



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

PUBLIC INTEREST LITIGATION NO. 42 OF 2024

PRADEEP BHAGWANRAO KULKARNI

VERSUS

**THE STATE OF MAHARASHTRA THROUGH MINISTRY OF
URBAN DEVELOPMENT AND OTHERS**

....

Mr. Pradeep B. Kulkarni, Party-in-person

Ms Neha Kamble, AGP for the Respondent – State

Mr. A. P. Bhandari, Advocate for Respondent No.2

Mr. Sachin Deshmukh, Advocate for Respondent No.3

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 06.09.2024

PER COURT :-

1. We have heard the learned Advocates for the respective sides, for quite some time. The pleadings set out in this Public Interest Litigation, give us a feeling that the Petitioner has a personal interest in this Petition.

2. The Petitioner has put forth prayer clauses (B) and (C), as under:-

“(B) By issuing appropriate writ, order or direction, the respondent No.2 be directed not to start food park as mentioned in Tender notice dated 23.02.2024 in the Balasaheb Thakre Botanical Garden situated in N-8, CIDCO, Aurangabad.

“(C) By issuing appropriate writ, order or direction, the respondent No.2 be directed not to start any such activity in the public garden, park and ground which would pollute the environment and release the Hazardous waste.”

3. The Petitioner is a practicing Lawyer in this Court. His house is located at Plot No.4, Shivdatta Housing Society, N-8, CIDCO, Chhatrapati Sambhajnagar (Aurangabad), which is said to be abutting the Balasaheb Thakre Botanical Garden, N-8, CIDCO, Chhatrapati Sambhajnagar. This aspect has been suppressed from the Court. It was the Municipal Corporation, that has pointed out that this Public Interest Litigation has the trappings of a personal interest and that the Petitioner's home is within the area where the Balasasaheb Thakre Botanical Garden is situated. He has certain grievance against the activity in the said park and, therefore, he has preferred this Petition, as Party in Person.

4. We have perused the photographs at page Nos. 27 to 29. On page No.27, an entrance gate is constructed by the Municipal Corporation and the sign board indicates as 'Shiv Sena Pramukh Shriman Balasaheb Thakre Botanical Garden'. There are innumerable multi-storey buildings inside the gate on both the sides of the walking path, which actually is a common path that takes the public at large, deep inside the area where a park is situated. This is visible from the first two photographs on page No.27.

5. Much ado has been made by the Petitioner in person and which apparently aims to misguide us that the Botanical Garden commences from the very gate in a street having the banner of Shiv Sena Pramukh Shriman Balasaheb Thakre. A single glance at both the pictures would indicate that it is just a protective gate that has been installed abutting the main road and it is only for identification purpose that the column and beam structure has been erected which in Marathi is normally known as, "Kaman". The kiosks which are sought to be made functional, are way out of and away from the actual park/Garden. On page No.28, the kiosk appears to be on the periphery outside the park. There is a walking track and an open air

gym. A shed has been erected next to the open air gym for the purpose of enabling the residents, who visit the park, to do yoga and exercises.

6. The learned Advocate for the Corporation has tendered an affidavit in reply along with the colour pictures which are placed at page Nos.55 to 57. It is evident that the kiosks are nearer to the Kaman and even beyond these kiosks, there are several multi-storey buildings deep inside. All these structures are beyond the park.

7. The Corporation states in the affidavit-in-reply that the Botanical Garden is adjacent to the Nehru Garden. The garden was maintained by the CIDCO Authorities and subsequently, transferred to the Corporation, which now maintains it. At the entrance of the gated column (Kaman), a path is created in the lane between two colonies, to take the visitors around 300 to 400 meters inside, to where the park is actually located. At the entrance which is abutted by multi-storey buildings on both the sides, a “Khau Galli” has been started and which is far away from the park and nearest to the main road on which the Kaman is erected.

8. The party in person has relied upon the judgment delivered by the Hon'ble Supreme Court in ***M.C. Mehta Vs. Kamal Nath 1997 (1) SCC 388*** and he refers to paragraph 34 and a portion of paragraph 35, which read as under:-

“(34) Our legal system based on English Common Law includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea- shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

(35) WE are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open land in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasing complex society, find it necessary to encroach to some extent open lands heretofore considered in-violate to change. The resolution of this conflict in any given case is for the legislature and not the courts.”

9. He has then relied upon the judgment delivered by the Hon'ble Supreme Court in ***M.I. Builders Private Limited Vs. Radhey Shyam Sahu and others, AIR 1999 SC 2468***. In the said matter, the issue was that the authorities had constructed an underground shopping complex in a park. A high power committee was appointed.

The decision was placed before the Executive Committee as well as the general body of the Corporation. Both approved the construction of an underground shopping complex, though the subject of a shopping complex was not placed on the agenda of their meeting. Taking into account these factors, the Hon'ble Supreme Court referred to ***M.C. Mehta Vs. Kamal Nath*** (supra) and observed as under:-

“On a consideration of the relevant cases cited at the bar the following propositions may be taken as well-established; State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.”

10. There can be no debate as regards the prohibition on setting up of a shopping complex or a commercial complex inside a park or a water body. As like in the case of ***M.I. Builders*** (supra), a shopping mall being constructed below the park by digging the underground area, has been deprecated.

11. In the case before us, a protective gate has been erected at the entrance of the N-8 area, abutting the main road. As one enters from the said main gate, there are multi-storey buildings and colonies, on both the sides, that have been settled since decades. The lane/path between the two colonies and the multi-storey buildings, is converted into a walking path and paver blocks have been laid. This walking path is actually an entrance to the park which is more than 400 meters inside and with multi-storey buildings on both the sides. The Petitioner's (party in person) house is also located in one of the said colonies. The kiosks are right at the main gate, which is more closer to the main road and far away from the park.

12. In the light of these facts, we do not find any reason to entertain this Public Interest Litigation. When residents are residing in multi-storey buildings in colonies adjacent to the area for decades, having legally erected their constructions, these kiosks which are right at the entrance of the main gate would apparently not pose any threat, much less, release 'hazardous waste' as is claimed by the Petitioner. Nevertheless, if in future, the Petitioner notices that inside the actual area of the park, if a botanical garden is set up and if there

are any commercial activities in future in the heart of the Botanical Garden, the Petitioner would be at liberty to point out such instances.

13. In view of the above, **this P I L Petition is disposed off.**

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

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