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

PUBLIC INTEREST LITIGATION NO. 119 OF 2022

Sanjaykumar Damodar Surve

...Petitioner

V/s.

State of Maharashtra through Secretary & Ors. ...Respondents

Mr. Shishir Joshi a/w. Kishore Shriyan a/w. Bhavika
Thingalaya i/b. MST Legal for petitioner.

Mr. P. P. Kakade, GP a/w. Mr. B. V. Samant, AGP for
respondent No.1-State.

Mr. Nitin V. Gangal a/w. Ms. Perna Shukla a/w. Mr.
Ashok Kadam for respondent Nos. 2 & 3-CIDCO.

Mr. Tejesh Dande a/w. Mr. Krupanshu Nandu for
Respondent No.5.

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE: OCTOBER 13, 2022

JUDGMENT (Per Madhav J. Jamdar, J.) :

1. The petitioner is Chief Editor of Marathi newspaper "Aajchi Navi Mumbai." The petitioner by the present PIL petition is *inter alia* challenging the legality and validity of Work Order dated 3rd September 2019 granted to respondent no.6 for construction of tenements of EWS/LIG under package-II in respect of 3131 number of tenements proposed to be constructed on the plot where presently Truck Terminal at Vashi Node is existing. The present PIL petition *inter alia* challenging the Work Order dated 3rd September 2019 is filed

on 15th December 2021, i.e. after delay of more than 2 years.

2. Before considering the issue regarding delay and laches in filing the present PIL petition, it is necessary to set out certain factual aspects:-

- i. The respondent no.1-State of Maharashtra issued a direction under section 154 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "**the MRTTP Act**"), on 26th February 2018 for modification in the Development Rules of all Planning Authorities, Development Authorities for permitting 2.5 FSI in developing node and 1 FSI in No Development Node as well as Agriculture Node for providing residential units to economically weaker sections/lower income groups.
- ii. On 29th June 2018 the Government of Maharashtra approved modification in the sanctioned development plan of Navi Mumbai Municipal Corporation (hereinafter referred to as "**NMMC**") in respect of permitting 2.5 FSI for Housing Scheme to be undertaken by the NMMC for EWS and LIG.
- iii. Respondent no.2-the City Industrial Development Corporation ("**CIDCO**" for short) approved a proposal on 8th December 2018 for construction of 89,771 tenements(53,483 EWS tenements and 36,288 LIG tenements) on balance FSI/air space available at various bus depot/terminal, truck terminals and railway stations. In the present PIL petition challenge is to housing scheme proposed at Vashi Truck Terminal. Therefore, details mentioned in the said proposal regarding Housing

Scheme to be implemented at Vashi Truck Terminal are set out herein below:-

Proposed Package II: Housing Scheme at various Bus Depot/Terminal & Truck Terminal

Sr. No.	Node/ Location	Sector	Plot area (Ha).	BUA as per 2.5 FSI (Ha)		Type & No. of tenements		Total
				Residential	Commercial	EWS	LIG	
Built up Area per unit (sqft.)						489.90	--	
7.	Vashi Truck Terminal	--	6.01	15.66	1.84	3440	-	3440
Total			28.90	71.91	6.83	15795	-	15795

- iv. In January 2019, CIDCO invited request for qualifications from the eligible contractor for construction of 89,771 tenements for EWS/LIG-I, II and III types dwelling units in four packages at various locations at Navi Mumbai under Pradhan Mantri Awas Yojana ("**PMAY**" for short).
- v. On 3rd September 2019, CIDCO accepted offer of respondent no.6 for construction of approximately 21,346 nos. of EWS/LIG type dwelling units at various locations viz. Kharghar station, Kharghar bus terminal, Panvel bus terminal, Kalamboli bus depot, Kharghar bus depot, Vashi truck terminal & Kharghar sector-44, Navi Mumbai.
- vi. In the meanwhile, respondent no.2-CIDCO after following the procedure under sub section 1 of section 37 of the MRTP Act submitted a proposal of modification to the State Government vide letter dated 17th June 2019 so as to amend the Regulation no.3, 14, 16, 18 and 25 of General Development Control Regulations. The

State Government by exercising power under sub section 2 of section 37 of the MRTTP Act, sanctioned the said proposal and accordingly notification dated 16th July 2020 was issued. The following are the relevant modifications:-

- a) In case of Bus Depot Bus/Truck Terminals the circulation space used for Bus bays/Truck bay shall be under the still.

- b) 14.4.13. Composite Land use:

Composite Use will be allowed only in the plots reserved/designated for Bus Depot, Bus Terminal and Truck Terminal.

Without sub division of the reserved/designated plot, out of the total area 40% of the reserved/designated plot shall be used for original designated purpose along with the other allied facilities on Ground and/or stilt and above that the tenements for the PMAY can be construction of the 60% reserved area shall be used for the construction of the tenements for the PMAY. The F.S.I. for this reserved/designated site shall be 2.50 as permissible for PMAY. The separate Entry and Exist shall be provided for the Designated user and the PMAY.

- c) Composite:

Combination of Residential or/and assembly or/and storage land uses used for housing for EWS/LIG under various State or Central Govt. schemes. Maximum permissible FSI=2.5

The minimum Plot size of 4000.00 sq.mt. And 18.00 mt wide access road is the pre-requisite.

3. It is the main contention of the petitioner that respondent no.2-CIDCO has no jurisdiction to implement the schemes in the areas designated for Navi Mumbai Municipal Corporation. It is submitted that CIDCO by amending GDCR's applicable to them cannot enter upon the area of respondent no.5-Navi Mumbai Municipal Corporation for implementing the construction of EWS/LIG types dwelling units. It is further submitted that where the plot has been earmarked for the purpose of truck terminal, respondent no.2 without taking permission of respondent no.5 is implementing the scheme of PMAY for housing of economically weaker section and lower income group. It is also submitted that final development plan approved by respondent no.1 in respect of the Vashi Node is notified as a Wholesale Market cum Warehousing. The Planning Authority for Vashi node is respondent no.5. Respondent no.2 failed to appreciate that the plot at Vashi node is notified as Wholesale Market cum Warehousing in the Warehousing Zone and in violation of the provisions of the law provided the said plot for housing for EWS/LIG.

4. Affidavit-in-reply dated 19th July 2022 has been filed by Mr. Sanjay Shankarrao Dahedar, Superintending Engineer (HSG-III), CIDCO duly authorized on behalf of respondent nos. 2 and 3. In the said affidavit-in-reply it is contended as follows:-

- i. Navi Mumbai is designated as New Town under section 113 (1) of the MRTP Act and CIDCO is the designated

New Town Development Authority (NTDA) for this project. The lands in this project area are necessarily to be acquired by Government and vested with CIDCO. Thus, the lands in Navi Mumbai are Government owned, acquired for the Navi Mumbai project and vested with the CIDCO as lessor of the land. Thus, unlike any other local authority, where there are privately owned lands, in the area of Navi Mumbai project, entire land belongs to the CIDCO as lessor and Government as owner.

- ii. In the Nodal plans prepared by CIDCO, plots are only earmarked and not “reserved” as sought to be contended by the petitioner for different land uses. The CIDCO, being the New Town Development Authority, has flexibility to allocate the land use of plots which are already earmarked for a particular purpose to different land use as per the requirements considering the entire scenario around a particular plan with due regard to CIDCO approved norms and standards for provision of public facilities/amenities.
- iii. The nodal plans are not statutory plans and as such procedure under MRTP Act need not be followed, nor it is applicable in such cases. The nodal plans as well as sector plans are prepared by CIDCO to meet the public needs and requirements and would be regulated by a set of planning principles for development of Navi Mumbai areas.
- iv. CIDCO enjoys the flexibility to change the land uses of the particular plots as per the requirement. It is pertinent to mention that no specific land use was ever

assigned to the said plots in question. In the area of CIDCO, there are no statutory reservations as such contemplated under the provisions of MRTP Act. However, only the earmarking of particular land uses in the nodal plan is provided. The said earmarking does not amount to statutory reservations. As such rights of lessee in the land owned by CIDCO are crystalized only after execution of Agreement to Lease by CIDCO being Lessor with such Lessee.

- v. The Union of India in aid with other statutory bodies, viz. respondent no.2-CIDCO in the present case, is implementing mass housing scheme under PMAY project. This is flagship mission of Government of India with an object to cater the housing needs of EWS, LIG and MIG categories including slum dwellers by ensuring a decent living for all eligible urban household. For the said purpose, CIDCO was pleased to locate 24 locations in its region for housing about 90,000 families. This is one of the largest affordable housing scheme in the Asian Continent with a view to avoid developing slums in urban agglomeration. The said project is the project of the highest magnitude ever carried out in our country and that restraining the said project in whatsoever manner would incur huge cost from the public exchequer of State and Central Government apart from the inconvenience and loss of labour.
- vi. The present petition takes an exception to the location of the site at Vashi Truck Terminal within the territory of respondent no.5-NMMC. The work order was issued to

respondent no.6 on 16th September 2019, for carrying out works at various sites including the site at Vashi Truck Terminal. The total value of contract price of all sites is about Rs.4,841,97,15,193,00, which includes the site impugned in the present petition.

- vii. The work at Vashi Truck Terminal in sector-19 Vashi consist of 15 nos. of buildings for EWS-B and EWS-C for economically weaker section people. At present, 85% of the piling work for all 15 buildings is completed along with non-tower areas. The work upto plinth level is completed for 2 buildings and columns from plinth level to mezzanine floor is completed. The work for pile cap in 6 buildings is also completed and also further work for remaining buildings is in progress for piling work/pile cap. The total work done till date is about 50 Crores.
- viii. The Vashi Truck Terminal plot admeasures 56.72 sq.mtrs. Wherein CIDCO has proposed to construct 15 residential cum commercial buildings upon the said land with a podium beneath which there will be a truck terminal having an area of 29,200 sq. mtrs.

5. The factual position emerging from the above contentions raised by both the sides shows that impugned work order dated 3rd September 2019 was issued in favour of respondent no.6 for construction of approximately 21,346 number of EWS/LIG type dwelling units at various locations. The PIL petitioner is *inter alia* challenging said work order to the extent of construction of 3131 tenements of EWS proposed to be constructed on the plot at Vashi Node, which is presently utilized as truck terminal. It is significant to note

that as contended in said affidavit-in-reply, the work at Vashi Truck Terminal in sector-19 Vashi consist of 15 nos. of buildings for EWS-B and EWS-C for economically weaker section people. At present, 85% of the piling work for all 15 buildings is completed. The work upto plinth level is completed for 2 buildings and columns from plinth level to mezzanine floor is completed. The work for pile cap in 6 buildings is also completed and also further work for remaining buildings is in progress for piling work/pile cap. The total work done is worth about 50 Crores. The Vashi Truck Terminal plot admeasures 56.720 sq.mtrs. wherein CIDCO has proposed to construct 15 residential cum commercial buildings upon the said land with a podium beneath wherein will be a truck terminal having an area of 29,200 sq. mtrs.

6. Thus it is clear that the project which is being implemented at the said plot is a very important project. The said project is being implemented under PMAY. The project intends to fulfill demands in EWS spectrum housing scheme.

7. As set out earlier, PIL petition *inter alia* challenging work order dated 3rd September 2019 was filed on 15th December 2021. Thus, there is delay of more than two years in challenging said work order. The Supreme Court in **Bombay Dyeing & MFG. Co. Ltd.(3) vs. Bombay Environmental Action Group**¹ extensively dealt with the aspect of delay and laches in filing PIL petition. The relevant portion of the said judgment is reproduced hereinbelow:-

“341. Delay and laches on the part of the writ petitioners indisputably has a role to play in the matter of grant of reliefs in a writ petition. This

¹ (2006) 3 SCC 434

Court in a large number of decisions has categorically laid down that where by reason of delay and/ or laches on the part of the writ petitioners the parties altered their positions and/ or third parties interests have been created, public interest litigations may be summarily dismissed.

Delay although may not be the sole ground for dismissing a public interest litigation in some cases and, thus, each case must be considered having regard to the facts and circumstances obtaining therein, the underlying equitable principles cannot be ignored. As regards applicability of the said principles, public interest litigations are no exceptions. We have heretofore noticed the scope and object of public interest litigation. Delay of such a nature in some cases is considered to be of vital importance. (See *Chairman & MD, BPL Ltd. v. S.P. Gururaja*)

342. In *Narmada Bachao Andolan v. Union of India*² this Court held: (SCC p.762, para 229)

"Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them."

343. In *R & M Trust v. Koramangala Residents Vigilance Group*³ this Court laid down the law in the following terms: (SCC p.109, para 23)

"[S]acrosanct jurisdiction of public interest litigation should be invoked very sparingly and in favour of the vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purposes of serving their private ends."

It was further stated: (SCC p.113, para 34)

"34. There is no doubt that delay is a very

² (2000) 10 SCC 664.

³ (2005) 3 SCC 91.

important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. We cannot disturb a third party interest created on account of delay. Even otherwise also why should the Court come to the rescue of a person who is not vigilant in his rights."

344. In *State of Maharashtra v. Digambar*⁴ this Court held: (SCC p.690, para 14)

"[W]here the High Court grants relief to a citizen or to any person under Article 226 of the Constitution against any person including the State without considering his blameworthy conduct, such as laches, or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the state."

345. However, **we do not intend to lay down a law that delay or laches alone should be the sole ground for throwing out a public interest litigation irrespective of the merit of the matter or the stage thereof. Keeping in view the magnitude of public interest, the court may consider the desirability to relax the rigours of the accepted norms.** We do not accept the explanation in this regard sought to be offered by the writ petitioners. We have no doubt in our mind that the writ petitioners are guilty of serious delay and laches on their part."

(Emphasis added)

8. The above observations of the Supreme Court are squarely applicable to the present case. The petitioner is Chief Editor of Marathi newspaper "Aajchi Navi Mumbai" and, therefore, it would be not unreasonable to infer that being a journalist he is expected to be aware about the said work order dated 3rd September 2019 and commissioning of the said work as per the said work order. In this background, it is significant to note that the petitioner has not offered any explanation for delay and raised the following contention in paragraph 36:

⁴ (1995) 4 SCC 683.

“The Petitioner after seeking legal advice has approached this Hon’ble Court as expeditiously as possible and there is no delay or laches on their part in filing this present Writ Petition.”

Thus there is no explanation offered by the PIL petitioner for filing this PIL petition after a delay of more than 2 years *inter alia* impugning the work order dated 3rd September 2019.

9. In the present case, challenge is to the work order dated 3rd September 2019. The said work order *inter alia* covers construction of 15 buildings for economically weaker section people. The respondent no.2-CIDCO is proposing to construct about 3131 number of tenements for EWS. Respondent no.2-CIDCO in the present case, is implementing mass housing scheme under PMAY project. This is flagship mission of Government of India with an object to cater the housing needs of EWS, LIG and MIG categories including slum dwellers by ensuring a decent living for all eligible urban household. It is pointed out that the work at Vashi Truck Terminal in sector-19, Vashi consist of 15 nos. of buildings for EWS-B and EWS-C for economically weaker section people. At present, 85% of the piling work for all 15 buildings is completed. The work upto plinth level is completed for 2 buildings and columns from plinth level to mezzanine floor is completed. The work for pile cap in 6 buildings is also completed and also further work for remaining buildings is in progress for piling work/pile cap. The total work done is about 50 Crores. If the PIL petition is entertained at this belated stage, then the same

will affect a very important project being implemented under the PMAY and affect many shelterless families who are in need of shelter which is a basic human necessity.

10. Therefore, without going into merits of the case, we dismiss the PIL petition on the ground of delay and laches.

11. No costs.

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(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)