

Pdp

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

**PUBLIC INTEREST LITIGATION NO. 211 OF 2023
WITH
INTERIM APPLICATION NO. 12737 OF 2024
AND
INTERIM APPLICATION STAMP NO. 34684 OF 2024**

Jewish Heritage Trust .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr. Abhay S. Khandeparkar, Senior Advocate a/w Adv. Harris Khan, Daniel Pezarkar, Venkatesh Bhandari, Rajashi P. and Esha Malik i/by Raymond Gadkar for petitioner.

Mrs. Neha S. Bhide, Govt. Pleader with Mr. O. A. Chandurkar, Addl. Govt. Pleader and Mrs. G. R. Raghuwanshi, AGP for respondent no.1.

Mr. Rajesh A. Tekale for respondent no.2.

Mr. Jitendra Jagtap for respondent no.4 – MPCB.

Ms. Shital Londhe for respondent no.5.

Mr. Raviraj S. Gamare for respondent nos.6 and 7.

Mr. Balraj Y. Bhandere a/w Premanand K. Torane for respondent no.8.

Mr. Prashant Rathod for applicant in IAST/34684 of 2024.

**CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.
DATE: 16th 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 is a Trust formed by advocates of Jewish Community with an object to manage and protect Jewish

Heritage sites and properties which are entrusted for the use and benefit of Jewish population in India.

3. The contention of the petitioner in the Public Interest Litigation is that plot of land bearing No. 217 is designated as cremation ground, whereas an adjoining plot, namely, land bearing plot no. 209, on which holy Israel tank is situated and the adjoining plots are reserved for beautification of Israel tank for the use and benefit of Jewish community in Panvel.

4. The grievance of the petitioner as projected in this PIL is that on the land bearing Plot Nos.217 and 210, which is designated as above, certain encroachments have been made by respondent nos. 5 to 7 and by various other persons by raising construction of hutments. It is also pleaded in the PIL that respondent nos.5 to 7 are carrying out construction on the land in their occupation. It is averred in the PIL that Israel tank is used for washing the bodies prior to their cremation. The petitioner approached the respondents-authorities by submitting a representation on 9th May, 2023. However, the aforesaid representation has failed to evoke any response. Hence, this PIL.

5. Learned senior counsel for the petitioner submits that the Panvel Municipal Corporation (hereinafter referred to as "the Corporation") is under statutory obligation for removal of encroachment and to keep the water bodies clean. However, despite grievance made in this regard, the Corporation has failed to perform its statutory duties. It is pointed out that during the pendency of the PIL, the Corporation has identified the encroachers and has issued notices to them. However, action is not being taken against the encroachers merely on

the ground that this PIL is pending. It is, therefore, contended that the PIL be disposed of by issuing suitable directions.

6. On the other hand, learned counsel for respondent nos.6 and 7 submits that land bearing Plot No. 210 is recorded in the name of Subhanshah Dargah and the respondents are raising construction on the land bearing Plot No.210 after obtaining permission from the Charity Commissioner and Waqf Board in accordance with law.

7. We have considered the rival submissions made on both the sides and have perused the record. Undoubtedly, under the Maharashtra Regional and Town Planning Act, 1966 and the Maharashtra Municipal Corporations Act, 1949, the Corporation is under a statutory obligation to remove encroachment and to keep the water bodies clean. The issue whether the construction is being raised on land bearing Plot No.210 or land bearing Plot No.217 designated as cremation ground is a question of fact which cannot be determined in exercise of power under Article 226 of the Constitution of India.

8. Therefore, in the peculiar facts and circumstances of the case, we deem it appropriate to issue following directions: -

(a) The Ward Officer, "D" Ward, Panvel Municipal Corporation, shall afford an opportunity of hearing to respondent nos.6 and 7 and all other persons who may be in occupation of the land bearing Plot Nos. 217 and 210.

(b) In case, any person who is found to be in unauthorized occupation or has raised any illegal construction on the land bearing Plot Nos.217 and 210, the Ward Officer, "D" Ward, Panvel Municipal Corporation, shall initiate an action for removal of the encroachment/demolition of the unauthorized construction in accordance with law.

(c) The aforesaid exercise shall be completed within a period of three months from today.

(d) In case the officers of the Panvel Municipal Corporation requires police assistance, they shall make an application to the concerned police station. Thereupon the necessary police assistance shall be provided to them by the concerned police station.

(e) Needless to state that any person aggrieved by the order directing removal of encroachment or demolition of unauthorized construction, shall be at liberty to take recourse to such remedy as may be available to him/it in accordance with law.

(f) It is clarified that this Court has not expressed any opinion on merits of the case.

9. Accordingly, the PIL is disposed of.

10. Interim Applications shall also stand disposed of.

(SANDEEP V. MARNE, J.)

(CHIEF JUSTICE)