

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO.2 OF 2013

Khatri Mohammad Nafees Abdul Jabbar ... **Petitioner**
versus
Brihanmumbai Municipal Corporation
and Ors. ... **Respondents**

Mr.Bilal Qureshi i/b Zaid S. Ansari &
Associates for the Petitioner.

Ms.K.H.Mastakar for MCGM.

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

DATE :- NOVEMBER 15, 2019

P.C. :-

1. By this petition styled as a Public Interest Litigation, the petitioner-Khatri Mohammad Nafees Abdul Jabbar, says that there are rampant illegal construction activities on a plot of land bearing CTS No.557 situate at Jogeshwari (West), Mumbai 400 102. This plot is reserved for public purpose. It would not have been, therefore, encroached upon, much less any structure built on it. Therefore, not only the construction and encroachment has to be removed, but the municipal officials must initiate civil and criminal action.

2. On such a PIL petition filed in the year 2012, this Court was persuaded to pass several orders and directions.

3. An affidavit has been filed and which is stated to be a compliance report.

4. This Court was apprised of the fact that the municipal legislation contains provision like Section 351 of the Mumbai Municipal Corporation Act, 1888, Sections 52, 53 and 55 of the Maharashtra Regional and Town Planning Act, 1966 enabling the municipal officials and staff to proceed against such developments, which are termed as an unauthorised developments, at times of temporary nature. The laws enact adequate provisions so as to enable the Municipal Corporation and the Planning Authority to take steps and cause removal of the structures and the unauthorised developments.

5. It is stated that action has been taken from time to time and reports have been placed on record.

6. The last affidavit filed in this Court of 21st August, 2018 by the Municipal Corporation and, particularly, its Assistant Engineer (In charge), Building and Factory Department, K/West Ward, says that the municipal officials have initiated measures and steps. They have invoked the relevant statutory provisions.

They have taken action, but on occasions, they find that the portions occupied by these constructions and illegal activities are public properties, in the sense that it is the Collector of the Mumbai Suburban District, who alone can take the requisite steps. He has powers under the Maharashtra Land Revenue Code, 1966 to remove the encroachments on the public properties.

7. We do not think that beyond noting the statements in this affidavit, independently, we can do anything in this matter.

8. We have to rely on the statements made in the affidavits filed by the public officials on the basis of the public documents and records. There is presumptive value attached to it. That presumptive value also extends to the contents of the documents and the records. Section 114 of the Indian Evidence Act, 1872 is required to be referred only for this purpose. Anything contrary to the public documents and records has to be brought before the Court by the person initiating the litigation. It may be a public interest litigation, but that responsibility continues and the burden is primarily that of the petitioner, who asserts and alleges that the construction on this plot is illegal and unauthorised. The petitioner seems to have no data nor material in his possession indicating the number of structures and the extent of

unauthorised construction and encroachment. He has not done any research at all. The petitioner is expected to assist the Court and if he has in his possession the necessary proof, then, he must produce the same so that this Court can pass orders directing the municipal authorities to act against the construction activities detailed by the petitioner. Absent any contra material, we have to accept the statements made on oath by the municipal officials.

9. We accept them and close the proceedings. PIL is disposed of with clarification that any construction, which is unauthorised and illegal remaining at site, can be proceeded against either on the complaint of the petitioner or *suo-motu* by the Municipal Corporation and its concerned Ward officials. The disposal of this PIL would not prevent or preclude such steps being taken.

(R.I.CHAGLA, J.)

(S.C.DHARMADHIKARI, J.)