

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

PUBLIC INTEREST LITIGATION NO.132 OF 2012

Macchindranath Narahari Karalkar	...	Petitioner
versus		
The Municipal Commissioner of Greater Mumbai and Ors.	...	Respondents

Mr.Vishal Thadhani i/b Veena Thadhani
for the Petitioner.

Ms.K.H.Mastakar for MCGM.

Ms.Geeta R. Shastri, Additional
Government Pleader a/w Ms.Jyoti
Chavan, AGP for State.

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

DATE :- NOVEMBER 15, 2019

P.C. :-

1. Having heard Mr.Thadhani at some length, we find that this Court has passed orders on previous occasions in this Public Interest Litigation (PIL).

2. The petitioner in this PIL, filed on 24th September, 2012, says that the Municipal Corporation of Greater Mumbai is reluctant to act against the shopkeepers and landlords of the buildings and chawls along Irla Society Road. They have put up unauthorised and illegal constructions. They have also encroached upon the compulsory open space in front and on the

rear side of the building. We fail to understand how such a litigation with this prayer and also seeking direction to the Municipal Corporation to act against the hawkers on the road can be said to be a public interest litigation.

3. At best, it projects the grievance of those residing in the buildings on both sides of the road. Further, the shopkeepers and landlords who are supposedly unauthorised are not before this Court. Yet, everything done by them is termed as unauthorised.

4. There is an affidavit-in-reply filed by the Municipal Corporation of Greater Mumbai, which says that the cognizance of the complaints from local residents has been taken and action under Section 55 of the Maharashtra Regional and Town Planning Act, 1966 (for short, "the MRTP Act") for dealing with the temporary development in front open spaces has been taken by issuance of notices. The encroachments are claimed to have been demolished on 24th March, 2014. It is claimed in this affidavit, affirmed by the Assistant Engineer (B&F), K/West ward, that the road is encroachment free. Everybody using the road can move freely and without any intervention.

5. Then it is claimed that on south side of Irla Society road, the buildings are ground plus two upper floors. They are old buildings

constructed prior to merger of the Municipal Corporation. The plans are not available in order to verify whether the internal changes have been made or there is change of user. However, the ground floor of this building is occupied by shops. On north side, the structures are on the land partly belonging to the Government and partly on the municipal property. Most of the portion is slum and the road facing structures are occupied for commercial purpose since last 20-25 years. Then, certain action against ALFA-1, ALFA-3 and ALFA-5 along Irla Society Road, has also been taken as per the complaints received from time to time.

6. After this clarificatory affidavit, which is an action taken report, filed on 3rd April, 2014, the petitioner files a rejoinder affidavit and in that rejoinder affidavit, styled as additional affidavit, it is claimed that the Municipal Corporation has not taken the action against some specific constructions, particularly, Bharat Building, Arif Mansion and Shafi Mansion. There are large scale encroachments in front and rear side of the building. This affidavit is totally vague for it does not define anything, much less detail the names of the persons concerned with these buildings, the dimension and size of the construction activities, the construction beyond the sanctioned and approved plans, whether there is any encroachment on a plot owned by the society or it is

abutting the road and, therefore, causes an obstruction etc. In the absence of such specific information, we cannot go on issuing directions to the Municipal Corporation. The Engineers and the Officers would have to go on identifying the construction activities all over Mumbai and Mumbai Suburban city and our directions would be completely futile. The public interest litigants ought to be aware that they have to carry a study, due research and assist the Court, if they are residing in the locality and are responsible citizens of this country. This Court will also find out whether the complaints are motivated or are made at the behest of some persons, who do not wish to proceed against any construction activity within their plot of land. We do not think that the responsibility of the PIL petitioner is over after filing of a PIL. They cannot leave the matter to Court. A good seven or more years are over after the institution of this petition.

7. The further affidavit of the Municipal Corporation enlists the steps taken and seeks to substantiate the action with photographs. Thereafter, twenty-nine notices under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short, “the MMC Act”) were issued for unauthorised extension to the existing structures on both sides of Irla society. We have found that the commercial vendors, who were keeping goods in the front open

space outside their structures, were issued thirty-one notices and the prosecution was launched.

8. The petitioner files an additional affidavit and then says that a telephone call was received by him from the K/West Ward, Building and Factory Department on 3rd September, 2015 informing him that he should attend the meeting of the Grievance Redressal Committee. Then, it is stated that this meeting could not be attended for several reasons, including the petitioner being not in Mumbai. He says that if he had attended the meeting, he would have been physically harmed. We do not see how we can go on trusting and relying upon such affidavits of the parties like the petitioner, who claims to have moved this Court in the public interest.

9. Now, when the notices issued are of this nature, the recipients of the notices have legal recourse open to them. They often move the Civil Court challenging the notices issued under Section 351 of the MMC Act or the action stated to be taken by the Municipal Corporation terming them as encroachers. The matters are pending before the Civil Courts and on occasions, municipal authorities are helpless. The City Civil Court at Mumbai is flooded with such suits and proceedings. Although the strength of the

Judges is adequate, an individual Court or Judge has more than 1500 to 2000 cases assigned to him or her. The cases have to be moved in terms of their dates of registration. No priority can be given to the litigation, which does not affect larger public interest. If the allegation is that the parties are given a long date, nothing prevented the petitioner from intervening in the pending proceedings before the Civil Court and point out that the larger public interest is affected. The petitioner does nothing of this kind, but goes on orally complaining before this Court that the action taken at the site is cosmetic. People come back although their alleged encroachments are removed or structures are demolished. If that be so, it is for the petitioner to approach the competent authorities in the Municipal Corporation and bring to their notice, the instances of this nature.

10. We do not think that ward-wise monitoring and supervision by this Court is possible. This Court cannot only deal with the public interest litigations for it has other proceedings on its file. The private interest litigation is equally important and that being given priority also subserves larger public interest.

11. We do not think that we should, in the garb of complaint of this nature, issue sweeping directions and give impression to the

public that despite intervention of this Court, the wrongs and illegalities continue in the society. We do not think that this impression will enhance the prestige and reputation of this institution. The petitioner should approach the competent forum available. We do not think that affected parties are prevented from moving the competent forum and lodging individual complaints. That door is always open to them. We do not think that we should further monitor and supervise the action taken at the site.

12. Although we are aware of the fact that the Municipal Corporation turns a blind eye to encroachments and unauthorised construction activities, we are also aware of the fact that there is a shortage of staff and at times, for removal of such construction or dealing with such activities, requires the assistance to be rendered to municipal officials by the State and the police machinery. All have to act in a co-ordinated manner. The Municipal Corporation will have to take action against its erring and negligent officials. It is a normal tendency of the shopkeepers and those whose structures abut the road to seek permission and erect monsoon sheds. These monsoon sheds continue to exist at site even after the monsoons are over and the municipal officials turn a blind eye. We do not think that the

Municipal Corporation is acting in a manner upholding the rule of law. It also should realise that it is equally in public interest if the High Court's time is not wasted in such litigations.

13. With the above observations, the PIL is disposed of.

(R.I.CHAGLA, J.)

(S.C.DHARMADHIKARI, J.)