



2022 DGLS(Bom.) 3042
(BOMBAY HIGH COURT)

Equivalent Citations :-

Before :- Dipankar Datta : M.J. Jamdar :JJ

Sarathi Seva Sangh and Another
Versus
Mumbai Municipal Corporation and Others

Case No. : Public Interest Litigation No.43 of 2022
Date of Decision : 27-09-2022

Acts Referred :

Constitution of India,Art.226
Maharashtra Municipal Corporations Act,S.267(A)
Maharashtra Municipal Corporations Act,S.152(A)

Cases Referred :

1. Aleemuddin Vs. State of Uttar Pradesh and Others;2019 AIR(SCW) 276 : 2019 AIR(SC) 276 : 2018 Scale (15) 726 : 2018 DGLS(SC) 1295 : 2020 SCC (18) 419 :
2. Grace Estate Development Venture Vs. Municipal Corporation of Greater Mumbai and Others;2019 DGLS(Bom.) 957 : 2020 Bom.C.R. (1) 684 :
3. Peoples Union For Democratic Rights Vs. Union of India;1982 AIR(SC) 1473 : 1982 DGLS(SC) 148 : 1982 Scale (1) 818 : 1982 SCC (3) 235 :
4. State of Uttaranchal Vs. Balwant Singh Chaufal and Others;2010 AIR(SC) 2550 : 2010 DGLS(SC) 59 : 2010 JT (1) 329 : 2010 Scale (1) 492 : 2010 SCC (3) 402 : 2010 SCC(Cri) (2) 81 : 2010 Supreme (1) 227 :
5. Kushum Lata Vs. Union of India and Others;2006 AIR(SC) 2643 : 2006 AIR(SCW) 3543 : 2006 DGLS(SC) 536 : 2006 JT (6) 293 : 2006 MLJ (3) 298 : 2006 Scale (7) 41 : 2006 SCC (6) 180 : 2006 Supreme (5) 843 : 2006 JCR(SC) (4) 159 :
6. Janata Dal. Vs. H.S.Chowdhary.;1993 AIR(SC) 892 : 1993 Cri.L.J. 600 : 1992 DGLS(SC) 537 : 1992 JT (5) 213 : 1992 Scale (2) 338 : 1992 SCC (4) 305 :
7. Kazi Lhendup Dorji Vs. Central Bureau of Investigation;1994 DGLS(SC) 352 : 1994 JT (3)



140 : 1994 Scale (2) 428 : 1994 SCC (Supp.2) 116 : 1994 SCC(Cri) 873 :
8. Ramjas Foundation Vs. Union of India;1993 AIR(SC) 852 : 1992 DGLS(SC) 768 : 1992 JT (Supp.1) 370 : 1992 Scale (3) 121 : 1993 SCC (Supp.2) 20 :
9. K.R.Srinivas: K.V.Ramana Vs. R.M.Premchand;1994 DGLS(SC) 911 : 1997 JT (10) 608 : 1994 Scale (4) 436 : 1994 SCC (6) 620 :
10. Balco Employees Union Vs. Union of India;2002 AIR(SC) 350 : 2001 AIR(SCW) 5135 : 2001 DGLS(SC) 1508 : 2001 JT (10) 466 : 2001 Scale (8) 541 : 2002 SCC (2) 333 : 2001 Supreme (8) 660 :
11. Kalyaneshwari Vs. Union of India and Others;2011 DGLS(SC) 68 : 2011 JT (2) 38 : 2011 Scale (1) 651 : 2011 SCC (3) 287 :

Advocates Appeared :

Mr. Ranjit Bhosale along with Mr. Rakesh Agrawal, Advocate for the Petitioners.
Dr. Milind Sathe, senior advocate along with Mr. K.H. Mastakar, Advocate for the Respondent Nos. 1 and 2 (MCGM).
Mr. Aspi Chinoy, senior advocate along with Dr. Birendra Saraf, senior advocate along with Mr. Murtuza Federal and Ms. Rashne Mulla-Feroze instructed by Federal & Company, for the Respondent No. 3.

JUDGMENT :

Per Madhav J. Jamdar, J. :-

1. The Supreme Court has time and again held that the High Courts must remain vigilant to the attempts to misuse PILs to subserve extraneous and motivated purposes. It has been consistently held that such efforts must be dealt with firmly. High prerogative writs cannot be utilised for such ends. [Aleemuddin vs. State of Uttar Pradesh and Ors., reported in (2020) 18 SCC 419] This case is a classic example of the abuse of the PIL jurisdiction of this Court.

2. The petitioner no.1 claims to be a society, incorporated under the provisions of Societies Registration Act, 1860. The petitioner no.1 claims that it has been incorporated with an object to promote ecology and render services to social and down to stream people. The petitioner no. 2 is an individual. What is the relationship between the petitioner no. 1 or members of the petitioner no.1 and the petitioner no. 2 is not disclosed in the petition. Why petitioner nos. 1 and 2 jointly took decision to file this PIL, how they came together, how the decision is taken, all these aspects are conspicuous by non-disclosure.



3. The PIL is filed seeking setting aside of the amended plan approved on 26th March 2021 to the extent of granting an additional 0.73 Floor Space Index (hereafter “FSI”) to the plot in question namely C.S. no. 2 (part), Plot ‘E’, known as Shah House situated at Dr. A.B. Road, Worli Division, ‘G’ South Ward, Mumbai - 400 018, considering notional plot area of said plot as 3124.09 sq.mts when actual physical area admeasures 1672.26 sq. mtrs. The petitioner has also made further prayer to recompute the Floor Space Index by deducting additional 0.73 FSI and for demolition of the constructions made by the respondent no. 3 by consuming additional 0.73 FSI. The petitioner has also made alternative prayer to the effect that the Municipal Commissioner of respondent no.1 be directed to decide complaint/notice dated 17th August, 2021 within thirty days or such period as directed by this Court.

4. We have heard Mr. Ranjit Bhosale, learned advocate appearing for the petitioners, Dr. Milind Sathe, learned senior counsel for the respondent nos. 1 and 2 and Mr. Aspi Chinoy, learned senior counsel for the respondent no. 3.

5. Mr. Ranjit Bhosale, learned advocate for the petitioners submitted that the actual and physical area of the said plot is 1672.26 sq. mtrs. and therefore, notionally considering said plot area as 3124.09 sq. mtrs. and granting FSI on such notional plot area is totally illegal. He pointed out definition of site and FSI defined under Regulation 2 (109) and Regulation 2 (61) of the Development Control and Promotional Regulation, 2034 (hereinafter referred to as “DCPR”). He also relied on Clause 8 of Regulation 33 (6). He submitted that the respondent no. 1 has illegally granted fungible FSI and zonal FSI and therefore the petitioners are constrained to approach this Court seeking the reliefs as sought in the petition. He relied on judgment of a Co-ordinate Bench of this Court in the matter between Grace Estate Development Venture Vs. Municipal Corporation of Greater Mumbai and Others, reported in 2020 (1) Bom. C.R. 684, to substantiate his contention that FSI cannot be granted on the notional plot area and actual plot area has to be taken into consideration.

6. Mr. Milind Sathe, learned senior counsel appearing for respondent nos.1 and 2 submitted that the PIL is not filed in public interest. Why this particular project is targeted is not explained. The learned senior counsel submitted that plot in question namely plot ‘E’ is not a sub-divided plot and it is a part of larger plot admeasuring 12422.02 sq.mtrs. The demolished building on plot ‘E’ was having built up area of 5186.73 sq.mtrs and therefore, land entitlement of this built up area was 3124.54 sq.mtrs. which was taken into consideration while processing the plans. Learned senior counsel submitted that the same is in conformity with Regulation 33(6) of DCPR. He submitted that therefore, there is no illegality in sanctioning of the plan. He submitted that the FSI granted is in accordance with DCPR and therefore there is no substance in the contention that additional FSI has been granted in violation of the various



provisions of DCPR.

7. Mr. Aspi Chinoy, learned senior counsel appearing on behalf of the respondent no.3 pointed out the MCGM approved layout plan dated 9th May 1964. He submitted that as per said approved layout plan, building no. 'E' utilised the FSI of 1.66 sq. mtrs. i.e. 5186.77 sq.mtrs. equivalent to 3124.09 sq. mtrs. of plot area. He submitted that on or about 7th November 1974, the owners of the said entire land without effecting partition by metes and bounds and without effecting sub-division allotted plots A to G amongst themselves. Therefore, there is no sub-division of the larger plot of land. These plots A to G were carved out by excluding the area used for roads and open areas of the larger plot.

8. Mr. Chinoy, learned senior counsel pointed out deed of confirmation dated 15th December 2005 and Indenture of Lease dated 18th February 2005. He submitted that the lease deed specifically gives right for putting up any additional construction vertically or horizontally on the said plot or on any property including the adjoining property and gives right to load FSI, TDR or any other building potential of any other property on any of the structures constructed or to be constructed on the said plot. He submitted that the owners of the other plots namely A, B, C and D have not taken any objection and therefore, granting of FSI as done by the Corporation is not illegal. He submitted that the judgment in Grace Estate (supra) is not applicable as in that case other societies raised the objection to grant of FIS. He submitted that the said judgment is distinguishable on facts as in the present case, the lease deed gives specific right to avail the additional FSI and other co-owners have not objected for grant of said FSI.

9. Before considering the rival contentions on merits, it is necessary to see whether the present litigation is filed in the public interest or for extraneous consideration or is motivated.

10. The Supreme Court in Peoples Union for Democratic Rights and Ors. vs. Union of India and Ors., reported in (1982) 3 SCC 235, while explaining the importance of PIL has held that:

“2. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically dis-advantaged position should not go unnoticed and unredressed. That would be destructive of the rule of law which forms one of the essential elements of public interest in any democratic form of Government.”

In the said judgment the Supreme Court held that the public interest litigation is a



cooperative or collaborative effort on the part of the petitioner, the state or public authority and the Court to secure observance of the constitutional or human rights, legal rights, benefits and privileges conferred upon the vulnerable sections of the community. The aforesaid observations of the Supreme Court clearly show the importance of Public Interest Litigation.

11. The Supreme Court in *State of Uttaranchal Vs. Balwant Singh Chaufal & Ors.*, reported in (2010) 3 SCC 402, discussed how over a period of time the sphere of public interest litigation has broadened. It has been held that broadly the public interest litigation can be divided in three phases/ categories:

“Phase I.-- It deals with cases of this Court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginalised groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this court or the High Courts.

Phase II.-- It deals with the cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments etc. etc. Phase III.-- It deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance.”

12. The Supreme Court emphasized the importance of PIL Jurisdiction in *State of Uttaranchal* (supra) in paragraphs 31 and 36 as follows:-

“31. According to our opinion the public interest litigation is an extremely important jurisdiction exercised by the Supreme Court and the High Courts. The Courts in a number of cases have given important directions and passed orders which have brought positive changes in the country. The Courts’ directions have immensely benefited marginalised sections of the society in a number of cases. It has also helped in protection and preservation of ecology, environment, forests, marine life, wildlife etc. etc. The courts’ directions to some extent have helped in maintaining probity and transparency in the public life.”

“36. Public interest litigation is not in the nature of adversarial litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Government and its officers must welcome public interest litigation because it would provide them an occasion to examine whether the poor and the downtrodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at



the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements.”

13. Thus, importance of PIL and the significant impact of the orders passed in PIL on the Citizens of India particularly, on the weaker section cannot be undermined. However, there are several instances noticed by the Supreme Court as well as the High Courts where it has been found that such an important jurisdiction is abused for extraneous and motivated purposes.

14. In *Kushum Lata Vs. Union of India and Ors.*, reported in (2006) 6 SCC 180, the Supreme Court discussed the abuse of PIL in the following words:

“5. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be “publicity interest litigation” or “private interest litigation” or “politics interest litigation” or the latest trend “paise income litigation”. The High Court has found that the case at hand belongs to the second category. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreak vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. The courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in *Janata Dal v. H.S. Chowdhary* (1992) 4 SCC 305 : 1993 SCC (Cri) 36 and *Kazi Lhendup Dorji v. CBI*. 1(1994) Supp (2) SCC 116 : 1994 SCC (Cri) 873. A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. (See *Ramjas Foundation v. Union of India* (1993) Supp (2) SCC 20 : AIR 1993 SC 852 and *K.R. Srinivas v. R.M. Premchand.*) (1994) 6 SCC 620.”



15. The Supreme Court noted abuse of PIL in paragraphs 143 and 144 of State of Uttaranchal (supra) and observed as follows:

“143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts.”

“144. In BALCO Employees’ Union v. Union of India 98 (2002) 2 SCC 333 : AIR 2002 SC 350, this Court recognised that there have been, in recent times, increasing instances of abuse of public interest litigation. Accordingly, the court has devised a number of strategies to ensure that the attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. Firstly, the Supreme Court has limited standing in PIL to individuals “acting bona fide”. Secondly, the Supreme Court has sanctioned the imposition of “exemplary costs” as a deterrent against frivolous and vexatious public interest litigations. Thirdly, the Supreme Court has instructed the High Courts to be more selective in entertaining the public interest litigations.”

16. In view of rampant abuse of PIL, the Supreme Court in paragraph 181 in State of Uttaranchal (supra) issued certain directions. The said paragraph 181 reads as under:-

“181. We have carefully considered the facts of the present case. We have also examined the law declared by this court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of



this court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.”

17. The Supreme Court in *Kalyaneshwari vs. Union of India and Ors.*, reported in (2011) 3 SCC 287, reiterated that great care has to be taken before exercising jurisdiction and deciding a PIL. The relevant discussion in this behalf is reproduced hereinbelow for ready reference:

“43. The courts, while exercising jurisdiction and deciding a public interest litigation, have to take great care, primarily, for the reason that wide jurisdiction should not become a source of abuse of process of law by disgruntled litigant. Such careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose true facts and approach the Court with clean hands. Thus, it is imperative that the petitions, which are bona fide and in public interest alone, be entertained in this category. Abuse of process of law is essentially opposed to any public interest. One who abuses the process of law, cannot be said to serve any public interest, much less, a larger public interest. In the name of the poor let the rich litigant not achieve their end of becoming richer by instituting such set of petitions to ban such activities.”

18. As noted earlier the Supreme Court in *Aleemuddin* (supra) reminded the High Courts to



remain vigilant to the attempts to misuse of PILs to subserve extraneous and motivated purposes. Such efforts must be dealt with firmly.

High prerogative writs cannot be utilised for such ends.

19. Thus, it is settled position that before entertaining PIL, a duty has been cast on the High Court to verify that the PIL is genuine and bonafide and substantial public interest is involved in the PIL. In view of this settled position, we will examine whether the present PIL is filed in the public interest.

20. As noted above, the petitioner no.1 is a society registered under the provisions of the Societies Registration Act. The petitioners claim that the petitioner no. 1 has been incorporated with an object to promote ecology and render services to social and down to stream people. The petitioners have not annexed Memorandum of Association of said society with the petition memo to demonstrate that the society has been formed with the said object. As we wanted to verify whether the PIL is filed in public interest, we directed the petitioners to produce the same and accordingly, petitioners produced Memorandum of Association of the petitioner no. 1- society alongwith their advocate's letter dated 15th September 2022. The said Memorandum of Association of Sarthi Seva Sangh shows that following are the objectives of the Society:-

"OBJECT OF SOCIETY :

1. To create unity, brotherhood etc. amongst the members of the Society and General Public.
2. To help the Members and General Public by providing free legal aid and assistance to them.
3. To solve the problems of Members and General Public time to time.
4. To file PIL, Writ Petition against complaint illegality Anti Social Element.
5. To implement the Scheme of Government, Semi Government and Municipal Corporation subjects to their conditions.
6. To run and organize social activities and programs for the benefit of the Society.
7. To create Social, Cultural, Educational awakening amongst the Members.



8. To work for the welfare and development of the Members and General Public through various programs, lectures, demonstrations and other activities.

9. To give educational help to poor and deserving students.

10. To give Medical help to the poor peoples.

11. To arrange Medical Camps.

12. To perform social and cultural activities.

13. To provide relief to the people who are affected by Natural Calamities.

14. To do such other things which are incidental conducive to attainment of above objects."

[Note: Copy of Memorandum of Association submitted in Court shows that Clause Nos. 4 and 5 are struck off]

21. The said objects of the petitioner no.1-society do not show that one of the objects of the society is to promote ecology. The petitioners have made following solemn statement in paragraph 1 of the PIL:-

"1.....The Petitioner no.1 has been incorporated with an object to promote ecology and render services to social and down to stream people."

22. A bare perusal of the objects of the society clearly show that to promote ecology is not the object of the society. The said statement in the PIL as set out above is not at all correct. It is further significant to note that the petition has been affirmed by the petitioner no.2 who has nothing to do with the petitioner no.1-society. As set out earlier how the petitioner no.1 is concerned with the petitioner no.2 is not at all disclosed in the PIL petition. Thus, it is clear that the petitioners have not approached this Court with clean hands.

23. It is further significant to note that the office bearers and members of the said society are staying at Bandra and Kurla locality of Mumbai and the plot in question is at Worli. The said details are set out hereinbelow:

Sr. Names & Address of Designation



No. office bearers and

members of petitioner

no.1-society

1. Mr. Sayed Shoukat President

Abbas 1709/A, Bharat

Nagar, Bandra (E),

Mumbai 400051.

2. Mr. Abdul Bayan 8/104, Vice President Kapadia Nagar, Kurla PIL-43.2022-.doc (W), Mumbai 400070.

3. Mr. Mir Mozam Ali S. No. Secretary

341, Kala Nagar, BKC

Road, Bandra (E),

Mumbai 400051.

4. Mr. Mir Safder Ali Treasurer

04/306, Kapadia Nagar,

Kurla (W), Mumbai

400070.

5. Mr. Sanjay Gupta Member

Shastri Nagar, C.T.S No.



629 (pt), Bandra (E),

Mumbai 400051.

6. Mr. Mohamad Aslam Member

Shaikh Shop No. 2, Plot

No. 1, Bharat Nagar,

Bandra (E), Mumbai

400051.

7. Mr. Shaikh Jabbar Member

Islampura, 1709/B,

Bharat Nagar, Bandra

(E), Mumbai 400051.

24. It is further significant to note that the present PIL has been lodged on 27th September 2021 and the Resolution dated 19th September 2021 was passed by the society authorising filing of this PIL. The said Resolution does not show that the office bearers and members of the said society are aware about the factual position involved in this PIL and that the respondent no. 1- society took conscious decision to file the present PIL. The Resolution is vague and of general nature. The said Resolution reads as under:

RESOLUTION "RESOLVED THAT" the Hon'ble Secretary Mr. Mir Mozam Ali of the society is duly authorised on behalf of the society to file Vakalatnama, Petitions including PIL, Reply, Rejoinder, Written Statement, Suit or any other proceeding.

Further, to sign and file or withdraw Application, Public Interest Litigation, Contempt Petition, Criminal Application, Writ Petition, Review, Sit Dispute, proceeding before Judicial, Quasi-Judicial, Administrative Authorities writ petition (civil/criminal), Special Leave Petitions (civil/criminal), Appeal from Order, First Appeal, Claims, Consent Term and Counter Claims, Appeals, Applications, Affidavits, Vakalatnama and writing of every description and or nature



as may be necessary to be signed, verified and /or executed for the purpose of any disputes, Suit, Action, Appeals and proceedings of any kind whatsoever before any court of law whether of original, Appellate or Criminal or Divisional Jurisdiction and to do all acts and appearance and Application and or evidence in any such proceeding bought or commenced and to defend, answer or oppose the same and to execute such Decree or order as the said person shall be advised or think proper and to sign or execute and Application, Affidavits or other documents or writing relating thereto before the Hon'ble High Court or Hon'ble Supreme Court of India.

To appoint and engage Advocates, Solicitors, Sr. Counsel/Advocate in such proceedings and to agree to pay and pay their fees and cost in accordance with law.

To do all necessary acts, deeds, steps, etc, to properly prosecute and or defend (as the case may be) such proceedings including giving of evidence on behalf of society.

Further he authorised to execute all documents, affidavits, complaints, Petitions, SLP, Applications etc. and to do all the deeds, acts, required for the same and also expends society's fund being legal expenses.

We confirm that the society shall bind by the action through the hands of said Mr. Mir Mozam Ali Proposed by: Mohammed Aslam Shaikh Seconded by : Shaikh Jabbar Carried unanimously.

Dated : 19.09.2021 Place : Mumbai”

25. The above position clearly demonstrate the casual manner in which the petitioner no. 1 took decision to file this PIL. The judgments of the Supreme Court referred hereinabove set out the importance of PILs. The petitioners have invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India by filing PIL. There is nothing in the Resolution to demonstrate that the petitioner no.1 took conscious decision to file PIL.

26. It is further significant to note that the petitioners have very specifically stated in the petition that the petitioners have noticed only this case where there is violation of DCPR. The relevant averment in this behalf is found on page 19 of the PIL in paragraph 20(c) which reads thus:

“(c) The present is the only case that came to the notice of the Petitioners where there is an apparent violation of Development Control and Promotional Regulation, 2034 favoring Respondent No. 3 for reasons and extraneous consideration, in the manner stated.



27. It is very well-known that in the city like Mumbai, there are large number of unauthorised and illegal constructions which are carried out without taking permission from planning authority. There are several projects in which FSI violations have taken place. There are several slum projects where number of slum dwellers residing in slum areas in Mumbai are inflated to avail extra FSI in illegal manner.

28. In fact, this Court was required to take suo motu cognizance of collapse of unauthorised structures / buildings resulting into loss of lives, numbered as Suo Motu PIL Litigation No. 1 of 2020. A Co-ordinate Bench of this Court to which one of us (the Chief Justice) was a member issued several directions in paragraph 101 of the said order. The said paragraph 101 is reproduced hereinbelow:

“101. It is with the above parting words, we close the present proceedings by the following orders:

ORDERS

i) We accept the report of the learned Commissioner on the questions as framed by us in terms of the findings as recorded by the learned Commissioner qua each of such questions.

ii) In particular we accept the following findings of the learned Commissioner in regard to question no. (h) and direct the Principal Secretary to initiate action against the Municipal and State Government officials and Employees in the manner as directed in the subsequent part of this order:

“MCGM being the local authority for Greater Mumbai, which includes Malwani Village, Officials of the MCGM viz. Junior Engineer and Building Mukadam attached to the Office of the Designated Officer of MCGM for Malwani Village were responsible to maintain vigil and supervision in respect of unauthorized developments at Malwani Village.

Similarly, since the said unauthorized construction was on the State Government land, Officials from the Office of the Additional Collector (ENC), Malad 2 viz. the Surveyor in the Office of the Deputy Collector (ENC / Removal), Malad 2 was responsible to maintain vigil and supervision in respect of unauthorized developments on Government land at Malwani Village.”

iii) The planning authorities through its Competent Officers shall keep informed the Urban Development Department of the Government of Maharashtra on the numbers of illegal constructions in the respective municipal and jurisdictional areas and the action being taken in



regard to such illegal constructions, which shall be notified on the website of the planning authority.

iv) The names and designations of the officers/Municipal Officers and employees in charge of the respective municipal and jurisdictional areas, reposed with the authority to initiate action in regard to the illegal, unauthorized and ruinous structures, shall be notified by the planning authorities/ Municipal Corporations ward-wise on its official websites, so that accountability can be attributed and fixed in deciding complaints which may be filed by the aggrieved persons.

v) Municipal Commissioner and/or the competent authority of a designated planning authority, is directed to take a review of the illegal buildings/structures in every ward and actions taken thereon, periodically between the 25th to 30th day of every month.

vi) Except for an acceptable and lawful reason, if an illegal and unauthorized construction is found to have subsisted and/or its non-removal is aided and/or abetted by the municipal officers or its employees for a substantial time of more than six months, the Municipal Commissioner shall take penal action against such erring municipal officers including lodging of prosecution under the Municipal laws, in addition to the relevant provisions of the Indian Penal Code, apart from initiating disciplinary proceedings.

vii) In so far as the notified slum areas are concerned, in respect of all illegal and unauthorized constructions, in accordance with the provisions of Section 3Z-2(7) of the Slums Act, the State Government is directed to lodge prosecution including against the competent authority and the other officers of the SRA for having aided or abetted the construction of unauthorized or illegal structures and also against the persons responsible for putting up these structures. In the event there is a collapse of a structure/building in the slum area, the direction in

vi) above shall be applicable against the competent authority and other officers who are in-charge of supervising and taking actions on illegal constructions in slum areas.

viii) In the event of a building collapse resulting in loss of lives, the Principal Secretary (UDD) and/or the Municipal Commissioner, as the case may be, shall immediately conduct an enquiry to be completed within a period of fifteen days from such collapse, so to determine the responsibility of the concerned Municipal and Government Officials failing to discharge their duties, and after so ascertaining, institute criminal proceedings against the concerned officers and employees in-charge of the Ward and those who were responsible to take action on the dilapidated buildings, as also against the higher officials under whom such ward



officer/designated officer would immediately work. Such criminal prosecution not only shall be under the provisions of the municipal laws but also under the relevant provisions of the Indian Penal Code.

ix) The persons who put up illegal or unauthorized constructions cannot claim any immunity by undertaking such illegal acts. The Municipal Commissioner apart from taking action for demolition of such illegal structures, shall also institute criminal proceedings against such persons, who are found to have violated municipal laws and constructed unauthorized or illegal structures apart from taking action for demolition of such structures in a manner known to law. This apart those who are victims of a building collapse, in the absence of any fault on their part, would also be entitled to seek reliefs in appropriate civil and criminal proceedings against the owners of the building and the municipal officers, notwithstanding their right in law to claim compensation from such parties.

x) The concerned Municipal Commissioners are directed to give effect to the provisions of Section 152A of the MMC Act and Section 267A of the Maharashtra Municipal Corporations Act to levy penalty which shall be equal to twice the property taxes leviable on such building, so long as it remains unlawful and recover such amounts as arrears of property taxes.

xi) The Permanent Standing Committee (Encroachment Prevention Committee) as constituted under the Government Resolution dated 15th December 2004, shall forthwith be made functional by the State Government so as to commence its functioning with effect 15th March 2022. Such committee shall hold periodical sittings twice every month so as to take account of the actions on illegal structures in Mumbai. Such Committee shall also be constituted in respect of other cities in Maharashtra and it shall hold sittings accordingly.

xii) In so far as the State Government's land and/or other public lands in respect of which, till date no slums schemes are approved by the Slum Rehabilitation Authority, such lands shall not be redeveloped under slum redevelopment schemes, unless the State Government or the concerned public authority gives a 'no objection', to be published, in at least two local newspapers, that in future it does not require such public lands for any of its purposes, or for the public purposes of any other public bodies under the State or the Central Government. Unless, such no objection is received from the State Government or the Central Government or any other public body, the development of any slum scheme or private utilization of such land shall stand freezed.

xiii) The State Government and the public bodies shall take appropriate steps as permissible in law, to remove the encroachments of the public lands as described in (xii) above, so that



land is made encroachment free, to be utilized for public purpose.

xiv) In the event the encroached lands are required by the State Government or by any public body, steps be taken to remove the encroachment and make the land encroachment-free within one year, by rehabilitating the slum dwellers of such lands, if they are protected occupiers. Such eligible slum dwellers be rehabilitated in any other part of the city or in the municipal jurisdiction of the adjoining municipal corporation as the State Government may decide.”

29. Thus, it is clear that the statement in the PIL that this is the only case that came to the notice of the petitioners where there is an apparent violation of the provisions of DCPR is totally false. In Mumbai city, there are several unauthorised and illegal constructions which is very widely known. Therefore, there cannot be any manner of doubt and it is obvious that this PIL has been filed for extraneous reasons and not in the public interest.

30. It is further significant to note that earlier PIL no. 1 of 2017 was filed challenging the redevelopment on the plot which is the subject matter of the present PIL; however, the same was withdrawn on 2nd August 2019 on the ground that DCPR-2034 has come into effect and therefore the PIL has been rendered infructuous. In any case, what is also significant to note is that redevelopment on the same plot was targeted in 2017 and again targeted by the present PIL, with a specific statement that this is the only construction in the entire city of Mumbai, which has come to the notice of the petitioner where the provisions of DCPR are violated.

31. The learned senior counsel appearing on behalf of the respondents tried to contend that the same advocate on record has filed the present PIL as well as the earlier PIL, although petitioners in both the PILs are different. This contention is raised to support their contention that this project is targeted for extraneous reasons; however, we deem it appropriate not to examine said aspect.

32. Considering various aspects as set out hereinabove, we conclude that this is not a fit case where this Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India and particularly when the same is brought to this Court by labeling the same as PIL.

33. As we have noted that the present PIL is filed for extraneous and motivated purposes, the same is dismissed with costs of Rs.1,00,000/- to be paid to the Tata Cancer Hospital, Parel, Mumbai. The same shall be paid within a period of two weeks from today.



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