



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

**PUBLIC INTEREST LITIGATION NO. 114 OF 2012
WITH
NOTICE OF MOTION NO. 207 OF 2013
AND
INTERIM APPLICATION (L) NO. 17821 OF 2024**

Manish Ramniklal Sawla } Petitioner
} versus
State of Maharashtra & Ors. } Respondents

Mr. K. R. Tiwari i/b. K. R. Tiwari and Co. for petitioner.

Ms. Anupama Pawar, AGP for respondents 1, 2 & 7 (State).

Ms. Oorja Dhond i/b. Mr. S. K. Sonawane for respondent no. 4 (BMC).

Mr. R. V. Govilkar, Senior Advocate with Mr.Murlidhar Kumar, Mr. Shaba N. Khan i/b. Mr. Mihir Govilkar for respondent no. 5.

Mr. P. G. Lad for respondent no. 6 (MHADA).

Mr. Anish Karade with Mr. Shahrukh Shaikh i/b. Mr.Rohit Shetty for respondent no. 8.

Mr.Irfan Ansari with Mr. Abdul Kalam Ansari i/b. Mr.Ajaz Ahmed Ansari for respondent no. 9.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
AMIT BORKAR, J.**

DATE: 28th AUGUST 2024

P.C.:

1. Heard Mr. Tiwari, learned counsel for the petitioner, learned Government Pleader representing State authorities,

Ms.Dhond, learned counsel representing respondent-Corporation and Mr. Lad, learned counsel representing Maharashtra Housing and Area Development Authority (MHADA).

2. The instant PIL petition was filed with the assertion that the landed property comprised in CTS No. 538A at village Chakala, Andheri, Mumbai Suburban District (Parsiwada, Andheri (E), Mumbai), which is an open area of land, has been encroached upon by some builder, who was accorded permission for construction etc. in the neighbouring plot and not at CTS No.538A.

3. In the wake of the aforesaid assertion, the prayer made in the instant PIL petition is that the respondent no. 4 be directed to cancel the Intimation of Disapproval (IoD) and Commencement Certificate (CC). Another prayer made in the PIL petition is that the respondents may be issued a direction to take possession of the entire area of land comprised in CTS No.538A as described aforesaid.

4. The Court, taking cognizance of the matter, passed an order on 17th January 2024 noticing the assertions of the petitioner and recorded finding that there appears to be missing area of 1100 square meters of the plot at CTS No. 538A. The Court further observed that there are two possibilities, viz., (i) the said area may have been encroached upon by trespassers and (ii) there may be some genuine mistake in the revenue records.

5. By the said order, dated 17th January 2024, the Court also directed that proceedings be drawn under section 135 read with section 106 of the Maharashtra Land Revenue Code, 1966

(hereinafter referred to as "the MLRC") which shall be completed within two months. The Collector, while drawing the proceedings under section 135 and 106 of the MLRC, was also directed to hold an inquiry by granting all persons interested, opportunity to appear and produce their evidence. The petitioner was also permitted to participate in the said proceedings drawn under sections 135 and 106 of the MLRC and make submissions.

6. As per the affidavit in reply filed by respondent no. 1-Collector to Interim Application (L) No. 17821 of 2024, the Collector has passed an order under section 135 of the MLRC and has ordered that the area entered in Column No. 3 on Property Card mentioned under the City Survey Chakala, Taluka Andheri be cancelled and in lieu of it, action be taken to enter the area mentioned in Column No. 4 on the Property Card. Para 6 of the said affidavit in reply filed by respondent no. 1 is extracted herein below: -

"6. I further say that therefore, while exercising the powers given under Section 135 of Maharashtra Land Revenue Act, 1966, the Collector, MSD, has ordered that, the area entered in column no. 3 on Property card mentioned under the City Survey Chakala, Taluka Andheri be cancelled and in lieu of it action to be taken to enter the area mentioned in column no. 4 on property card."

7. In the aforesaid affidavit, it has also been stated that hearing was conducted by the Collector and all concerned parties submitted their submissions on record and also that after giving all concerned fair opportunity of hearing, the Collector concluded that it was necessary to confirm the area of 474.5 square meters of CTS No. 538A and accordingly, passed an order on 18th March 2024.

8. Another affidavit was filed on 28th March 2024 by the City Survey Officer, Vile Parle, Mumbai in compliance of the order of the Court dated 17th January 2024, wherein it has been stated that there was some arithmetical error in calculating the numbers in the City Survey and Original Vasalevar.

9. The order dated 18th March 2024 passed by the Collector, thus, finally closes the controversy for the reason that the said order has not been challenged by any party. Accordingly, so far as the prayers made in the PIL petition is concerned, no cause of action survives so that the proceedings of the PIL petition may be continued any further.

10. As far as the prayer made in Interim Application (L) No. 17821 of 2024, we may observe that the said prayer also cannot be granted for the reason that learned counsel for the petitioner has utterly failed to bring to our notice any law which forbids grant of temporary permission to any Ganesh Mandal for erecting temporary pandal, which, after the festival is over, is vacated and the land is handed over to the State authorities.

11. We may also observe at this juncture that the application made by Shri. Sarvajanik Ganeshotsav Mandal, vide its letter dated 8th December 2023 for allotment of land comprised in CTS No. 538A for conducting certain social, educational and health activities, is still pending and no final decision has been taken. It is only as a temporary measure that the land comprised in CTS No. 538A has been permitted to be used for Ganesh Festival only.

12. For the reasons aforesaid, the PIL petition as also Interim Application (L) No. 17821 of 2024 are hereby dismissed.

13. There shall be no order as to costs.

14. In light of the dismissal of the PIL petition, other interim application/notice of motion, if any, does not survive and stands disposed of as such.

15. However, notwithstanding dismissal of the present PIL petition and the interim application, it will always be open to the petitioner and other residents of the area to take legal recourse which may be available to them for redressal of their grievances in respect of non-availability of any open area to be used by the residents for recreational and other allied purposes.

JAYANT
VISHWANATH
SALUNKE

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(AMIT BORKAR, J.)

(CHIEF JUSTICE)