

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

**PUBLIC INTEREST LITIGATION NO.73 OF 2010
WITH
NOTICE OF MOTION NO.393 OF 2010**

S.G.P. Barnes

... Petitioner

Vs

The Municipal Commissioner
Brihanmumbai Municipal Corporation & Ors.

... Respondents

Petitioner in person – present

Mr.A.Y. Sakhare, Senior Advocate with Mr.Javed Shaikh, Mr.H.C. Pimple and Ms.K.H. Mastakar for Corporation

Mr.Parag Masurkar, Dy. Municipal Commissioner (Zone III and IV)
– present

Ms.Uma Palsuledesai, AGP, for Respondent – State

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

DATED: DECEMBER 6, 2019

P.C.:

1. Affidavit of compliance has been filed.
2. That lists several steps taken so as to comply with the order passed by this Court. The Municipal Corporation has prioritised and ear-marked the encroachments for removal so as to clear

busy roads in K-West ward. There are three railway stations, namely, Andheri, Jogeshwari and Vile-Parle in the K-West ward. There are 190 major roads whereon heavy motor vehicles, buses ply. The roads are also to be kept free of encroachments. That is how the first action is taken against temporary structures and then, routine inspection is carried out by which the Municipal Corporation identifies the encroachment on footpaths and public streets. It is taking action of removal and if they resurface or re-erect, then again, by the said inspection, the encroachers and wrong doers are identified and action is taken.

3. The complaints of the party appearing in person / PIL petitioner/senior citizen is attended by road-wise action and details of the same are pointed out.

4. However, the PIL Petitioner insists that there is an illegal temple of Sai Baba Sansthan. It is lying on the public road leading to BMC Joggers Park garden and backside of Hill Rock societies in Ramesh Nagar. This is a ground level structure. The action has been taken by issuing notice and thereafter passing an order. The development plan department says that this temple is situate at CTS No.54, village Ambivali. The owner of CTS No.54 applied for

development permission proposing a building to be constructed on this land for which the Executive Engineer (Building Proposals) Western Suburbs, approved the plan on 18.5.1991. After the part occupation certificate is granted on 5.1.2000, the full occupation certificate has not been granted or rather is withheld due to the owner not handing over the portion of the land reserved for garden. The owner has further handed over another portion of 9.15 metres for the DP road. There is an unauthorised construction of temple on the garden plot which is forming part of the larger reservation but once the owner has handed over some other portion for the DP road, the advice to the Municipal Corporation is to acquire the rights of the owner and then alone, it will be able to take that part of the plot in larger garden area. Thus, reservation of garden would be taken to its logical conclusion after this portion also comes in possession of the Municipal Corporation.

5. The PIL petitioner insists that after there is an undertaking given by the owner and a notice has been issued by the Municipal Corporation, it can go ahead and take possession of this portion by demolishing the temple. The Corporation says that the temple is

on a private plot which has still not vested in it and it cannot be included in the garden by adopting steps or measures as proposed or indicated by the petitioner.

6. The PIL petitioner must realise that the Courts do not pass orders contrary to law or defeating and frustrating the law. The Courts pass orders in accordance with law. Today, we cannot enter the dispute as to whether the owner of the plot was obliged to hand over the portion where the temple is constructed free of cost in fulfillment of a condition imposed on him. If that condition is not fulfilled by the owner, then, what are the consequences of the same, cannot be our present concern. This is a PIL. It cannot be converted into a litigation so as to settle any private disputes. The PIL petitioner has not even bothered to implead the owner or place before us complete facts. If her assertion is that the condition imposed on the owner would enable the Municipal Corporation to take over his plot but the Municipal Corporation feels otherwise, then, in such a dispute and particularly, where the Municipal Corporation says it must abide by law or be ready to abide by law, we should not enter. By keeping open that part of the controversy to be dealt with in appropriate proceedings, we close this PIL.

7. We do not think that this Court can keep such PILs pending and ensure that all 190 roads identified by the Municipal Corporation would be encroachment-free. It is for the PIL petitioner to follow up the matters with the Municipal Corporation and merely because she does not get the necessary and anticipated response, she cannot rush to this Court with multiple PILs.

8. This PIL is therefore disposed of.

9. In view of the disposal of the PIL, Notice of Motion also stands disposed of.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)