

Pdp

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

PUBLIC INTEREST LITIGATION NO. 76 OF 2024

Vijay Yashwant Gaykhe

.. Petitioner

Versus

The State of Maharashtra & Ors.

.. Respondents

Ms. Siddhi Patil i/by Ms. Manisha Devkar for petitioner.

Mrs. Neha S. Bhide, Govt. Pleader with Mr. O. A. Chandurkar, Addl. Govt. Pleader and Mrs. G. R. Raghuwanshi, AGP for respondent nos.1 to 7 and 11.

Ms. Chaitrali Deshmukh a/w Mr. Mahesh Pawar for respondent nos.8 and 12.

Mr. Shubham Jangam for respondent nos.9 and 10.

Mr. Girish Agrawal for respondent no.13.

**CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.**

DATE: 12th JUNE, 2025

ORAL ORDER [Per Chief Justice]:

1. Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties, heard finally.

2. The petitioner claims to be a social activist. In this writ petition, which has been filed as Public Interest Litigation, the petitioner, *inter alia*, seeks direction to respondents to demolish the illegal structure constructed in Gat No. 467, bearing property no. 1326 at Saikheda Cross Road, Mauje Saikheda, Taluka – Niphad, District – Nashik (hereinafter referred to as “the subject plot”).

3. Learned counsel for the petitioner submits that the respondent no.13 has constructed the illegal structure on the subject plot by encroaching upon certain portion of road and no permissions were sought from any of the authorities. It is further submitted that the said illegal structure is used for commercial purpose. He further submits that despite the letters being addressed to all the respondents-authorities by the petitioner asking them to take action against the illegal construction, no action has been taken by them for removal of the illegal construction.

4. On the other hand learned counsel for the respondent no.13 has disputed above-said submissions made on behalf of the petitioner.

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 a peculiar facts of the case, we deem it appropriate to issue the following directions:-

(a) The Collector, Nashik, shall issue notice to the petitioner as well as to the unofficial respondent and every other person who may be in occupation of the illegal structure on the subject land.

(b) The Collector, Nashik, shall carry out a survey to

ascertain the legality of the structure/encroachment on the subject land.

(c) The Collector, Nashik, shall thereupon afford and opportunity of hearing to all the parties and to submit the documents in support of their claim.

(d) In case the subject structure is found to be illegal/encroached upon public road, the Collector, Nashik shall initiate an action for removal of the same in accordance with law.

(e) The aforesaid exercise by the Collector, Nashik, shall be carried out within a period of four months from today.

(f) The learned Addl. Govt. Pleader undertakes that assistance of police shall be provided to the Collector, Nashik, for removal of illegal structure/encroachment upon public road.

(g) Needless to state that any person aggrieved by the order directing removal of the illegal structure/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. With the aforesaid directions, PIL is disposed of.

(SANDEEP V. MARNE, J.)

(CHIEF JUSTICE)