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

PUBLIC INTEREST LITIGATION NO. 34 OF 2024

Siddheshwar Mogalappa Kamurti .. Petitioner

Versus

The Bhiwandi Group Vividh Karyakari
Seva Sahakari Soc. Ltd. & Ors. .. Respondents

Mr. Ramdas P. Sabban a/w Mr. Shrikant S. Kompelli and
Arundhati Sabban for petitioner.

Mr. P. P. Kakade, Government Pleader with Mr. O. A.
Chandurkar, Addl. Govt. Pleader and Mrs. Snehal S. Jadhav,
AGP for respondent nos.5 to 9.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE: 11th MARCH, 2024

P.C.:

1. Heard the learned counsel for the petitioner and the
learned Government Pleader representing the respondent nos.
5 to 9.

2. This petition, ostensibly filed in public interest, seeks to
challenge the proceedings of Regular Civil Suit No. 140 of
2023 filed on 10th March, 2023 by the respondent no.4
against the Bhiwandi Nizampur City Municipal Corporation
(hereinafter referred to as "the Corporation"). The other
prayer made in the PIL petition is that the respondent-
Corporation may be directed to take action by demolishing

some structures said to be situated at Survey No. 42/A/3, Mouje – Kamatghar, Bhiwandi, which is said to have been constructed by respondent no.1 – Mr. Kamlakar Kashinath Taware, Chairman of Bhiwandi Group Vividh Karyakari Seva Sahakari Society Ltd., Bhiwandi.

3. Submission of the learned counsel for the petitioner is that the learned Court of Civil Judge, Junior Division, Bhiwandi has entertained the said suit despite the bar of Section 433-A of the Maharashtra Municipal Corporation Act, 1949 (hereinafter referred to as “the Act of 1949”) and, hence, the proceedings of the suit are liable to be quashed. The case, as set up by the petitioner, is that certain illegal constructions had been raised, in respect of which demolition order was passed, however, despite the demolition order, the illegal constructions were not being demolished. The petitioner earlier approached this Court by way of filing PIL No. 92 of 2022 which was disposed of by a coordinate Bench of this Court by means of order dated 30th January, 2023 wherein it was found that certain orders were passed in Civil Suit bearing Regular Civil Suit No. 482 of 2021 filed by the alleged encroacher and that the respondent-Corporation can challenge the said order by filing appropriate proceedings. The

Division Bench also observed, while passing order dated 30th January, 2023, that in case the construction, which was the subject matter of the said PIL petition, was not covered by the order of status quo passed by the Civil Court, then the respondent – Corporation can further proceed in respect of the property not covered by the order of status quo. The Court further observed that it is for the respondent-Corporation to take steps.

4. Learned counsel for the petitioner has stated that in the said Regular Civil Suit No. 482 of 2021, an order was passed by the Civil Judge concerned whereby the order of status quo was vacated, however, after vacation of the said order of status quo, another individual, namely, respondent no.4, who is a member of the respondent no. 1, the Co-operative Society, has now instituted Regular Civil Suit No. 140 of 2023 wherein certain interim injunction orders have been passed on 10th October, 2023, 16th March, 2023 and 21st March, 2023.

5. The submission of the learned counsel for the petitioner is that the said RCS No. 140 of 2023 has been entertained though the learned Civil Court does not have jurisdiction to entertain any such suit in view of the bar created by Section 433-A of the Act of 1949.

6. Having heard the learned counsel for the petitioner and perused the records available before us on this PIL petition, we find that the instant PIL petition is nothing but complete abuse of the process of the Court and law for the reasons set out herein-below.

7. The petitioner has been a Municipal Councilor of the respondent – Corporation since 1985 to 2023. The alleged illegal constructions, as stated by the learned counsel for the petitioner, were raised in the year 2021 and at that time the petitioner was himself a Municipal Councilor. Being a Municipal Councilor, the issue relating to illegal constructions could have been and might have been raised by the petitioner in the proceedings of the House of the respondent-Corporation or otherwise at a forum within the Corporation available to the petitioner. It is not in dispute that some demolition order was passed by the Corporation, however, on institution of RCS No. 140 of 2023, the learned trial Court below has passed interim injunction order. The petitioner, admittedly, is not a party to the said suit. The proceedings in the suit or any orders passed in the suit can be challenged only by the parties to the suit and if a party having some interest has not been impleaded in the suit as a defendant, such a party can seek its

impleadment and take out appropriate proceedings seeking vacation of the order of interim injunction. However, the petitioner, who is a complete stranger to the proceedings of the RCS No. 140 of 2023 cannot, in our considered opinion, be permitted to challenge either the orders passed in the said proceedings or the proceedings of the suit itself by filing a Public Interest Litigation petition.

8. The jurisprudence around the Public Interest Litigation has been developed by Hon'ble Supreme Court and various High Courts in the country in the course of time primarily by relaxing the rule of locus. It is settled law that in any proceeding, party approaching the Court for any action needs to establish its locus, however, having regard to various social conditions and with a view to give a voice to the persons who are in some disadvantaged position because of poverty or any other reason, Hon'ble Supreme Court has developed the entire jurisprudence relating to Public Interest Litigation relaxing the rule of locus. The primary concern of the Court in entertaining a Public Interest Litigation by an individual who does not have any direct locus to the issue being raised is to provide a forum to those who for some or the other reason are in disadvantaged position to approach the Court.

However, such relaxation, in our considered opinion, will not mean that any person or any stranger who is not a party to the suit can be permitted to challenge the proceedings of a civil suit by instituting Public Interest Litigation. The matter pending before the Civil Court is primarily between the plaintiff and the defendant, who, in this case, is the respondent-Corporation. The petitioner in the capacity of a former Councilor, in our opinion, does not have any locus either to challenge the proceedings of the suit or the orders passed by the learned civil court. If there is any legal flaw or illegality or irregularity in entertaining the suit filed before the learned civil court by the respondent no.4, it is for the defendant in the said suit i.e., the respondent-Corporation to take out appropriate proceedings, however, the petitioner cannot be permitted to challenge the said proceedings, that too, by filing a Public Interest Litigation. The relaxation to rule of locus for entertaining a Public Interest Litigation cannot be stretched to the extent of permitting a person, who is a stranger to the proceedings of a suit, to challenge the order passed in the suit or to challenge the proceedings of the suit itself by instituting Public Interest Litigation.

9. For the discussion made above, we are of the opinion that instant PIL petition is nothing short of absolute abuse of the process of the Court and the process of Public Interest Litigation.

10. The PIL petition being devoid of merit is, thus, hereby dismissed.

11. Before parting, we also find it appropriate to impose some costs on the petitioner for filing the instant PIL petition, which we quantify at Rs.10,000/- (Rupees Ten Thousand Only). The said costs shall be deposited by the petitioner within two weeks with the Kirtikar Law Library, High Court, Bombay. The petitioner shall place on record a receipt thereof within three weeks from today.

JAYANT
VISHWANATH
SALUNKE

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(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)