

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. 2 OF 2025

Faiyyaz Mullaji

....*Petitioner*

: *Versus* :

The Brihanmumbai Mahanagar
Palika and Ors.

....*Respondents*

Mr. Rakesh K. Agrawal, *for the Petitioner.*

Ms. Oorja Dhond *i/b Ms. Komal R. Punjabi, for the Respondent Nos.1 to 3-MCGM.*

Mr. Anirudh Hariani *with Mr. Anirban Sen i/b Indus Law, for Respondent No.4.*

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

DATED : 4 JULY 2025.

P.C.:

1) With the consent of the learned counsel for the parties, the Public Interest Litigation is heard finally at admission stage.

2) In this Public Interest Litigation, the Petitioner, *inter-alia*, seeks a direction to Respondent Nos. 2 and 3 to take action and demolish the Building, which is allegedly illegal, constructed on plot bearing New Survey No. 1379 situated at Street No.28, 1st Agiary Lane, C-Ward of Mumbai Municipal Corporation (**the said building**). The PIL, in addition, seeks a direction to Respondent No.1-MCGM to prosecute concerned

officials of Respondent Nos. 2 and 3 under Mumbai Municipal Corporations Act, 1988 and Indian Penal Code for deliberate inaction and defiance of orders passed by this Court in Suo-Moto PIL No. 1 of 2020. The grievance of the Petitioner is that the said building is constructed after demolition of the old structure without securing any development permission.

3) The learned counsel for the Petitioner submits the said building is constructed without securing any development permission. That Respondent Nos.2 to 3 have not demolished the said building situated despite representations being made to Respondent Nos.2 and 3.

4) On the other hand, the learned counsel for Respondent Nos.1 to 3 has disputed the abovesaid submission made on behalf of the Petitioner and have pointed out that what is carried out is only repair works of the old structure. That the work is carried out after securing due permissions from the competent authorities. That Respondent No.4 has completed the repairs work and the petition suffers from delay. Credentials of Petitioner in filing the PIL are also questioned.

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 land. Equally correct is the position that all constructions must be carried out after securing the development permission and strictly in conformity with the sanctioned plans, However, whether or not an individual has encroached a public road and whether the construction is erected in accordance with sanctioned plans or not are questions of fact, which are disputed in the facts and circumstances of the case. This Court, in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India cannot determine the disputed questions of facts.

However, in peculiar facts of this case, we deem it appropriate to issue the following directions:

- i. The Assistant Municipal Commissioner, C Ward, shall ascertain whether the construction of the said building is carried out after securing due permissions. While doing so, he shall issue notice to the Petitioner as well as to Respondent Nos. 3 and 4 and offer them opportunity of hearing. If occupants of the building are interested they can also participate in such hearing.
- ii. In case it is found that the construction of the building is carried out without securing the requisite permissions, the Assistant Municipal Commissioner, C Ward shall proceed to take action in respect of the construction in accordance with law.
- iii. Needless to observe that any person aggrieved by the order directing removal of construction 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.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]

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