that this Court was persuaded to issue a direction to the Secretary of the Urban Development Department, Government of Maharashtra, to consider the observations made in paragraph 3 of the order of 21-4-2014 and to take the necessary corrective steps. With all these, we expected Mr. Bhushan Walimbe to remain present and argue this case today. Neither the PIL petitioner nor Mr. Bhushan Walimbe is present.

4. This Court, on 1-8-2014, had passed another order by which it decided to pursue the case, particularly about the working of Section 12 of the Act of 1949.

5. The follow up by this Court has continued as is apparent from a reading of the further orders and particularly dated 24-3-2015, 21-4-2015 and the last in point of time dated 28-9-2016.

6. Affidavit in pursuance of the order dated 24-2-2015 has not been filed. The last affidavit that we have on record is of 7-5-2014.

7. From the tenor of the petition and the orders of this Court, it appears that the construction stated to be illegal and unauthorised is attributed to respondent Nos.7 to 11. They were elected Councillors of the Thane Municipal Corporation.

8. Their term of office is over and fresh elections have also been held. In the circumstances, by keeping open the larger issue, this PIL can be disposed of as infructuous.

9. We do so and by clarifying that this order does not conclude the legal controversy or issue. That is kept open for being decided in an appropriate case.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)