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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 29 OF 2025**

Kamlakar Bhagoji Phatkare**.. Petitioner****Versus****Peter Joseph Gonsalves & Ors.****.. Respondents**

Mr. A. A. Siddiquie with Mr. Chowdhari Moin i/by A.
A. Siddiquie & Associates for petitioner.

Ms. Swati Sagvekar for respondent nos.3 and 4.

Mrs. Neha S. Bhide, Govt. Pleader with Mr. O. A.
Chandurkar, Addl. Govt. Pleader and Mrs. G. R.
Raghuwanshi, AGP for respondent no.5.

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

DATE: 23rd APRIL, 2025

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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.** In this writ petition, which has been filed as Public Interest Litigation, the petitioner, *inter alia*, seeks a direction to respondents to take immediate action, including demolition of the illegal construction on land bearing Sub-Division No. 193/4, situate at Nagandas Pada, Nallasopara (East), Taluka Vasai, District Palghar (subject land), which is carried out without required permission from the Competent Authorities.
- 3.** The petitioner claims to be RTI activist and fighting against corruption. According to the petitioner repeated

complaints have been submitted in respect of illegal and unauthorized construction of ground plus five storeyed building on the subject land adjacent to the public school without any permission of the concerned Corporation. However, no action has been taken against the said unauthorized construction.

4. Learned counsel for the petitioner submitted that suitable directions be issued to the concerned District Collector to remove the unauthorized construction in accordance with law.

5. On the other hand, learned counsel appearing for respondent nos.3 and 4 and learned Additional Government Pleader appearing for respondent no.5, submitted that suitable action in accordance with law shall be taken.

6. We have considered the rival submissions made by the learned counsel for the parties.

7. The issue whether or not the alleged illegal construction has been carried out without any permission from the concerned authorities is a question of fact and normally is disputed. The aforesaid fact cannot be adjudicated in exercise of summary jurisdiction under Article 226 of the Constitution of India as this Court normally is not examining disputed question of facts, however, in the peculiar facts and circumstances of the present case we deem it appropriate to issue the following directions:

- (i) The District Collector, Palghar or his authorized representative shall issue notice to the petitioner as well as to concerned persons who may be in occupation of

the subject land.

(ii) Thereupon, the Collector or his authorized representative shall carry out survey to ascertain the illegal construction on the subject land.

(iii) Thereafter, the Collector or his representative shall afford an opportunity of hearing to the parties concerned and to submit documents in support of their claim.

(iv) In case the construction on the subject land is found to be illegal, the District Collector or his authorized representative shall initiate an action for removal of said illegal construction.

(v) The aforesaid exercise shall be carried out within a period of four months from today.

(vi) Learned Additional Government Pleader undertakes that assistance of police shall be provided to the District Collector for removal of construction from the subject land, if found to be illegal.

(vii) Needless to state that any person aggrieved by an order directing removal of illegal construction shall be at liberty to take recourse to such remedy as may be available to him/her in law.

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

8. With the aforesaid directions, PIL is disposed of.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)