



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION (L) NO.84 OF 2008

WITH

PUBLIC INTEREST LITIGATION (L) NO.83 OF 2008

PIL (L) NO.84 OF 2008

Rajendraprasad Brijbhushan Choube )  
Indian Inhabitant of Mumbai, )  
Municipal Councillor of Ward No.3, )  
BMC, having address at A/102, )  
Windsor Co.op. Hsg.soc. Shiv Vallabh )  
Road, Ashokvan, Borivali (East), )  
Mumbai – 400 066. ).. Petitioner

Versus

1. The State of Maharashtra, )  
Through the Principal Secretary, )  
Revenue & Forests Department, )  
Mantralaya, Mumbai – 400 032. )  
2. P.N. Munde, )  
Director & Conservatory of Forest, )  
Sanjay Gandhi National Park, )  
Borivali (East), Mumbai - 400 066. )  
3. Vishwasrao Patil, )

Collector of Mumbai Suburban District, )  
Administrative Building, )  
Opp. Chetna College, Govt. Colony, )  
Bandra (East), Mumbai – 400 051. )

4. B.G. Pawar, )  
Additional Collector, )  
Mumbai Suburban District, )  
having his office at Administrative )  
Building, Opp. Chetna College, )  
Govt. Colony, Bandra (East), )  
Mumbai – 400 051. )..

Respondents

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Shri A.C. Singh for the Petitioner.

Shri D.A. Nalawade, Government Pleader for the State.

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PIL (L) NO. 83 OF 2008

Ketkipada – Dharkhadi (Dahisar) )  
Nagarik Seva Sangh, )  
Through its President Mr.Ramprasad )  
Chimanlal Sharma, residing at )  
Vidya Bhavan, Ketki Pada, Dahisar (East), )  
Mumbai – 400 068. )..

Petitioners

Versus

The State of Maharashtra, )  
Through the Principal Secretary, )  
Revenue & Forests Department, )  
Mantralaya, Mumbai – 400 032. )

2. P.N.Munde, )  
Director & Conservatory of Forest, )

Sanjay Gandhi National Park, )  
Borivali (East), Mumbai - 400 066. )

4. Vishwasrao Patil, )  
Collector of Mumbai Suburban District, )  
Administrative Building, )  
Opp. Chetna College, Govt. Colony, )  
Bandra (East), Mumbai – 400 051. )

4. B.G. Pawar, )  
Additional Collector, )  
Mumbai Suburban District, )  
having his office at Administrative )  
Building, Opp. Chetna College, )  
Govt. Colony, Bandra (East), )  
Mumbai – 400 051. ).. Respondents

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Shri P.M.Havnur for the Petitioner.

Shri D.A. Nalawade, Government Pleader for the State.

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**CORAM: SWATANTER KUMAR, C.J. &**  
**A.P.DESHPANDE J.**

JUDGMENT RESERVED ON : 21ST AUGUST, 2008

JUDGMENT PRONOUNCED ON 29TH AUGUST,

2008

**JUDGMENT: ( PER SWATANTER KUMAR, C.J.)**

By this common judgment, we will dispose of these two

public interest litigations. PIL (L) No.84 of 2008 has been filed by one Rajendraprasad Brijbhusan Chaube, who states that he is Municipal Councillor of Ward No.3, Mumbai, and also a member of Improvement and Law Committee of Municipal Corporation of Greater Mumbai. Being associated with the various organisations, the petitioner states that he is concerned with the protection and rehabilitation of residents and occupants of the area which is sought to be included in the forest and/or Sanjay Gandhi Rashtriya Udyan. It is claimed in the petition that the petitioner is filing the present Public Interest Litigation to protect about 5000 slum dwellers residing near Sanjay Gandhi Rashtriya Udyan and that they have been residing in their respective structures for quite some time and have made certain new structures. Public Interest Litigation being Writ Petition No.305 of 1995 had been filed in this Court for removing the unauthorised structures from the forest land and the structures in furtherance of the order of the Court are removed. According to the petitioners, as per the policy of the Government, the slum dwellers who are occupying the structures prior to the year 1995 are eligible for alternate

accommodation, subject to deposit of Rs.7,000/- for their rehabilitation. The total number of occupants are about 5000 families. By relying upon the orders of the Court passed in Public Interest Litigation No.76 of 2007 filed by one Nirmala Samant Prabhavalkar dated 24<sup>th</sup> January, 2008 and 31<sup>st</sup> January, 2008, it is stated that the time to deposit the amount of Rs.7,000/- was extended by the Court and thus all these occupants, on whose behalf the Petitioner has approached the Court, should also be permitted to deposit the said amount and they be provided with alternate accommodation and in the meanwhile their structures should not be demolished.

2. According to these petitioners, these persons are also residing much prior to the year 1950, this includes the area bearing Survey No.345-A. The respondents have issued a demolition notice dated 12<sup>th</sup> August, 2008 and certain structures have been demolished. The petitioners claim that it can be demonstrated that Ketkipada cannot be included in forest as the structures do not fall in

the forest area, and these structures cannot be demolished. It is further contended that there are about 250 convenient shopping on whose removal would cause great prejudice to the residents. The policy of the Government being of protecting the structures from 1995 to 2000 in the case of MMRDA, MUTP and property of Airport Authority of India, it will be discriminatory if the structures in question are not protected. On this premise, the petitioner has prayed for a direction to the respondents to rehabilitate the slum dwellers of Ketkipada and Darkhadi which structures are existing prior to 2000 and situate at boundary of Sanjay Gandhi National Park. They are not even in the forest area and as such the respondents be restrained from demolishing the structures on these two areas without demarcating the forest boundary and without providing them alternate accommodation.

3. In the other Public Interest Litigation being PIL (Lodg.) No.83 of 2008, Ketki Pada – Dharkhadi (Dahisar) Nagarik Seva Sangh has approached the Court under Article 226 of the Constitution

of India. Here also the petitioner, which is neither registered body nor a legal entity in the eyes of law, claims that it has filed the Public Interest Litigation to protect about 5500 structures which include commercial and residential structures at the boundary of Sanjay Gandhi National Park. In this petition also, a reference has been made to the earlier Public Interest Litigations being Writ Petition No.305 of 1995 and P.I.L No. 76 of 2007 and the various orders passed by the Court from time to time. It also claims to be concerned with the structures on Survey No.345A of Dahisar Village where the structures are not in the forest area and in fact the said Survey Number is about 209.25 acres on which the structures are situated, even does not form part of the forest area. It is averred that vide Notification dated 16<sup>th</sup> January, 1996 issued by Revenue and Forests Department, the said structures fell outside the National Park and in the boundary of Nagla Block of Sanjay Gandhi Udyan, Borivali. According to the petitioner, the respondents have misused the provisions of the Forest Act and their actions are illegal and unjustifiable. It is stated that the supreme Court of India in SLP

Nos.1812 to 1817 of 2004, has passed some orders and the said Petitions are pending before the Supreme Court of India. The hearing of these petitions have been expedited. The area in question not being forest area, the petitioner prays time for payment of Rs.7,000/- in terms of the Government Policy should be permitted to deposit by these persons. Referring to other facts similar to the one pleaded in other petition, it is stated that the Government is not giving any indulgence for rehabilitation of the slum dwellers and, therefore, the Court should interfere with the matter and grant reliefs asked for.

4. Before we elaborate on the merit of the writ petition, it will be necessary to refer to certain factual background in the present petitions. Appa Pada Rahivashi Seva Sangh had filed the Public Interest Litigation in the year 2004 being Writ Petition No.2025 of 2004 praying that the Respondents be directed to comply with the orders which had been passed by this Court in Writ Petition No.305 of 1995 for protection of the forest area and in regard to reallocation of the eligible persons whose structures/hutments are liable to be

demolished and also that no hutments be demolished. In this writ petition, various orders came to be passed and it came to the notice of the Court that the order passed in the earlier petition have not been complied with. An undertaking was given by the developers that the entire project of rehabilitation etc. would be completed. A detailed order was passed by the Court on 4<sup>th</sup> May, 2006. Noticing the total number of tenements which required reallocation. It will be appropriate to refer to some extracts of that order.

“2. We directed the Principal Secretary in the Housing Department of the State to file an affidavit explaining why the direction has not been complied with and to set out a time schedule within which the process of rehabilitation will be completed. Accordingly, an affidavit has been filed by Shri N. Rama Rao, Principal Secretary in the Housing Department. In the affidavit, it has been stated that several difficulties were experienced in the process of constructing rehabilitation buildings. One of the issues was whether the buildings should have five or seven storeys, and this was sorted out in September, 2005. It has also been stated that because of the topography of the site which consists of a rocky terrain, the work of construction and laying of infrastructure has taken some time. M/s.Sumer Corporation, the developer in charge of implementing

the project, has raised certain issues regarding the role of Nivara Hakk Welfare Centre in the project. The State Government has now decided that whilst the developer will be Sumer Corporation, Nivara Hakk Welfare Centre will be an NGO, which will assist in the rehabilitation of the oustees from the National Park. The Slum Rehabilitation Authority has been directed to enforce the decision taken by the State Government.

3. The State Government has, through the Principal Secretary in the Housing Department, assured the Court that the following time schedule for completing the rehabilitation of eligible persons within the National Park, who will have to be re-located, shall be observed.

<u>No. of Tenements</u>	<u>Date of availability of Tenements</u>
3823	30 <sup>th</sup> Sep. 2006
1936	31 <sup>st</sup> Dec. 2006
3000	30 <sup>th</sup> Sep. 2007
3310	31 <sup>st</sup> Dec. 2007

4. The Court has been informed that the first lot of 9 buildings comprising of about 3823 tenements is nearing completion and it has been stated on behalf of the developer that the anticipated date of completion is 31<sup>st</sup> July, 2006. However, by way of abundant caution, the rehabilitation of the first lot of 3823 families, which have originally been slated to be re-located by 31<sup>st</sup> May, 2006, shall be done on or before 30<sup>th</sup> September, 2006.

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12. We are constrained to observe that there has not been a concerted effort on the part of the State to ensure due compliance with the directions issued by the Division Bench of the Court. While taking a serious note of the state of affairs, we finally extend time on the assurance of the State Government that everything that is required to be done to enforce compliance with this order shall necessarily be done within the time schedule.”

5. Thereafter, the Court granted various orders for completion of project and ensuring that the forests are cleared at the earliest. While stating that the orders of the Court were not being taken seriously by the concerned authority, on 22<sup>nd</sup> March, 2007, the Court passed certain stringent directions and required the government officials to be present before the Court. The relevant directions read thus: -

“We direct the Officiating Govt.Pleader to keep the Chief Executive Officer of the Slum Rehabilitation Authority, the Addl.Collector – Encroachment, Bombay Suburban District, D.C.P. of the Zone and Dr. Munde, the Deputy Conservator of Forests, personally present in this Court on the next date and file their affidavits as to within how much time all these authorities, in coordination with each other, will be able to clear off

the encroachment. Needless to say, for any further encroachment in the forest, the Chief Forest Conservator of the range will be personally laible. We make it clear that if these authorities fail to coordinate on the relevant points, we will be required to summon the Principal Secretaries of all the Departments so that all the departments can execute the work in coordination. S.O. To 29.3.2007 at 11.00 O'clock.”

6. Thereafter, by an order dated 29<sup>th</sup> March, 2007, the Court while declining to extend the time clearly observed that Conservator of Forests would file an affidavit in regard to the implementation of the Scheme of Rehabilitation and specifically observed that it should not be misconstrued that the Court has extended the time frame it had earlier prescribed when the petition was disposed of and subsequently extended at the instance of one party or the other. The Co-ordination Committee appointed by the Government was required to take appropriate action and to ensure that all encroachments within Sanjay Gandhi National Park, Borivali (East), would be removed and eligible encroachers would be rehabilitated. This undertaking made by counsel for the State was recorded and following order was passed:-

“14. Our order puts all concerned on notice. Needless to say that Deputy Commissioner of Police of the Zone concerned would make sufficient police force available to Mr.Munde, Director of Conservator of Forests, Sanjay Gandhi National Park, Borivali (East), on demand, for enabling him to comply with our order and execute the work assigned to him under the Slum Rehabilitation Act insofar as removal of encroachment and rehabilitation of eligible encroachers are concerned.”

7. Certain further prohibitory orders were made to ensure that no construction is raised in any area of the Park and no outsider is permitted to raise encroachments in any part of the Sanjay Gandhi National Park.

Various orders passed in that Writ Petition show that the Court impressed upon the need of introduction of public accountability by the functionaries of different departments in the State. By an order dated 3<sup>rd</sup> October, 2007, the Court expressed its displeasure about the manner in which the entire problem was being tackled in paragraphs 11 and 12 of that order. Thereafter, again vide order dated 10<sup>th</sup> January, 2008, following directions were issued by the

Court.

“4. Having heard the learned counsel appearing for the parties, these petitions are disposed of with the following directions:-

(i) It is conceded before us that relevant cut off date for determination of eligibility is 1<sup>st</sup> January, 1995.

(ii) As the State Government has no objection to accept the money from the persons who are eligible but did not pay the sum of Rs.7,000/- to be covered under the rehabilitation scheme formulated by the State Government, the Government would now accept the same, if the payments are made within two weeks from today.

(iii) If the eligible persons make the payment as demanded by the State within two weeks from today and satisfy the concerned authorities of their eligibility, the State would include these persons also under the rehabilitation scheme and make efforts to resettle them as per its policy.

(iv) The persons who are ineligible and are unauthorised occupants in any part of the Sanjay Gandhi national Park shall be removed in accordance with law within eight weeks from today.

(v) The State authorities shall ensure that no unauthorised activity is carried on in the entire park.

(vi) All unauthorised constructions shall be

removed from the area of Sanjay Gandhi National Park within eight week from today.

(vii) The authorities shall also ensure that appropriate steps are taken for afforestation of the forest area wherever the forests were destroyed during the course of this long period. Resultantly ensure that the forest area in the National Park is restored.

(viii) The Government shall appoint appropriate experts for this purpose and shall submit the report to the chief Secretary, Government of Maharashtra, who in turn shall pass appropriate directions for compliance of the recommendations, subject to their acceptance by the State Government.

(ix) All steps shall be taken by different agencies of the State including the Forest Department and the Police Department to ensure that no fresh encroachments are made in any part of the Park and the boundary wall of the Sanjay Gandhi National Park is properly maintained. The Officers concerned would be liable for violation of these conditions, in the event any further encroachments come up on any part of the Sanjay Gandhi National Park.

(x) The Secretary, Revenue and Forest Department, Government of maharashtra, shall be responsible for carrying out the directions. In the event of any default, the Court would be compelled to take appropriate action.

(xi) The authorities would be at liberty to conduct a survey i.e. Spot inspection for the purpose of

determining the removal of unauthorised occupation/construction.”

8. The State was called upon to file detail affidavits in regard to the unauthorised occupants and final period by which the Park would be cleared. The State was also directed to comply with the directions of the Court and to ensure that the compliance is done.

9. Another Writ Petition was filed in this Court being PIL No.76 of 2007 by Nirmala Samant-Prabhavalkar & Anr. V/s. State of Maharashtra & Ors. It was stated before the Court that with regard to proper implementation of Rehabilitation Scheme and for permission to pay Rs.7,000/- be granted and their hutments should not be demolished, this petition was filed in relation to dispossession of about 25000 hutment dwellers in that area.

10. Finally, vide order dated 7<sup>th</sup> August, 2008, the High Court directed in both the Writ Petitions No.2025 of 2004 and PIL No.76 of 2007 that the State should implement the directions of the court and expected the authorities to comply with the directions without fail,

atleast within a month. The parties were required to submit the physical situation existing on the site. It may also be noticed here that because of the pendency of some proceedings before the Supreme Court, and there being an order of status quo passed in Civil Appeal No.2352 of 2005 ( Sabir Siddiq Malik v. Bombay Environmental Action Group & Ors.) the State had sought clarification from the Bench as to whether the said order was operative in general. The Supreme Court vide its order dated 2<sup>nd</sup> May, 2008 clarified the order that:-

“This Court had passed a status quo order on 16.7.2007 on I.A. No.5 in C.A. No.2352/2005. The status quo order is confined to the applicant therein namely, Sabir Siddiq Malik.”

11. Upon such direction issued by the Supreme Court, the Government has taken effective steps to clear forest area and to

demolish structures unauthorisedly constructed in that area. Furthermore, the Government has also taken effective steps to implement rehabilitation scheme. The present writ petitions have been filed with vague averments and without any documents to substantiate even vague averments made in the writ petitions. The matters have been pending for orders for months together before this Court and it was after great difficulty that the orders of the Court were implemented by the State to some extent. Earlier, the applicants who were found to be eligible for alternate accommodation were granted time to deposit the money in terms of the policy which was decided by them and the rehabilitation scheme in force. The present applicants firstly in no way show that they are eligible or covered under the Policy. Even if that was to be in their favour, they had not deposited the requisite money in terms of settled scope of the rehabilitation scheme. If every day new application would emerge despite the fact that the matters had been pending before this Court since 1995 and despite continuous orders passed in different writ petitions for clearance of the forest area, it will be difficult to

implement the directions. In fact, the directions were also given to the State to do the re-forestation. No details of the so called 5000 slum dwellers, on whose behalf the present writ petitions have been filed, have been given in the writ petitions. We are unable to contribute to the view that the petitioners have come with a cause which is really a Public Interest Litigation. The cause of action, if any is personal to the slum dwellers, and they have to satisfy the ingredients laid down under the policy of the State, to pay the money and then they may have a right of consideration. But here admittedly, and apparently, not only that the time prescribed under the policy is over but even the time extended by the Court from time to time is also over. The Court having expressed the final view in no uncertain terms that no further extension would be granted and that the order had taken effective view for considerable time, it will be unfair to the other persons who claimed benefits under the Scheme and wanted to pay the amount but had been granted no extension. The first survey conducted had shown limited number of slum dwellers. Now by passing of time the slum dwellers in excess of total

number of the earlier slum dwellers are coming out before the Court in the present form of public interest litigations, with no details, no documents and without proper averments. The averments of the petitioners in the petitions are in apparent contradiction to the orders.

12. For these reasons, and besides the fact that the present Public Interest Litigations itself are not maintainable, we find no merit in the petitions. The same are dismissed.

**CHIEF JUSTICE**

**A.P. DESHPANDE, J**