

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.132 OF 2013

Hardas Hazarimal Tharwani

..Petitioner

Versus

State of Maharashtra and others

..Respondents

Ms. Minal J. Chandnani, Advocate for the Petitioner.

Mr. K. S. Thorat, AGP for Respondent Nos.1 & 2 – State.

Mr. S. M. Kamble, Advocate for Respondent No.3.

CORAM : PRADEEP NANDRAJOG, C.J. &
N. M. JAMDAR, J.

DATE : 16th JULY, 2019

P.C.

1] Respondent Nos.4 and 5 have not been served till date.

2] We have heard learned counsel for the Petitioner.

3] The Petitioner is a journalist and by way of the instant Public Interest Litigation filed in the year 2013 he questions the permission granted on 18th October 2002 (Annexure D) to the 4th Respondent to construct a commercial building on land bearing Plot Nos.36 and 37, Section 4B, Sheet No.29, Powai Chowk, Ulhasnagar, District Thane. The Petitioner also questions the right of Respondent No.5 to construct commercial building on the said land under the authorization of Respondent No.4.

4] As pleaded in the Petition, 1159 sq. yards land comprising Plot Nos.36 and 37, Section 4B, Sheet No.29, Powai Chowk, Ulhasnagar belong to the Government of Maharashtra and *vide* Exh.A was allotted to Respondent No.4. The allotment dated 30th January 1982 stipulates the conditions of the allotment being that on FSI one, 24 flats having carpet area of 450 sq.ft. would be constructed and allotted to 24 members of the Respondent No.4 society. That user of the land and the building constructed would be residential.

5] Pleading that Respondent No.4 made partial construction on the land resulting in full FSI not being used, it allotted 12 tenements to 12 members, the grievance to the impugned order dated 18th October 2002 is to the fact that permission has been granted to effect further construction and use the additional constructed area for commercial use.

6] Public Interest Litigation was not properly prosecuted resulting in the same being dismissed in default on 25th October 2013. It was restored on 9th June 2016 and since then Respondent Nos.4 and 5 have not been served.

7] In our opinion, the Public Interest Litigation is liable to be dismissed on account of delay and laches. The impugned order dated 18th October 2002 has been questioned after 11 years.

8] We have asked the learned counsel as to what is the

current status of additional constructions made by Respondent No.5 under authority of Respondent No.4 pursuant to the order dated 18th October 2002.

9] Learned counsel very fairly states that the commercial space generated as a result of additional construction has been transferred to third parties.

10] The Public Interest Litigation is accordingly dismissed.

N. M. JAMDAR, J

CHIEF JUSTICE