

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

1008 PUBLIC INTEREST LITIGATION NO. 109 OF 2015

REGISTRAR(JUDICIAL) HIGH COURT OF BOMBAY
BENCH AT AURANGABAD

VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

WITH
WRIT PETITION NO. 1651 OF 2004
IN WP/421/1986

YESHWANT ANANDRAO GOSWAMI
VERSUS
SK ABBAS SK KHAJA AND ORS

...

WITH
PUBLIC INTEREST LITIGATION NO. 38 OF 2015

VIJAY GOVINDRAO SHIRSAT AND ANOTHER
VERSUS
UNION OF INDIA AND OTHERS

...

WITH
CIVIL APPLICATION NO. 2631 OF 2024
IN PIL/109/2015

DIPAK SARUPCHAND JAIN AND ANR
VERSUS
THE REGISTRAR(JUDICIAL) HIGH COURT OF BOMBAY
BENCH AT AURANGABAD AND ORS

...

WITH
WRIT PETITION NO. 2556 OF 2013

RAJENDRA SURESH LOKHANDE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

WITH

CIVIL APPLICATION NO. 3876 OF 2012

IN WP/3865/2008

GHAZI SAADUDDIN GHAZI ZAHIR AHMED

VERSUS

REGISTRAR (ADM.) HIGH COURT BOMBAY BENCH AT
AURANGABAD AND ORS

...

WITH

CIVIL APPLICATION NO. 9257 OF 2012

IN WP/3865/2008

SHAIKH ABBASS SHAIKH SULEIMAN

VERSUS

REGISTRAR (ADM.) HIGH COURT BOMBAY BENCH AT
AURANGABAD AND ORS

...

WITH

CIVIL APPLICATION NO. 9256 OF 2012

IN WP/3865/2008

MIRZA REHMAN BAIG MIRZA GAFFAR

VERSUS

REGISTRAR (ADM.) HIGH COURT BOMBAY BENCH AT
AURANGABAD AND ORS

...

WITH

WRIT PETITION NO. 3865 OF 2008

REGISTRAR (ADM.) HIGH COURT BOMBAY BENCH AT
AURANGABAD

VERSUS

THE STATE OF MAHARASHTRA AND ORS

...

**WITH
CIVIL APPLICATION NO. 4698 OF 2024
IN PIL/109/2015**

SUDHAKAR VIKRAM PHAD
VERSUS
THE REGISTRAR(JUDICIAL) HIGH COURT OF BOMBAY
BENCH AT AURANGABAD AND ORS

...

**WITH
CRIMINAL SUO-MOTU WRIT PETITION NO. 2 OF 2001**

ADDL. REGISTRAR H.C. AURANGABAD
VERSUS
STATE OF MAHARASHTRA AND ORS.

...

**WITH
CIVIL APPLICATION NO. 8414 OF 2023
IN PIL/109/2015**

RAJSARTHI FLAT OWNERS CO-OP. HOUSING SOCIETY
LTD., AURANGABAD THR ITS MEMBER
VERSUS
THE REGISTRAR (JUDICIAL) HON'BLE HIGH COURT OF
JUDICATURE AURANGABAD AND OTHERS

...

**WITH
CIVIL APPLICATION NO. 9974 OF 2017
IN WP/3865/2008**

MINORITIES WELFARE AND UPLIFTMENT TRUST
MUJEEB COLONY AURANGABAD THU SECRETARY
NASER KHAN MOHD KHAN
VERSUS
THE REGISTRAR (ADM.) HIGH COURT BOMBAY BENCH
AT AURANGABAD AND OTHERS

...

**WITH
CIVIL APPLICATION NO. 9934 OF 2023
IN PIL/109/2015**

ADV. T.K. PRABHAKARAN
VERSUS
THE REGISTRAR(JUDICIAL) HIGH COURT OF BOMBAY
BENCH AT AURANGABAD AND ORS

...

**WITH
CIVIL APPLICATION NO. 12658 OF 2018
IN WP/3865/2008**

JAGDIH KESHARAO SAHUJI
VERSUS
ADDITIONAL REGISTRAR HIGH COURT BOMBAY
BENCH AT AURANGABAD AND OTHERS

...

**WITH
CIVIL APPLICATION NO. 13060 OF 2017
IN WP/3865/2008**

SOMNATH GANGADHARRAO BOMBLE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

**WITH
CIVIL APPLICATION NO. 13287 OF 2023
IN CA/8414/2023**

RAJSARTHI FLAT OWNERS CO-OP. HOUSING SOCIETY
LTD., AURANGABAD THR ITS MEMBER
VERSUS
THE REGISTRAR JUDICIAL HON'BLE HIGH COURT OF
JUDICATURE AT BOMBAY BENCH AT AURANGABAD
AND OTHERS

...

**WITH
CIVIL APPLICATION NO. 475 OF 2018
IN WP/3865/2008**

DR BABASAHEB AMBEDKAR MARATHWADA
UNIVERSITY THROUGH REGISTRAR S P PANDE

VERSUS

THE REGISTRAR (ADM.) HIGH COURT BOMBAY BENCH
AT AURANGABAD AND OTHERS

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Shri Abhay Ostwal, Advocate, Amicus Curiae.

Shri Ajit B. Kadethankar, Advocate for the Petitioner.

Shri S.B. Pulkundwar, AGP for Respondent No.1/State.

Shri A.S. Bajaj, Advocate for Respondent Nos.3 and 4.

Shri S.B. Deshpande, Senior Advocate i/by Ms.Anjali Dube
(Bajpai), Advocate for Respondent No.11/ Municipal
Corporation.

Shri V.D. Sapkal, Senior Advocate i/by Shri R.N. Dhakane and
Shri Ashutosh Kulkarni, Advocates for the Applicants in the
concerned Civil Applications.

Shri A.S. Tilve, Advocate for the Applicant in CA No.4698/2024.

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

DATE :- 19th July, 2024

Per Court :-

Civil Application No.4698/2024

1. We have heard the learned Advocate for the
Applicant for quite sometime. The learned Senior Advocate Shri

Deshpande, representing the Municipal Corporation has placed before us the file belonging to the Encroachment Department – 06, pertaining to N-3 CIDCO, High Court–Kamgar Chowk Road. He has pointed out that the present Applicant himself is allegedly engaging in an act of constructing beyond the construction permission granted. Consequentially, an action has been initiated against the present Applicant.

2. The learned Advocate for the Applicant submits that he should not be picked and chosen as a sole example of a law violator. If there are violations by many other people, they should also be proceeded against.

3. The learned Senior Advocate Shri Deshpande submits that the Municipal Corporation would not spare any person, who indulges in an encroachment or constructs in violation of the construction permission.

4. By recording the above statement, **Civil Application No.4698/2024 is disposed off.**

Encroachment in the campus of the University

5. The learned Senior Advocate Shri Deshpande representing the Municipal Corporation submits that the Commissioner of the Municipal Corporation is present in the Court Hall. Insofar as the Dr.Babasaheb Ambedkar Marathwada University, Chhatrapati Sambhajinagar, is concerned, he would be having an urgent meeting with the Vice-Chancellor of the University. The Zone Deputy Commissioner of Police would be accompanying him. In the said meeting, a road map would be chalked out in order to proceed for removal of encroachment in the University. He fairly submits that there are several orders passed in the months of December, 2022 and January, 2023 with regard to the illegal structures including illegal religious structures in the premises of the University. He submits that the development that may take place would be narrated before this Court in this PIL, on 25.07.2024.

High Court Constituted Committee

6. The learned Amicus Curiae Shri Ostwal makes a grievance that the High Court constituted Committee has not met for the last almost three months.

7. The learned Senior Advocate Shri Deshpande submits that since the Commissioner of the Municipal Corporation (Chairman of the Committee), was appointed as an observer for the State of Orissa during the National/ General Elections, he has resumed office only after the results of elections were declared. He would start in right earnest and commence the meetings of the Committee at the earliest. He further submits that as a matter of routine, there will minimum of one meeting of the Committee in a month.

Mezzanine Floors

8. With regard to the Mezzanine Floors, the learned Senior Advocate Shri Deshpande submits that all those commercial establishments, in which, mezzanine floors have been constructed, would be dealt with by applying the same yardstick applied to the establishment 'Icy Spicy'. He tenders a compilation of 35 pages, which in fact, are notices to all such commercial establishments, primarily in the CIDCO Cannought Place, who have constructed mezzanine floors, calling upon them to demolish the said floors, failing which the Municipal

Corporation would initiate an action. The said compilation is marked as ‘Y-9’ for identification.

9. The learned Senior Advocate Shri Sapkal representing the commercial establishment ‘Icy Spicy’, submits that his client has developed an apprehension that the Municipal Corporation is concentrating only on his client’s establishment. When the list of other establishments with illegally constructed mezzanine floors, has been made available to the Municipal Corporation, besides issuing notices below ‘Y-9’, no further steps have been taken. According to him, an eyewash is created by showing that notices are issued and that action is being taken. In fact, no action is taken thereafter, keeping in view that the last notice issued to such commercial establishment is dated 07.05.2024.

10. Shri Deshpande submits that further course of action for removal of such mezzanine floors would be initiated at the earliest and this Court would be apprised of the action taken.

11. Insofar as Civil Application No.13287/2023, is

concerned, the learned Senior Advocate Shri Sapkal submits that the Civil Application filed by the Applicant Rajsarthi flat Owners' Co-operative Housing Society Limited has itself indulged in acts of encroachments. He draws our attention to Page No.115 onwards, which consists of various color photographs. According to him, some of the flat owners in the said building have themselves constructed shops with mezzanine floors. Common passages have been blocked by installing fabricated metal gates. This needs to be considered by the Municipal Corporation Authorities and action needs to be taken even against such shop owners and the commercial establishments. Shri. Sapkal further points out from page No.131 that a shed has been erected even on the terrace of the building by the said society. This is visible from the photographs at page No.120.

12. The learned Senior Advocate Shri Deshpande submits that the Municipal Corporation would not hesitate to proceed against the said Rajsarthi Flat Owners Society by following the due procedure laid down in law and an endeavor would be made to ensure that Mr. Sapkal's client is not required

to make a further complaint of being singled out in the anti-encroachment drive.

13. In view of the above, we expect the learned Senior Advocate Shri Deshpande to address us on this aspect in the next week as regards proposed action to be initiated and further, after four weeks, as regards the actual action taken.

14. Shri Deshpande would endeavor to place the structural audit report of 'Icy Spicy' strictly in accordance with the directions issued by this Court vide order dated 18.04.2024, within four weeks, before the Court.

15. **Stand over to 25.07.2024 at 04:30 PM.**

kps (Y. G. KHOBRADE, J.) (RAVINDRA V. GHUGE, J.)