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

PUBLIC INTEREST LITIGATION NO. 105 OF 2024

Firoz Khurshed Jamshedji

.. Petitioner

Versus

The State of Maharashtra & Ors.

.. Respondents

Mr. Nitin Gangal a/w Prapti Karkera for petitioner.

Mrs. Neha S. Bhide, Govt. Pleader with Mr. O. A. Chandurkar, Addl. Govt. Pleader and Mrs. R. A. Salunkhe, AGP for respondent nos.1 to 5.

Adv. Joshua D'Souza a/w Chirag Sancheti i/by Bulark Solicitor for respondent no.7.

Mr. Durgesh Rege i/by Subodh Pathak for respondent no.8.

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**CORAM: ALOK ARADHE, CJ. &
M. S. KARNIK, J.**

DATE: 22nd APRIL, 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 himself to be a public spirited individual. In this Public Interest Litigation, the petitioner is aggrieved by the illegal construction of a building made on Gat No. 27/2 admeasuring 1561 sq.mtrs., situate at village Ashagad, Taluka-Dahanu, District – Palghar (hereinafter referred to as “the subject plot”).

3. The learned counsel for the petitioner submits that the respondent no.8 has raised illegal construction on the subject plot and same is raised without obtaining any building permission from the competent authority. It is further submitted that the construction raised by the respondent no.8 is within 37 mtrs. width of the National Highway and the respondent no.8 has made construction of the aforesaid building in contravention of the provisions of the Maharashtra Highways Act, 1955. It is further submitted that being aggrieved, the petitioner had made complaint to respondent nos.1 to 7, however, the said respondents have failed to take any action despite order of demolition having been passed by the competent authority. The learned counsel for the petitioner further submits that the aforesaid illegal construction raised by the respondent no.8 cannot be regularized. Therefore, the petitioner is constrained to approach this Court.

4. On the other hand, learned Additional Government Pleader for respondent nos.1 to 5 submitted that Collector, Palghar shall take an appropriate action on the complaint of the petitioner with regard to illegal construction, after affording an opportunity of hearing to petitioner and the respondent no.8 within such time limit as may be fixed by this Court.

5. Learned counsel for the respondent no.8 submits that construction raised by the respondent no.8 is legal and valid and respondent no.8 has already submitted an application for regularization of the construction which has been raised in

violation of the provisions of the Maharashtra Highways Act, 1955.

6. We have considered the rival submissions made on both the sides.

7. The issue whether or not the construction in question has been made is illegal or not and has been made in violation of the Maharashtra Highways Act, 1955 and whether the same can be regularized are the questions of fact which cannot be determined in a proceeding under Article 226 of the Constitution of India. The issue whether the construction is illegal and whether the same can be regularized, at the first instance, is required to be examined by the competent authority. The petitioner has been constrained to approach this Court as the authority has failed to perform its statutory duty.

8. Be that as it may, in the facts and circumstances of the case, we deem it appropriate to issue following directions:

(i) The petitioner as well as respondent no.8 agree to appear before the Collector, Palghar on 5th May, 2025 at 11.00 a.m. The Collector, Palghar, thereupon shall afford an opportunity of hearing to petitioner as well as respondent no.8 and shall decide whether the subject construction raised by the respondent no.8 on Gat No. 27/2 admeasuring 1561 sq.mtrs., situate at village Ashagad, Taluka-Dahanu, District – Palghar is legal or not.

(ii) In case the Collector comes to the conclusion that the construction raised by the respondent no.8 is illegal,

it will be open for him to deal with the application for regularization which has been made by the respondent no.8. Needless to state that Collector shall also hear the petitioner and given an opportunity to file an objection to contend that the construction raised by the respondent no.8 cannot be regularized.

(iii) In case the Collector comes to the conclusion that the construction raised by the respondent no.8 is illegal and cannot be regularized, he shall take an action for removal of the illegal construction in accordance with law.

(iv) The Collector shall pass a speaking order and shall conclude the aforesaid exercise within an outer limit of four months from today.

9. It is clarified that this Court has not expressed any opinion on merits of the matter.

10. Accordingly, PIL is disposed of.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)