

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.21 OF 2024**

Gaurav Vijaysingh Rajput	]	..	Petitioner
vs.			
Ambernath Municipal Council & Ors.	]	..	Respondents

Mr.Dhreeraj Panchange for the Petitioner.

Mr.Rajat Dighe i/b A.S. Rao for Respondent Nos.1 and 2.

Ms.Neha Bhide, GP a/w Mr.O.A. Chandurkar, Addl. GP and Mr.Tejas Kapre, AGP for State-Respondent Nos.3, 4 and 5.

Mr.Suresh Sabrad a/w Pratik Sabrad, Amey Sawant, Neha Zanje and Mallesh Chalwadi i/b Pratik Sabrad for Respondent Nos.6 and 8.

**CORAM : ALOK ARADHE, CJ. &
BHARATI DANGRE, J.**

DATE : 29th JANUARY, 2025.

P.C.

1. With the consent of the learned counsel for the Parties, the Writ Petition is heard finally at admission stage.

2. In this Writ Petition, which has been filed as Public Interest Litigation, the Petitioner *inter alia* seeks a direction to restrain Respondent Nos.1 to 5 from granting development permission for construction of building belonging to Respondent Nos.6 and 7 which is being developed by the Developers Respondent Nos.8 and 9. The PIL in addition seek direction to Respondent-Ambernath Municipal Council

to take action for removal of the encroachment which is made by Respondent Nos.6 to 9 on public road.

3. The learned counsel for the Petitioner submits that Respondent Nos.6 to 9 have encroached the public road and despite representation being made to Ambernath Municipal Council , no action has been taken by it for removal of the encroachment.

4. On the other hand, the learned counsel for Respondent Nos.6 and 8 has disputed the above-said submission made on behalf of the Petitioner and has pointed out that in accordance with the development permission granted by the Municipal Council, Respondent Nos.6 and 8 have completed the construction work and have not encroached on the land belonging to the public.

5. We have considered the rival submissions made by the learned counsel for the Parties. Undoubtedly no individual has a right to encroach on a public road. However, whether or not an individual has encroached a public road is a question of fact, which is disputed in the facts and circumstances of the case. This Court, in exercise of inherent jurisdiction under Article 226 of the Constitution of India cannot determine the disputed question of facts. However, in peculiar facts of the case, we deem it appropriate to issue the following directions:-

i. The Chief Executive Officer of Ambernath Municipal Council, shall issue notice to the Petitioner as well as to the unofficial Respondents and every other person who may be in occupation of the subject land .

- ii. The Chief Executive Officer shall carry out a survey to ascertain the encroachment on the subject land.
 - iii. The Chief Executive Officer shall thereupon afford an opportunity of hearing to all the parties, and to submit the documents in support of their claim.
 - iv. In case, the subject land is found to be a government land, the District Collector, Thane, shall initiate an action for removal of encroachment in accordance with law.
 - v. The aforesaid exercise by the District Collector, Thane, shall be carried out within a period of four weeks from today.
 - vi. The learned Addl. GP undertakes that assistance of police shall be provided to the District Collector Thane, for removal of encroachment from the subject land, if found to be a government land.
 - Vii. Needless to state that any person aggrieved by the order directing removal of the encroachment shall be at liberty to take recourse to such remedy as may be available to them in law.
6. It is clarified that, this Court has not expressed any opinion on the merits of the case.
7. Accordingly, Public Interest Litigation is disposed off.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)