

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**PUBLIC INTEREST LITIGATION NO. 224 OF 2014
WITH
CIVIL APPLICATION NO. 108 OF 2017**

Shri.Abhijit Prakashrao Patil	}	
and Ors.	}	Petitioners
versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

**WITH
PUBLIC INTEREST LITIGATION NO. 62 OF 2012**

Anil Tekadmal Vidhani and Anr.	}	Petitioners
versus		
The State of Maharashtra and Ors.	}	Respondents

**WITH
PUBLIC INTEREST LITIGATION NO. 98 OF 2016
WITH
CIVIL APPLICATION NO. 41 OF 2019
(NOT ON BOARD)**

Ashok Hadumal Chandwani	}	
and Ors.	}	Petitioners
versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

Mr.Shantanu Chandratre i/b. M/s.Khandeparkar and Associates for the petitioners in PIL/224/2014 and PIL/62/2012.

Mr.B.V.Samant-AGP for State in PIL/224/2014.

Ms.R.A.Salunkhe-AGP for State in PIL/62/2012.

Mr.Anand S. Ptil for respondent nos. 5 and 6 in PIL/224/2014.

Mr.G.S.Godbole with Mr.Manoj Patil for respondent nos. 7 to 10 in PIL/224/2014.

Mr.J.M.Puranik for respondent nos. 17 to 19 in PIL/224/2014.

Mr.A.Y.Sakhare with Mr.Joel Carlos for respondent nos. 7 to 21 in PIL/62/2012.

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

DATED :- FEBRUARY 5, 2020

P.C. :-

1. Heard both sides.

2. Upon this PIL (PIL/224/2014), notice was directed to be issued on 3rd November, 2014. Thereafter, the PIL was placed before various Division Benches time and again. The PIL has a chequered history. It appears that there are other litigations equally numbered as PILs concerning this issue, although some of the parties to this PIL may be different.

3. The argument before us is that the PIL petitioners have been residing in Karveer Taluka, District Kolhapur. They are public spirited citizens. They have impleaded, apart from the private parties (respondent nos.7 to 19), the State of Maharashtra, Divisional Commissioner, Pune, the Collector of Kolhapur District and the Chief Executive Engineer, Public Works Division, District Kolhapur. They have also impleaded Walivade Gram Panchayat.

4. The grievance projected in this PIL is that the Builders and Developers commenced construction without seeking any prior approvals and permissions and one such construction is carried out on land bearing Gat Nos. 189/5/2, 190 and 191. In paras 7 and 8 of this petition, this is what is stated:-

“7. The Petitioners states that the said lands i.e. Gat No.189/5/2, 190 and 191 abuts the Major District Road No.24 (Now numbered as 20). Major District Road 24 joins 5 principal villages namely Uchgaon, Gadmorshingi, Gandhinagar, Waliwade and Chinchvad. It is also submitted that Major District Road 24 is the only road to access these 5 villages. The said road further meets the Major District Road No.25. At present, the said road is 30 feet wide. Major District Road 24 joins 5 principal villages namely Uchgaon, Gadmorshingi, Gandhinagar, Waliwade and Chinchvad. It is also submitted that Major District road 24 is the only road to access these 5 villages. Gandhinagar is a commercial hub of western Maharashtra with a heavy transportation business having about 100 transport agencies therein. Therefore the said road is proposed to be widened as 60 feet road as at present the width of 30 feet is very meager as compared to the load of traffic on the same road. In fact, the said lands are affected by road widening. The Petitioner states that a citizen of Gandhinagar, Kolhapur vide letter dated 12th May, 2010 issued under the Right to Information Act was informed that 37 meters distance is required to be kept from centre of the road where the property is to be used for commercial user. Further, the said letter also says that the permission of the Public Works Department is necessary and any construction done in violation of the said requirement is illegal.

8. The Petitioner states that presently the road which is a Major District Road No.24 is 30 feet wide. The proposed road widening is for 60 feet. The area reserved for road widening is being affected by the present unauthorised constructions. The Petitioner further states that apart from the fact that the present unauthorised construction affects the road widening and consequently, the said construction is also violating the provisions of the Bombay Highway Act wherein the requirement of distance of 37 meters from centre of the road is required to be kept.”

5. Once again, in para 9, reference is made to the Government Resolution dated 9th March, 2001, which sets out the minimal distance required to be maintained from the centre of the highway. This Government Resolution regulates the distance which is to be maintained from the road for carrying out any construction activity. In para 10, reference is made to Bombay/ Maharashtra Highways Act, 1955.

6. The petitioner, therefore, says that the construction activity, termed as unauthorised and illegal, is on Major District Road No.24. Secondly, it is termed as unauthorised and illegal since it is without permission and approval from the planning authority/ local authority.

7. The PIL is filed and later on amended with prayers that an inquiry be conducted with regard to the permissions granted for construction on these Gat numbers and action be taken for violating the Circular dated 22nd December, 2010 issued by the concerned respondent and for breach and violation of the Maharashtra Highways Act, 1955 and Government Resolution dated 9th March, 2001.

8. Our attention was also invited to an order of a Division Bench of this court presided over by the Hon'ble the Chief Justice dated 18th April, 2019 in PIL No.54 of 2015.

9. Though there are affidavits in reply and rejoinder filed, we do not refer to them at all because the core issue is how the petitioners have identified and termed the road as a Major District Road governed by the Maharashtra Highways Act, 1955. The Maharashtra Highways Act, 1955 is an Act to provide for the restriction of ribbon development along highways, for the prevention and removal of encroachment thereon, for the construction, maintenance and development of highways, for the levy of betterment charges and for certain other matters. This Act has now been termed as Maharashtra Highways Act, 1955. Prior to this, it was known as Bombay Highways Act, 1955. Section 2 of this Act contains definitions. This Act extends to the whole of Maharashtra and for the purposes of its various Chapters, the definitions of certain words and expressions are necessary to be referred. Section 2(b) defines the word “building”, whereas, section 2(c) defines the term “building line”. Section 2(e) defines the expression “control line” and section 2(f) defines the word “encroachment”. The word “highway” is defined in section 2(i) and this expression includes what is set out in the sub-clauses of section 2(i). The word “highway” is understood as under:-

“2(i) “Highway” means any road, way or land which is declared to be a highway under section 3. The expression includes,-

(i) any land acquired or demarcated with a view to construct a highway along it;

(ii) the slopes, berms, borrow-pits, foot-paths, pavements and side, catch and boundary drains attached to such road or way;

(iii) all bridges, culverts, causeways, carriageways and other structures built on or across such road or way; and

(iv) the trees, fences, posts, boundary, furlong and milestones, and other highway accessories and materials and materials stacked on the road or way.”

10. Though this Act has been amended by the Maharashtra Act XLV of 2018, we are not concerned with the amended provisions. Chapter II of this Act is titled as “Declaration of Highways, Highway Authorities and their powers and functions”. Section 3 reads as under:-

“3. the State Government may, by notification in the Official Gazette, declare any road, way or land to be a highway and classify it as-

- (i) a State highway (Special),
- (ii) a State highway,
- (iii) a major district road
- (iv) other district road, or
- (v) a village road.”

11. Now, the petitioners term the road in question as a Major District Road. However, because the petitioners term it as a Major District Road, it does not mean it is a highway as dealt with by section 3(iii). The expression “highway” has been defined and equally the “highway boundaries” and “middle of highway”. A road is a highway, provided it is declared as road, way or land and classified, *inter alia*, as Major District Road. This emerges from a Notification in the Official Gazette as provided under section 3.

12. When this matter was placed before us yesterday, we asked Mr.Chandratre appearing for the petitioners as to how the petitioners can file this petition/PIL when they do not annex a copy of the notification issued under section 3 of the Maharashtra Highways Act, 1955. On that occasion, Mr.Chandratre prayed for time to produce such a notification. We granted time and placed the matter post recess yesterday. Since the notification could not be produced yesterday, purely to accommodate the counsel, we placed this matter today, but under the caption “For Passing Orders”. This course had to be undertaken by us because Mr.Sakhare learned senior counsel appearing for one set of private respondents and Mr.Godbole appearing for the other raised objections to the maintainability of this PIL. They would submit that the petitioners rely upon the order passed in PIL No.54 of 2015 dated 18th April, 2019. The private parties, aggrieved and dissatisfied with that order, preferred Special Leave Petition (Civil) [SLP] No.11659 of 2019 before the Hon’ble Supreme Court and the Hon’ble Supreme Court on 10th May, 2019 has taken into consideration all the submissions and directed the respondents to maintain status quo on the date on which that order was passed in respect of the construction carried out and do not demolish it if it is not already demolished.

13. The counsel appearing for the private respondents in this PIL would submit that unless and until this court is satisfied that the construction is on the highway and classified as above, it should not entertain the PIL. The counsel for the PIL petitioners has produced before us a copy of the information derived by the petitioners from an application under the Right to Information Act, 2005. An application was made to the Public Information Officer and the Sub-Divisional Engineer, Public Works Division on 15th May, 2015, seeking information, particularly a copy of the notification/ declaration of Major District Road No.24 (Tawde Hotel to Chinchwad – Rudadi Bandhara, Taluka Karveer, District Kolhapur). This is styled as the Major District Road notified in terms of section 3 of the Maharashtra Highways Act, 1955, but the information provided is that there is a Government Resolution dated 3rd May, 1997. That says that all roads within the Division in question (PWD), after obtaining the list from the Executive Engineer, PWD, Zilla Parishad, Kolhapur, have been handed over to the PWD, Kolhapur. The learned counsel for the petitioners would like us to draw an inference, from this piece of information provided to the petitioners by the concerned Public Information Officer, that the above road is a Major District Road.

14. We are unable to agree with this submission for more than one reasons. We do not rely upon any information which is provided in answer to a query under the Right to Information Act, 2005 simply because in the facts and circumstances of the present case, such information cannot substitute the declaration by way of a notification required by section 3 of the Maharashtra Highways Act, 1955. Apart from that, the information that is given to the petitioners is not with regard to the status or classification of the road, but the factum of handing over of roads under the Zilla Parishad, Kolhapur to the concerned Public Works Division of the Government of Maharashtra. That is based on the contents of Government Resolution dated 3rd May, 1997.

15. We have been taken through this Government Resolution and we find that on the basis of the same, the inference that is sought to be arrived at cannot be drawn at all. The Government Resolution refers to the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. That refers to section 100(1) clause (b) and second proviso to clause (c) and section 129(2) and proviso to sub-section (3) the said Act. These provisions are referred in the Government Resolution of the Public Works Department (PWD) dated 6th May, 1997. This Government Resolution says that the Schedule thereto refers to Major District

Roads, which have been constructed and were handed over for maintenance and upkeep to the Kolhapur Zilla Parishad. However, the Government of Maharashtra is satisfied that it is necessary to take over maintenance and upkeep of all development schemes. That is how the management and administration of the development schemes is sought to be taken over in exercise of the powers conferred by the aforementioned provisions of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. The Schedule to this Government Resolution only contains lists and details of the roads. They are termed and mentioned as Major District Roads and State Roads, District Road, State Boundary Road loosely without any reference to their designation in the Maharashtra Highways Act, 1955. Pertinently, there is no reference to this Act in the Notification at all. The phraseology “Major District Road” employed in these two Government Resolutions, but traceable to the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 would not enable us to conclude that they are Major District Roads classified after declaring them as highways by a notification issued under section 3 of the Maharashtra Highways Act, 1955. It will be to risky and unsafe to draw any inference. The Maharashtra Highways Act, 1955 and particularly section 3 requires the State Government to exercise its discretion by publication of a notification in the Official Gazette

declaring any road, way or land to be a highway and classify it as either a State Highway (Special), a State Highway, a Major District Road, other district road or a village road. It is thereafter that the Maharashtra Highways Act, 1955 applies with full force. It is thereafter that all the regulatory and controlling mechanisms under this law would come into play. It is then the words and expressions as understood by the Maharashtra Highways Act, 1955 and the distance to be maintained as contemplated therein would enable the local authorities to take action against the offending building and development work. In other words, it is only when the Maharashtra Highways Act, 1955 is attracted and is applicable that this court can take cognizance of the grievance of the petitioners that the offending construction and building activity is on the highway classified as Major District Road. We do not think that any other interpretation of the provision, namely, section 3 of the Maharashtra Highways Act, 1955, is possible. If the interpretation as placed by the petitioners' counsel is accepted, then, any road, way or land would be loosely termed as a highway, but the definition of the term Highway appearing in section 2(i) of the Maharashtra Highways Act, 1955 refers to section 3 thereof. Hence, absent the Gazette declaration, any road, way or land will be a highway. Therefore, we do not think that the petitioners can succeed on the core issue.

16. The order passed by this court on 7th December, 2016 in this PIL notes that the petitioners are proceeding on some information or perception, without any material with regard to encroachment on land. This court looked at the photographs and held that one cannot form an opinion, as desired by the counsel appearing for the petitioners, that from the center of the road, required open space from either side of the concrete road is not maintained. This court pointed out that unless the petitioners have specific information regarding the measurement of the land owned by the private respondents with demarcation of the boundaries, the court will not assist them merely because they term themselves as whistle blowers. That is why it directed the petitioners to deposit a sum of Rs.2 lakhs in this court to show their *bona fides*. We do not think that unmindful of such criticism and such an order, the Division Bench presided over by the Hon'ble the Chief Justice was persuaded to consider a similar grievance in PIL No.54 of 2015 and pass an order on 18th April, 2019 of demolition of the construction made by the private respondents in that PIL.

17. To our mind, such PILs, apart from resulting in wastage of precious judicial time, are filed in order to perpetuate private motives and to settle scores. On occasions, such a litigation is also a tool in the hands of those who target building and construction

activities in the towns and cities. The targeting is for obvious reason and that is to knockout something from the persons developing immovable properties and making construction on the land within the municipal limits. It is one thing to say that the construction is unauthorised and illegal because no permissions are obtained under the Maharashtra Regional and Town Planning Act, 1966 or the Maharashtra Municipal Corporations Act, 1949 and quite another to say that such construction is in the middle of a “Highway” and does not maintain the distance from the “middle of the highway”, both as understood by the Maharashtra Highways Act, 1955 and mandated to be maintained by that law. If the construction and development activities contravene the other enactments, as projected in some of the photographs annexed to the PIL, the petitioners very well know that their remedies lie elsewhere. That is before the municipal officials and if they do not take any cognizance, then, to approach a civil court and seek appropriate reliefs. For that type or nature of the grievance, ordinarily, this court would not entertain a PIL.

18. For the aforementioned reasons, we find no merit in the PIL (PIL/224/2014). We dismiss it. In the light of the dismissal of the PIL, Civil Application No.108 of 2017 does not survive and stands disposed of as such.

19. We clarify that we have expressed no opinion on the legality or otherwise on the development activities carried out by the private respondents. We also clarify that this order will not affect other legal remedies available to the petitioners before us.

20. We were inclined to impose heavy costs for the simple reason two or three Division Benches of this court had to spend considerable time and were taken on a mission to find out whether the road in question is a Major District Road and a highway within the meaning of the Maharashtra Highways Act, 1955. Since no assistance was rendered and relevant and germane materials were kept back, we would be justified in imposing heavy costs. However, the learned advocate appearing for the petitioners says that the petitioners have deposited Rs.2 lakhs at the time of initial hearing and particularly by virtue of an order passed by the Division Bench of this court dated 7th December, 2016. At best that amount be forfeited, but no costs should be imposed. We order forfeiture of Rs.2 lakhs accordingly and now the Registry of this court shall transfer that sum to the Juvenile Justice Fund maintained by the State Government under the Juvenile Justice (Care and Protection of Children) Act, 2015.

21. It is only because of the persuasion of the learned advocate appearing for the petitioners and in the light of the apology

tendered by him, we do not impose any costs and not make an order in that behalf. However, we have noticed that the present petition is filed as PIL by three petitioners. One of the petitioners is Ashok Hadumal Chandwani. This Ashok Hadumal Chandwani filed PIL No.98 of 2016. That was dismissed for want of prosecution on 3rd May, 2019, but Civil Application No.41 of 2019 seeking restoration of that PIL is pending. We restore that PIL to file and dispose it of by the present order. Civil Application No.41 of 2019 is also disposed of accordingly.

22. The Registry of this court shall not entertain any PIL where this Ashok Hadumal Chandwani is the petitioner.

23. The other PIL, namely, PIL/62/2012 filed by Anil Tekadmal Vidhani and Anr. is not disposed of by this order, but placed on the “Supplementary Board on 12th February, 2020.

(R.I.CHAGLA, J.)

(S.C.DHARMADHIKARI, J.)