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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL PUBLIC INTEREST LITIGATION NO.9 OF 2022

Mahesh Ramchandra Kanade
Age - 58 years, Occ - Advocate
R/o "Parakram", Jaisingpura, Aurangabad
Taluka & District - Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary
Urban Development Department,
Mantralaya, Mumbai
2. The Commissioner,
Municipal Corporation, Aurangabad
Taluka and District - Aurangabad
3. The District Collector
Aurangabad
4. The Commissioner of Police
Aurangabad
5. Pride Ventures Private Limited
Through its Director
Nitin Venuprasad Bagdiya
Age - 51 years, Occ - Business
R/o Railway Station, Aurangabad
6. Rameshchandra Pannalal Vakil
Age - Major, Occ - Business
R/o Pannalal Nagar, Aurangabad
7. Ravindrachandra Pannalal Vakil
Age - Major, Occ - Business
R/o As above
8. Maheshchanra Sureshchandra Vakil
Age - Major, Occ - Business
R/o As above

RESPONDENTS

RESERVED ON : 21st AUGUST, 2025
PRONOUNCED ON : 22nd SEPTEMBER, 2025

JUDGMENT (PER NITIN B. SURYAWANSHI, J.):

1. This Criminal Public Interest Litigation is filed for following relief:

“C. By issuing writ of mandamus or any other appropriate writ order or direction in the like nature, this Hon’ble Court may be pleased to direct the respondent authorities to conduct an inquiry in respect of submission of false documents by the respondent nos. 5 to 8 and officer of respondent no.2 in respect of permission no. 998 and 7 for CTS no. 14813/118 situated at Pannalal Nagar, Aurangabad and in respect of submission of fabricated documents by them and thereafter to register an offence against the respondent nos. 5 to 8 and all concerns and for that purpose issue necessary orders.”

2. The Petitioner, who is a practicing lawyer, has filed present Criminal Public Interest Litigation contending that, Respondents No. 5 to 8 obtained construction permission No. 406/2005 dated 3rd December, 2005, however, no construction was carried out on Plot bearing CTS No.14813/118, situated at Pannalal Nagar, Aurangabad (hereinafter will be referred as “said property”). As per Section 48 of the Maharashtra Regional Town Planning Act, the permission is required to be renewed every year, which is valid up to 3 years and thereafter, it lapses. Respondents No.5 to 8 filed application before the Town Planning Department of Respondent No.2 Municipal Corporation, seeking construction permission in respect of the said property and Respondent No.2,

without following due process of law and guidelines issued by the Government from time to time, issued construction permission No. 998/17-18, on 1st March, 2018.

3. Respondents No.5 to 8 again filed Application seeking revision in construction permission and the authorities of the Municipal Corporation issued revised permission No. 07/20-21 on 14th May, 2020.

4. According to the Petitioner, since the area of construction is 5644.40 square meter, in view of the provisions of Government notification dated 8th November, 2013, 20% of the total plot area is required to be kept for MHADA, however, ignoring this notification, the Authorities have held that since the earlier permission was granted in the year 2005, therefore, provisions of notification dated 8th November, 2013 are not applicable. The Petitioner further contends that it is mentioned in the inspection report of the concerned engineer, in the year 2018 that, the plot was open plot and there is no construction. The construction permission is given on the basis of measurement map prepared by the Taluka Inspector of Land Records and it is prepared on the basis of information given by the land owners and at their instance i.e. Respondents No.5 to 8.

5. The Petitioner claims that incorrect map is prepared, which

is against development plan sanctioned by the Government. The Petitioner has further contended that, the concerned Engineer has shown that there are minor modifications in the reservation of the land for school and some area is converted into residential area from the portion of the said property. As per Government notification dated 29th May, 2004 0.10 Hectare area is deleted from site No. 248 primary school. As per certified copy of the DP plan, given to the Petitioner, deleted area comes to 1375 square meters that means 375 square meter excess land is shown to be deleted in the DP plan. Therefore, 375 Square Meter land is grabbed by Respondents No.5 to 8 in collusion with Officers of the Town Planning Department of the Municipal Corporation.

6. The Petitioner further contends that, while granting construction permission in the year 2005, the then Engineer had specifically mentioned in the Inspection Report at para 18 that, towards east side of the said property, there is nala and there should not be any obstruction to the flow of the said nala and the owner must obtain permission from the concerned Department before seeking construction permission. Respondents No. 5 to 8 have not obtained any permission from the concerned department and without seeking permission, width of the nala is shifted. As per section 20 of the Maharashtra Land Revenue Code, Nala belongs to the State Government and, therefore, for

any permission in respect of Nala for construction, permission of the State Government is necessary.

7. According to the Petitioner, as per building bye laws, construction is not permissible within 6 meter from the edge of water mark of nala, but from the permission granted to Respondents No.5 to 8, it is clear that construction of building "C" is not permissible and the amenities shown in the plan, including swimming pool are not permissible. The Petitioner filed a detail Application / Representation to Respondent No.2 - Commissioner of the Municipal Corporation and prayed for cancellation of commencement certificate issued in the year 2018 and revised in 2020 in favour of Respondents No. 5 to 8 and also requested to register an offence against Respondents No.5 to 8 and all the concerned for grabbing the land and preparation of false documents.

8. The Petitioner had submitted representation dated 10th August, 2021 to the Commissioner of Municipal Corporation making allegations made in the PIL. It is, therefore, submitted that, before seeking writ of mandamus, the Petitioner has approached the concerned authorities. According to the Petitioner, the revised permission is illegal and the same is given by circumventing the mandatory condition of notification dated

8th November, 2013, which mandates 20% of net plot area to be provided for construction to Economical Weaker Section / Lower Income Group tenements, which area has to be handed over to MHADA at the land rate in the annual statement of the land prepared by the Inspector General of Registration of Maharashtra State.

9. On behalf of Respondent No.2, Deputy Director, Town Planning, Municipal Corporation, Aurangabad has filed reply affidavit, stating that, this Criminal Public Interest Litigation is filed without doing any research. Since the Petitioner has given up challenge to the commencement certificate dated 1st March, 2018 and revised permission dated 14th May, 2020, the Petitioner is not entitled to make any grievance regarding grant of permission by the Corporation and on this ground alone, the Criminal Public Interest Litigation is liable to be dismissed. It is averred that, by notification dated 25th May, 2004, reservation of primary school is deleted. Since the Petitioner is making grievance regarding deletion of reservation, after lapse of 18 years, the same may not be entertained. It is also clarified that the area stated in the development plan is shown in the indicative map and the same is required to be measured by the authorities of the land records department.

10. So far as contention of the Petitioner as regards nala, as stated in the inspection carried out in the year 2005, is concerned, it is submitted that, the same refers to water stream and permission was granted by the Corporation, excluding the portion affected by the water stream, for calculating the FSI.

11. *Locus* of the Petitioner is also challenged. It is submitted that the petitioner has failed to point out violation of specific rule. It is further contended that, measurement map at page 30 of the petition clearly indicates that no nala is passing through CTS 14813/118. Yet, the area discovered at the time of physical verification has been deducted while calculating FSI. It is submitted that permission is not lapsed, since development charges were deposited earlier. It is, therefore, contended that no public law element is involved for adjudication in the present PIL and, therefore, the PIL may be dismissed with exemplary cost.

12. Respondents No.5 to 8, by filing reply affidavit, have opposed the PIL, by raising similar contentions, as are raised on behalf of Respondent No.2. It is submitted that the PIL is filed after completion of the construction of 90 flats.

13. Respondent No.5, by filing Criminal Application No. 2933 of 2025, has raised preliminary objection as to the maintainability of the present PIL, *inter alia*, on the grounds that, there is no

allegation of violation of any statutory provision and the allegations of fraud and collusion are not substantiated by documents. Vague allegations are levelled and no public interest is pointed out by the Petitioner. The Petition is based on sweeping and unsubstantiated allegations regarding the land encroachment, misinterpretation of development plan, reservation and purported violation of fire safety. Alternate remedy is available to the Petitioner under the MRTP Act and Unified Development Control and Promotion Regulations (UDCPR), Maharashtra Land Revenue Code and Indian Penal Code. The Petitioner has directly approached this Court without first approaching the statutory authorities. The allegations are vague and unsubstantiated. The PIL is registered without following rules framed by the High Court. PIL is not filed for vindication of rights of any vulnerable class nor does it involve violation of any fundamental right of the marginalized sections. The Petitioner does not belong to any weaker section of the society. The PIL is filed with personal agenda of the Petitioner. Hence, the same may be dismissed.

14. Heard learned Advocates for the respective parties and learned APP at length. Perused the memo of PIL and the documents annexed with it and the affidavits filed on behalf of the Respondents.

15. Initially, this petition was filed as Criminal Writ Petition. On 14th July, 2022, the Petitioner requested permission to delete prayer clause “B”, which reads thus :

“B. By issuing appropriate writ, order or direction in the nature, this Hon’ble Court may be pleased to set aside the commencement certificate 998/17-18 dated 01.03.2018 which is revised on 14.05.2020 bearing No. 7/20-21 and for that purpose issue necessary orders”

The Petitioner also sought permission to convert present Petition into Criminal Public Interest Litigation. The Petitioner was permitted to delete prayer clause “B” and permitted to convert present Petition into Criminal Public Interest Litigation.

16. As the Petitioner has given up prayer clause “B”, we are not going into the merits of the commencement certificate, which was issued to Respondents No. 5 to 8, by Respondent No.2.

17. Claim of the Petitioner that, incorrect map is prepared which is against development plan sanctioned by the Government, relates back to the year 2004-05. On the ground of delay and latches, we refuse to go into the said allegations.

18. Petitioner prays for direction to the Respondent Authorities for conducting an inquiry in respect of submission of false

documents by Respondents No.5 to 8 and Officers of Respondent No.2 in respect of Permissions No. 998 and 7 for CTS No. 14813/118 situated at Pannalal Nagar, Aurangabad and to register an offence against Respondents No.5 to 8 and all the concerned Officers. We find that the allegations made by the Petitioner, about submission of fabricated documents, are vague and are not substantiated by anything worth to be called as evidence. The Petitioner has failed to point out as to which documents are fabricated in the present case. This Court cannot direct a roving inquiry into the vague and unsubstantiated allegations made by the Petitioner.

19. The Petitioner claims that Respondents No.5 to 8 have submitted false documents and on the basis of the said fabricated documents, permission No. 998/17-18 and 7/20-21 for CTS No. 14813/118 is granted and, therefore, offence should be directed to be registered against them.

20. If at all, the Petitioner really had material to substantiate his allegations of forgery and fabrication of documents, being a lawyer, he would have approached the police machinery. He neither approached the police machinery nor has filed private complaint against the Respondents. On failure of the Petitioner to avail alternate efficacious remedy, we refuse to entertain the

present PIL, by which the Petitioner seeks inquiry into unsubstantiated allegations made by him.

21. Public Interest Litigation is a mechanism to protect public from abuse of power and / or inaction of the public authorities. Taking into consideration the facts of the present case, the Petitioner has failed to point out that there is abuse of power on the part of the Respondent authorities. It is well settled that unless there is clear abuse of power, the Court should not interfere in PIL. The Petitioner has failed to bring his case within the above parameters.

22. The Respondents have brought to our notice representation dated 30th September, 2024 made by the Petitioner to the Commissioner of the Corporation, making similar allegations against another builder of Chhatrapati Sambhaji Nagar as are made in the present PIL.

23. Petitioner being a lawyer by profession, he does not belong to EWS or LIG category, therefore, there is no substance in his contention that he is espousing the cause of EWS or LIG category people. It is not the case that the builder has to give away 20% land or constructed area free of cost to MHADA. MHADA has to pay land rate of the said area to the builder. In this view of the matter, we are of the considered view that there is no public

interest involved in the present matter.

24. In view of the aforestated reasons, there is no merit in the PIL and the same is, therefore, dismissed. In the peculiar facts of the present case, we permit the petitioner to withdraw the amount of Rs.50,000/- deposited by him.

25. In view of disposal of the Criminal Public Interest Litigation, Criminal Application No. 2933 of 2025 is disposed of.

[SANDIPKUMAR C. MORE]
JUDGE

[NITIN B. SURYAWANSHI]
JUDGE