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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 868 OF 2024
IN
PUBLIC INTEREST LITIGATION NO. 54 OF 2017
WITH
PUBLIC INTEREST LITIGATION NO. 54 OF 2017**

Voice Against Illegal Activities .. Applicant

In the matter between:

Voice Against Illegal Activities .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr. Surel Shah i/by Jamshed Ansari & Ayaz Khan for petitioner/applicant.

Mr. Abhay L. Patki, Additional Government Pleader for respondent nos.1 to 6-State.

Ms. Oorja Dhond i/by Mr. S. K. Sonawane for respondent nos.7 and 8.

Mr. Induprakash K. Tripathi i/by C. K. Tripathi for respondent no.9.

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

DATE: 17th APRIL, 2024

P.C.:

1. The affidavit in rejoinder dated 13th April, 2024 to the reply dated 19th November, 2019 of the respondent no.9, tendered on behalf of the petitioner, is taken on record.

2. This Public Interest Litigation petition has been filed seeking a direction to the respondents/authorities to remove illegal encroachments/constructions on a piece of land comprising Plot bearing CTS No.1172, situate in Village Kandivali, Taluka – Borivali, District – Mumbai Suburban.

3. The Court, as far back as on 24th August, 2018 noticed in these proceedings that the plot in question admittedly belongs to the State Government and accordingly passed an order on the said date requiring the State Government to state before this Court as to what steps were proposed to be taken for freeing the said plot from encroachment. The affidavit from the office of the Collector, Mumbai Suburban District, was, thus, required to be filed by the said order dated 24th August, 2018.

4. On 15th March, 2019, the Court passed the following order:

"1. The learned Additional Govt. Pleader would take further instructions as it is admitted fact that there is encroachment on the subject land which is owned by the State as stated in paragraph 7 of the affidavit dated 26 September 2018 filed on 5 March 2019 by Sub Divisional Officer, Mumbai Western Suburban. The question is as to how the authorities will deal with this encroachment.

2. Stand over to 5 April 2019."

5. Thereafter the matter was taken up on 5th April, 2019, when the communication dated 4th April, 2019 from the Sub Divisional Officer, Mumbai Western Suburb to the Additional Government Pleader was taken on record, on the basis of which it was submitted by the learned Addl. Govt. Pleader that encroachments on the subject land will be removed by the end of June 2019. The order dated 5th April, 2019 is also extracted herein-below:

"1. The learned Addl. Government Pleader submits that the encroachment on the subject land would be removed by the end of June 2019. The communication dated 4 April 2019 addressed by Mr. Umesh Birari, Sub

Divisional Officer, Mumbai Western Suburb, to the Addl. G.P., is taken on record.

2. *Stand over to 28 June 2019 for compliance."*

6. It appears, as stated by the learned Addl. Govt. Pleader, that certain steps were taken by the office of the Collector for removal of encroachments, however, respondent no.9 had instituted a Suit against such action, wherein the prayer for interim relief was refused by the learned trial Court. It is also stated by the learned Addl. Govt. Pleader that the learned trial court, where the Suit was filed by the respondent no.9, however, granted protection for a period of three weeks for enabling the respondent no.9 to file an appeal. The said appeal is said to have been filed by the respondent no.9 in the year 2019, where the interim order is said to be continued.

7. Having regard to the aforesaid facts, the Court passed an order on 27th November, 2020, directing that the matter shall stand removed from the list on the statement made by the then Addl. Govt. Pleader who appeared on behalf of the State authorities that appropriate steps will be taken to move an application in the Appeal from Order (Stamp) No. 21105 of 2019 for vacating the ad-interim relief.

8. On 15th September, 2022, the Court again passed an order by adjourning the hearing of the PIL petition *sine die* till disposal of Appeal from Order (Stam) No. 21105 of 2019. Liberty to mention, however, was granted.

9. Today, when the Court made inquiries from the learned Addl. Govt. Pleader as to the current status of the application which was to be moved by the State in the appeal as aforesaid, seeking vacation of the ad-interim relief, we have

been informed that no such application has even been made. Statement on behalf of the State authorities for moving the application for vacating ad-interim relief operating in Appeal from Order (Stamp) No. 21105 of 2019 was made on 27th November, 2020. A period of about three years and six months has lapsed since then, however, no effort appears to be in sight on behalf of the State-respondents to seek vacation of the ad-interim relief granted in favour of respondent no.9 in the Appeal, as aforesaid. Even the application itself has not been moved.

10. Such a situation cannot be appreciated on any count. Admittedly, the land in question is government land and the office of Collector is the custodian of the State property which ultimately belongs to the people. Being a custodian of the State property, it is the duty of the Collector to take appropriate steps, wherever and whenever required, to protect the same. In the instant case, it is apparent that the Collector and his subordinate officers have utterly failed to discharge their duties.

11. We have been informed that the subject land is reserved for garden purposes. It is also stated by the learned counsel for the petitioner that on the subject land various kinds of illegal structures have come up and even third-party rights are being created which further complicate the matter.

12. Aforesaid facts and circumstances compel us to make an observation that the Collector and his subordinate officers have not only been negligent in discharge of their duties but on account of their apathetic attitude, the State land which is reserved for garden spaces has been allowed to be

encroached upon depriving the citizens in the vicinity of their right to clean air.

13. We just cannot appreciate such negligent conduct on the part of the office of the Collector concerned.

14. Learned Addl. Government Pleader, however, assures the Court that the requisite application in the pending Appeal from Order shall be filed within a week and shall be pursued with diligence. On his assurance, we adjourn the matter today and post it on **24th April, 2024 (High on Board)**.

15. Learned Addl. Government Pleader shall, in the meantime, file an affidavit bringing on record the steps which may be taken by the office of the Collector concerned to ensure compliance of this order.

16. We also direct that the Collector concerned shall cause an inspection of the subject plot done in terms of prayer clause (A) of the Interim Application No. 868 of 2024 and a report based on such inspection, shall be prepared and placed before the Court. The inspection shall be carried out within eight weeks.

17. Let a copy of this order be communicated to the Chief Secretary of the State of Maharashtra who shall issue appropriate directions for steps to be taken at the end of the District Collectors in the entire State for taking adequate measures for protecting the State land.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)