



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

WRIT PETITION NO. 9741 OF 2024

Purushottam Mohanlal Vyas,
Age-79 years,
Occupation – Advocate High Court,
B/708, Whispering Heights,
Mind Space, Chincholi Bunder Road,
Malad (W), Mumbai – 400064

... PETITIONER

VERSUS

- 1) State of Maharashtra
through Govt. Pleader having its office
in High Court premises, Jalna Road,
Aurangabad
- 2) The Commissioner,
Latur Municipal Corporation,
Latur Mahanagar Palika,
M. G. Road (SH-145),
Sawe Wadi, Latur-413531
- 3) Abdul Sattar S/o Mehtab Khoriwale,
Age – 50 years, Occupation – Agri.,
Near Chandtara Masjid, Pathan Nagar,
Ambejogai Road, Latur
- 4) Digambar Gangadhar Sul
- 5) Deepak Gangadhar Sul

No. 4 and 5 Residing at,
Ambajogai Road,
beside Amba Hanuman Mandir,
Latur, District Latur

- 6) Sanjay Shivdatt Vyas,
- 7) Santosh Shivdatt Vyas
No. 6 and 7 residing at,
Next to Bhakti Jewellers,
Papvinash Road,
Latur – 413512, Maharashtra ... **RESPONDENTS**

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Mr. Mukul Kulkarni, Advocate h/f Mr. U. G. Mitkari, Advocate for the
Petitioner

Ms Neha Kamble, AGP for the Respondent – State

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

**RESERVED ON : 12.09.2024
PRONOUNCED ON : 30.09.2024**

JUDGMENT (PER – Y. G. KHOBRAGADE, J.) :-

1. Rule. Rule made returnable forthwith and heard finally
by the consent of the parties.

2. By the present Petition, the Petitioner set out prayer
clause (a), as under:-

“(a) That this Hon’ble Court be pleased to call for records and after examining the legality and propriety be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order/ Direction to the respondent No.2 inter alia directing the respondent No.2 to take appropriate action of demolition of the illegal structure on the subject plot of land viz. Plot No. 3, S. No. 243, in front of Purushottam Market, Ambejogai Road, Latur.”

3. Having regard to the strenuous submissions canvassed on behalf of both the sides, we have gone through the Petition paper-book. The Petitioner who is a legal practitioner claimed that two Contempt Petitions bearing Nos.411 of 2018 and 192 of 2019, were filed against him by the legal heirs of Govind Sul and Mehtab Khoriwale. In first Contempt Petition, it was alleged that the Petitioner disobeyed the order of status-quo passed on 24.04.2018 in Civil Application No.5533 of 2018 in L.P.A. No.304 of 2010. In second Contempt Petition, the contempt Petitioner alleged about disobeying the order of status-quo in regard to title interest in respect of disputed property which is subject matter of L.P.A. No.304 of 2010.

4. According to the Petitioner, on 25.02.2020, he left for Chicago (USA) to stay with his grand-daughter. He returned on 06.03.2020. However, he was not keeping good health and suffered with Covid-19. Despite his ill-health, on 30.04.2019, he lodged a complaint about raising illegal construction on plot No.3, Survey No.243 in-front of Purushottam Market, Ambejogai Road, Latur. The Petitioner alleged that, he had given permission to Shri Chandraprakash Balkrishna Vyas, Shri Bhanuprakash Balkrishna Vyas, to use the Plot No.1 and he had permitted to Shri Santosh

Shivdatt Vyas and Sanjay Shivdatt Vyas to use his Plot No.3 admeasuring 39.3' X 99' ft, bearing Survey No.243 situated at Ambejogai Road, Latur, bearing C.T.S. No.9876/7.

5. Needless to say that the Petitioner himself claimed that he executed an affidavit on 05.04.2017 before the Notary stating that he is absolute owner of Plot Nos. 1 to 4, which was subject matter of Civil Suit No.364 of 1994 bearing Survey No.243 bearing CTS No.9876/7, situated at Ambejogai Road, Latur. The petitioner further stated in his affidavit that, he handed over actual possession of Plot No.3 admeasuring 39'.3" X 99' to his his nephews Santosh Shivdatt Vyas and Sanjay Shivadatta Vyas. The Petitioner further stated that, he gave Plot No.4 to his son Devanand (Vivekanand) Purushottam Vyas, Hitesh Purushottam Vyas, for carrying their businesses and or to let out the said premises for their benefits. However, the Respondent Nos 3 to 7 have raised unauthorised constructions on his plots without seeking permission, sanction from the competent authorities.

6. In case of City and Industrial Development Corporation-vs-Dosu Aardeshir Bhiwandiwalla and Ors., (2009) 1

SCC 168, the Hon'ble Supreme Court has held that, the High Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether;

- (a) adjudication of writ petition involves any complex and disputed question of facts and whether they can be satisfactorily resolved;
- (b) the petition reveals all material facts;
- (c) the petitioner has any statutory alternative or effective remedy for the resolution of the dispute;
- (d) person involving the jurisdiction is guilty of unexplained delay and laches;
- (e) Ex facie barred by any laws of the limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

7. Needless to say that raising the illegal constructions by the private party on the land owned by the private party it is a private cause and vendetta between the Petitioner and the Respondent Nos. 3 to 7, which involves several disputed questions of facts and it can not be decided without oral as well as documentary evidence about raising illegal/unauthorised constructions on private property of the Petitioner Therefore, as law laid down in case of ***City and Industrial Development Corporation (supra)***, Writ jurisdiction

under Article 226 of the Constitution of India is not amenable. In view of above discussion, the present **Writ Petition is dismissed.** Accordingly, Rule discharged.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

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