IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Public Interest Litigation NO. 15 OF 2016

Mr. Manoj Jaswantlal Kapadia ...Petitioner

Versus

1.The State Of Maharashtra
2.Mira Bhyandar Municipal Corporation
3.Mr.Achyut Hange, Municipal Commissioner
4.M/s.Ravi Developments. ...Respondents

Mr.Tushar N. Sonawane, for the Petitioner.

Mrs.M.P.Thakur, for Respondent No.1.

Mr.M.S.Lagu, for Respondent Nos.2 and 3.

Mr.Rajiv Narula i/b. M/s.Jhangiyani Narula & Associates, for Respondent No.4.

CORAM :- DR. MANJULA CHELLUR, C.J., &
G. S. KULKARNI, J.

RESERVED ON:- **FEBRUARY 1, 2017**

PRONOUNCED ON :- MARCH 8, 2017

JUDGMENT : (Per G.S.Kulkarni, J.)

1. The Petitioner claims to espouse a cause in public interest in filing the present petition and in doing so the petitioner has described himself to be a resident of Bhaindar, District Thane and regular tax payer and law abiding citizen and claims to have no personal interest in the subject matter of the petition.

2. The challenge in this Public Interest Litigation is to the action of Respondent No.2-Municipal Corporation in issuing Development Right Certificate (for short 'DRC') in favour of Respondent No.4 who is a developer, on the ground that issuance of such certificate has caused huge loss to the public exchequer. The Petitioner by this petition therefore interalia seeks directions against Respondent No.2-Corporation to initiate appropriate action against Respondent No.3 – Municipal Commissioner. The final and interim prayers in the petition are as under:-

> "i) Writ of Mandamus or any other appropriate Writ in the nature of Mandamus, Order or Direction directing the Respondent No.1 to take appropriate Civil and Criminal action and action under the provisions of Service Law against the Respondent No.3 for issuing Development Rights Certificate dated 28th August,2015 (Exhibit 'C' hereto) to Respondent No.4 contrary to the provisions of MRTP Act.
>
> ii) Writ of Certiorari or any other appropriate Writ in the nature of Certiorari, Order of Direction directing calling for record pursuant to which development Right Certificate dated 28th August 2015 issued to the Respondent No.4 by the Respondent No.3 to the extent of 9693.92 sq. mtrs. In lieu of the amenity constructed on the said Land (Exhibit C hereto) and after examining legality, validity and property thereof the Development Right Certificate dated 28th August,2015 issued to the Respondent No.4 by the Respondent No.3 to the extent of 9693.92 sq.mtrs. in lieu of the amenity

constructed on the said Land (Exhibit C hereto) be quashed and set aside;

iii) The Respondent Nos.2 and 3 be directed not to consider the any proposal of whatsoever nature submitted by the Respondent No.4 for utilization of the Development Right Certificate dated 28th August 2015 issued to the Respondent No.4 by the Respondent No.3 to the extent of 9693.92 sq.mtrs. In lieu of the amenity constructed on the said Land Exhibit C hereto;

Interim order, if prayed for

The Respondent Nos.2 and 3 be directed not to consider the any proposal of whatsoever nature submitted by the Respondent No.4 for utilization of the Development Right Certificate dated 28th August 2015 issued to the Respondent No.4 by the Respondent No.3 to the extent of 9693.92 sq.mtrs. in lieu of the amenity constructed on the said Land Exhibit C hereto;"

3. The case of the Petitioner is that Respondent No.4 had made an application to Respondent No.3 requesting for Transferable Development Rights (TDR) in the form of Development Right Certificate (DRC) in lieu of the amenities provided by Respondent No.4, namely construction of road on the land as described in paragraph 5(i) of the Petition. The land in question was reserved for a public road in the sanctioned development plan of Respondent No.2 – Corporation. The Development Right Certificate came to be issued in favour of Respondent No.4 on 28 August 2015 to the extent of

9693.92 sq.mtrs for constructing a public road. The Petitioner has stated that the lands mentioned in the certificate are shown to have been surrendered to the Municipal Corporation though the name of the respective owners continued to be shown in the official records. The Petitioner, therefore, made a representation to the Municipal Commissioner dated 20 November 2015 stating that the DRC should not have been issued in favour of Respondent No.4. It is stated by the Petitioner that even oral representation came to be made pointing out that the Urban Development Department of the State Government, on 30 April 2015 had directed to publish a notice in the Official Gazette under the provisions of clause (a) of sub-section (1)(AA) of Section 37 of the Maharashtra Regional Town Planning Act,1966 (for short 'MRTP Act'), disclosing its intention to incorporate new regulation regarding Transferable Development Rights in the sanctioned development regulations of various Planning Authorities including Respondent No.2-Corporation and for which objections or suggestions were invited and thereby requested that Respondent No.3 ought to have applied stringent provisions out of two existing Development Control Regulations (DCR), in considering the application of Respondent No.4 for grant of Development Right Certificate.

4. The petitioner has averred that though Respondent No.3 considered the petitioner's representation, however, by its reply dated 7 December 2015 justified the issuance of the DRC in favour of Respondent No.4 on the ground that the said certificate is in accordance with law and no financial loss was caused to the Municipal

Corporation and that by development of the road, the residents in municipal area are benefited by these amenities. The Petitioner being aggrieved by the action of Respondent No.2-Municipal Corporation and more particularly of Respondent No.3-Municipal Commissioner of granting DRC/TDR to Respondent No.4 has approached this Court in this public interest petition.

5. The principal contention as urged on behalf of the learned Counsel for the Petitioner is that Respondent No.2 – Municipal Corporation in granting the DRC in question in favour of Respondent No.4 has incurred a heavy loss to the public exchequer, as according to the Petitioner the Municipal Commissioner ought not to have acted on the existing Development Control Regulations so as to issue the said DRC but should have acted on the 'proposed Development Control Regulations' as notified in the notice dated 30 April 2015 issued by the State Government. It is contended that acting on the proposed modification to the D.C.Rules would have been more beneficial to the Municipal Corporation and the public exchequer. In so contending the Petitioner has placed reliance on a statement placed at page 12 of the petition giving a comparison applying the existing Regulation 33 read with Appendix-IV with that of the proposed/draft regulations published in the said notice dated 30 April 2015. According to the Petitioner, if the proposed Regulations are to be applied, then, in that event, the DRC of 3916.75 sq.mtr. was required to be issued, however, under the existing DC Regulations a TDR of 9692.32 sq.mtr. came to be generated and issued in favour of

Respondent No.4. According to the Petitioner, in terms of the monetary valuation there was a loss of Rs.14.43 crores to the Municipal Corporation The contention that the Municipal Corporation should have taken action as per the draft regulations as contained in the Government notice dated 30 April 2015, is on the basis of the provisions of Section 46 of the Maharashtra Regional and Town Planning Act,1966 (for short 'MRTP Act') which provides that the provisions of a development plan to be considered by the planning authority before granting a development permission. It would be profitable to extract Section 46 of the MRTP Act which reads thus:-

> **"46. Provisions of Development Plan to be considering before granting permission:**
>
> The Planning Authority in considering application for permission shall have due regard to the provisions of any draft or final plan [or proposal], [published by means of notice] [submitted] or sanctioned under this Act.
>
> [Provided that, if the Development Control Regulations for an area over which a Planning Authority has been appointed or constituted, are yet to be sanctioned, then in considering application for permission referred to in sub-section (1), such Planning Authority shall have due regard to the provisions of the draft or sanctioned Regional plan, till the Development Control Regulations for such area are sanctioned:
>
> Provided further that, if such area does not have draft or sanctioned Regional plan, then Development Control Regulations applicable to the area under any Planning Authority, as specified by the Government by a notification in the Official Gazette, shall apply till the Development Control Regulations for such area are sanctioned.]"

6. The Respondents have appeared and have opposed the petition by filing their respective reply affidavits. In the reply affidavit filed on behalf of the Municipal Corporation, it is firstly contended that the petition suffers from delay and laches inasmuch as the lands as referred in the petition were handed over to the Municipal Corporation under the various agreement executed in and around 2009 to 2013 as per the Development Control Regulations in vogue. It is submitted that the amenities are already constructed on the said land as per the specifications and the guidelines of the Municipal Corporation. It is stated that only after assessing the work of amenities and after ensuring that the land was made available for a public purpose, the DRC came to be issued in favour of Respondent No.4. It is stated that the issuance of the DRC was in accordance with the order passed by this Court in Writ Petition No.5509 of 2013 and as per the law laid down by the Apex Court. The Municipal Corporation has submitted that the Development Control Regulations for the Municipal Corporation under which they have acted were sanctioned by the State Government in the year 1997 as per the provisions of the MRTP Act. It is stated that as per the said Regulations, the maximum permissible Floor Space Index was 1.0 and the owner of a plot of land which is reserved for a public purpose is eligible for the award of TDR in the form of FSI equal to 1.0 of the area of the land surrendered to the Municipal Corporation as also DCR 33, Appendix IV Clause 6 provided that when the owner or lessee develops or constructs the amenity on the surrendered plot at his cost to the satisfaction of the Commissioner, an additional FSI equivalent to the area of the

construction shall be granted. The Corporation has placed reliance on Regulation 8 of the DCR which defines "amenity" as roads, streets, open spaces, parks, recreational grounds, play-grounds, gardens, water supply, electric supply, street lighting, sewerage, drainage, public works and other utilities, services and conveniences. The Municipal Corporation would submit that under the sanctioned development plan for Mira Bhayander Corporation, parts of Respondent No.4's land was reserved for D.P. Road and were accordingly surrendered to Respondent No.2. The Municipal Corporation by order dated 31 January 2011 and 22 February 2011 granted permission to Respondent No.4 for the construction of certain D.P. Roads and road side drains as per the estimations, specification and drawings sanctioned by the Works Department of the Corporation on certain terms and conditions for the consideration of issuance of TDR to the extent of expenditure, which is to be on the basis of the cost for roads, stipulated by the Works Department. It is stated that Respondent No.4 had constructed the amenities namely cement concrete road, as per the specifications of the Corporation. It is stated that on completion of construction, the same was inspected and tested by an independent surveyor from IIT, and only on satisfying itself on the nature and quality of road and as per the orders passed by this Court in Writ Petition No.5509 of 2013, the Respondent -Corporation issued a certificate of TDR to Respondent No.4 dated 28 August 2015. It is stated that there were no discrepancies of whatsoever nature in issuing the TDR and in doing so, the Respondent-Corporation have saved crores of rupees.

7. On behalf of Respondent No.4, a reply affidavit has been filed objecting the petition on the ground that the petition has been filed with ulterior motives and the Petitioner has suppressed that he is dealing in real estate. It is further contended that the petition is not maintainable in view of the settled position in law on grant of such DRC/TDR as held in the judgment of the Supreme Court in the case of "***Godrej & Boyce Manufacturing Co. Ltd. Vs. State of Maharashtra & Ors.***"[1] and the order dated 29 July 2015 passed by this Court in Writ Petition No.45509 of 2013 and the Municipal Corporation would be fully justified in issuing a DRC for public amenities as provided by Respondent No.4. Respondent No.4 has contended that the Petitioner has come before this Court without verifying the basic facts and has made several false and misleading statements and has also suppressed material facts. It is submitted that the Petitioner is not perennially espousing a public cause. It is further submitted that Respondent No.4's application for grant of TDR in lieu of development of amenity was made on 28 October 2009, and as the request of Respondent No.4 was not granted, Writ Petition No.902 of 2010 was filed by Respondent No.4 in this Court, which came to be disposed of recording a statement on behalf of the Municipal Corporation that the application of Respondent No.4 (petitioner in WP no.902/2010) be decided within four weeks. It is stated that though Respondent No.4 had become entitled for TDR, Respondent No.4 had again approached this Court in Writ Petition No.5509 of 2013 being

1 2009(5) SCC 24

aggrieved by the inaction of the Municipal Corporation, in which the Corporation agreed before the Court to grant DRC/TDR to Respondent No.4. The reply affidavit of Respondent No.4 narrates the details of correspondence as entered between Respondent No.4 and the Corporation between October,2009 to March,2010 in regard to construction of the DP road by Respondent No.4 and the entitlement to claim TDR/FSI in lieu of the amenities provided by Respondent No.4. It is submitted that in view of the decision of the Supreme Court in "*Godrej & Boyce Manufacturing Co. Ltd. Vs. State of Maharashtra & Ors.*" (supra) a similar issue was considered by this Court and it was held that the owner becomes entitled to additional FSI 1.0 or TDR 100% for construction of amenities in addition to the FSI 1.0 or TDR which is to be given in lieu of handing over the land. It is submitted that DRC is validly and legally issued not only as per DCR but also as submitted by the Municipal Corporation before this Court in Writ Petition No.5509 of 2013. It is submitted that the contention of the Petitioner that the proposed regulations are required to be applied, also cannot be accepted, as the notice in question dated 30 April 2015 as relied on by the Petitioner was only inviting objections and suggestions as Section 37(1-A) of the MRTP Act would provide.

8. We have heard the learned Counsel for the parties on the above contentions as noted by us. We have also perused the averments as made in the petition as also in the reply affidavits filed by the Respondents.

9. The principal contention which fall for our consideration is as to whether Respondent Nos.2 and 3 were right in granting a Development Rights Certificate dated 28 August 2015 in favour of Respondent No.4 for FSI credit to the extent of 9693.32 sq.mtrs. The other contention of the Petitioner, to challenge issuance of this DCR/TDR, is that the Respondent-Corporation ought to have applied proposed draft Regulations which came to be notified by a notice of the State Government dated 30 April 2015 as published in the Official Gazette. We deal with the second contention first. Admittedly the notice dated 30 April 2015 published by the State Government is issued under Section 37(1)(AA) of the MRTP Act. Section 37 interalia deals with the modification of final development plan. Sub-section (1)(AA) of Section 37 reads thus:-

> *"[(1AA)(a) Notwithstanding anything contained in sub-sections (1), (1A) and (2), where the State Government is satisfied that in the public interest it is necessary to carry out urgently a modification of any part of, or any proposal made in, a final Development plan of such a nature that it will not change the character of such Development plan, the State Government may, on its own, publish a notice in the Official Gazette , and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice and shall also serve notice on all persons affected by the proposed modification and the Planning Authority.*
>
> *(b) The State Government shall, after the specified period, forward a copy of all such objections and suggestions to the Planning Authority for its say to the Government within a period of one month from the receipt of the copies of such objections and suggestions from the Government.*
>
> *(c) The State Government shall, after giving hearing to the affected persons and the Planning Authority and after making*

> *such inquiry as it may consider necessary and consulting the Director of Town Planning, by notification in the Official Gazette, publish the approved modifications with or without changes, and subject to such conditions as it may deem fit, or may decide not to carry out such modification. On the publication of the modification in the Official Gazette , the final Development plan shall be deemed to have been modified accordingly.]" (emphasis supplied)*

A plain reading of the above provision makes it clear that when notice dated 30 April 2015 came to be issued by the State Government, the State Government has merely invited objections and suggestions to the proposed DC Regulations. Sub-clause (b) of sub-section (1AA) provides that these objections are thereafter required to be forwarded by the State Government to the planning authority for its say to the Government. The Planning Authority thereafter shall submit its say to the State Government within a period of one month on receipt of the copies of such objections and suggestions from the Government. Thereafter, under sub-clause (c), the State Government is under an obligation to give hearing to the affected persons and the planning authority and after making such inquiry as it may consider necessary and after consulting the Director of Town Planning, by notification in the Official Gazette, publish the approved modifications with or without changes, and subject to such conditions as it may deem fit, or may decide not to carry out such modification. It is only on the publication of the modification in the Official Gazette, the final Development plan shall be deemed to have been modified accordingly. Considering the provisions of Section 37(1AA) and Section 46 as noted above, we are not inclined to accept the submission as urged on

behalf of the Petitioner that the Regulations which were in vogue ought not to have been applied but the proposed Regulations on which suggestions and objections were invited by a notice issued by the State Government dated 30 April 2015, ought to have applied. The submission cannot be accepted for two reasons, firstly that the proposed Regulations had no place in the statute book and what was proposed by the State Government by notice dated 30 April 2015 was only to notify a proposal to modify the Development Control Regulation inviting objections and suggestions for further procedure to be followed. We are not shown any embargo on the Municipal Corporation not to proceed to apply the DCR in vogue including considering such application for grant of TDR, only because a notice under Section 37(1AA) of the MRTP Act inviting suggestions and objections was published by the State Government. The provisions of Section 46 would also not assist the Petitioner to support this contention inasmuch as Section 46 as noted above would provide that the Planning Authority in considering the application for permission shall have due regard to any draft or final plan or proposal published by means of notice submitted or sanctioned under the Act. The first proviso to Section 46 also speaks in the context of an application for permission as referred in sub-section (1), to be considered by the planning authority in a situation when the Development Control Regulations for an area over which a planning authority has been appointed or constituted, are yet to be sanctioned, in such case the planning authority shall have due regard to the provisions of the draft or sanctioned regional plan, till the Development control Regulations

for such area are sanctioned. Both, paragraph (1) of Section 46 as also the first proviso, speak about the "due consideration of the regional plan, sanctioned or draft" and not about "draft Development Control Regulations". The MRTP Act defines the 'regional plan' and 'Regulations' independently in Section 2(25) and Section 2(27), and therefore, there should not be any ambiguity or any confusion in reading Section 46 which provides for due regard to the provisions of any draft or final plan or proposal in the first paragraph, and in the proviso due regard to the provisions of the draft or sanctioned regional plan. If the contention of the Petitioner is accepted, then, it would amount to adding or substituting words in the first paragraph of Section 46 as also in the first proviso. The second proviso is not relevant as it concerns a situation where an area does not have draft or sanctioned regional plan, then in that event the Development Control Regulations applicable to the area under any Planning Authority, as specified by the Government by a notification in the Official Gazette, shall apply till the Development Control Regulations for such area are sanctioned. In not accepting the contention of the Petitioner on the applicability of Section 46 of the MRTP Act, we are supported by the observations of their Lordships in the decision of the Supreme Court in the case "***Suresh Estates Pvt. Ltd. & Ors. Vs. Municipal Corporation of Gr.Mumbai & Ors.***"[2]. The Supreme Court was considering an argument as recorded in paragraph 21 of the decision that in view of the provisions of Section 46 of the MRTP Act whether the planning authority has to take into consideration the

2 (2007)14 SCC 439

draft regulations of 1989. Their Lordships repelled the said argument by observing in paragraph 24 that what is envisaged in Section 46 of the MRTP Act is due regard to draft plan only, if there is no final plan. On the statement of law we are supported by the following observations:-

> "21. The argument that in view of the provisions of Section 46 of the Town Planning Act, 1966, the Planning Authority has to take into consideration the Draft Regulations of 1989 and, therefore, the appellants would not be entitled to additional FSI is devoid of merits.
> … ….
> 24. In view of the peculiar circumstances obtaining in the instant case, the Court is of the opinion that Section 46 of the M.R.T.P Act, 1966 would not apply to the facts of the instant case. Further, when the sanctioned D.C. Regulations for Greater Bombay, 1991 do not apply to areas covered within CRZ-II, since those regulations came into force with effect from March 20, 1991, its previous draft also cannot apply. The draft published is to be taken into consideration so that the development plan is advanced and not thwarted. The draft development plan was capable of being sanctioned, but when the final development plan is not applicable, its draft would equally not apply as there is no question of that plan being thwarted at all. As far as development in the area covered by CRZ-II is concerned one will have to proceed on the footing that the draft plan after CRZ Notification never existed. Even otherwise what is envisaged under Section 46 of the M.R.T.P. Act is due regard to draft plan only if there is no final plan. The DC Rules of 1967 were in existence as on February 19, 1991 and therefore the plan prepared thereunder would govern the case."

10. Thus, in our opinion, Section 37 as also Section 46 are of no avail to the Petitioner to assert that the contents of the draft Regulations as forming part of notice dated 30 April 2015 issued by the State Government under Section 37(1AA) ought to have followed

by the Municipal Corporation in issuance of the DRC in question to Respondent No.4. In our opinion, accepting such an argument would create an incongruous situation in the event the proposed modification as notified by the State Government fails and/or is not accepted.

11. We may observe that the Municipal Corporation in the present case has acted in accordance with the DC Regulations which are in vogue in considering the application of Respondent No.4 for grant of DRC in question. It is also not in dispute that the work of amenities was undertaken by Respondent No.4 to the satisfaction of the Municipal Corporation in regard to the quality and rates. It is also not in dispute that the Rules clearly provide for grant of DRC if construction of such amenities was undertaken by Respondent No.4 as permissible under the DC Regulations. In view of this clear position, we are surprised as to how the Petitioner can raise a challenge to the legality of the grant of DRC to Respondent No.4.

12. Respondent No.4 has appropriately relied on the decision of the Supreme Court in the case of ***Godrej & Boyce Manufacturing Co. Ltd. Vs. State of Maharashtra & Ors.***"(supra) and more particularly the observations of the Supreme Court in paragraph 43 for upholding such entitlement on the basis of equivalent to the area of construction/development done on the surrendered land being measured. The observations of the Supreme Court in paragraph 43 read thus:-

> "43. The last of the above makes the meaning of the word `equivalent' very clear by explaining it in contradistinction to the word `equal'. It says equivalent is equal in such properties as affect the use which we make of things. Seen thus any of the relevant properties, e.g., value, area, volume, quantity, quality etc. may form the basis for determining equivalence. Now, if the words in paragraph VI of schedule were to be "equivalent to the construction/development" then the submission of Mr. Naphade would have been fully acceptable as in that case it would be open to determine equivalence on the basis of value of the construction and not on any other basis. But the regulation fixes the measure of equivalence by using the words "equivalent to the area of construction/development done on the surrendered land". `Area' of construction/development having being fixed as the measure of equivalence it is no longer open to contend that any other basis such as value may be used for determining equivalence."

13. In view of the above discussion, we see no merit in the contentions as urged on behalf of the Petitioner. We are satisfied that the Municipal Corporation as also the Municipal Commissioner has taken the action in accordance with law in issuing Development Right Certificate to Respondent No.4. Public Interest Litigation, in our opinion, is misconceived and deserves to be dismissed.

14. Before parting, we would be failing in our duty if we overlook the objection as raised by Respondent No.4 that the present Petition is not a bonafide petition in public interest. We have carefully gone through the averments as made in the petition. The Petitioner has described himself to be a resident of Bhayander, District Thane and as a regular tax payer and a law abiding citizen. The Petitioner simplicitor claims to have espoused a Public cause and that he has no personal interest in the case. However, a vital contention as urged on

behalf of Respondent No.4 in the reply affidavit that the Petitioner is also a dealer in the real estate and has a given agenda against Respondent No.4, has gone uncontroverted. From the tenor of the averments as made in the petition, it is clear that only a person who is operating in the same field and having a considerable expertise, can raise such issue as raised in the petition. The petitioner does not come with a case that he had gathered material under Right to Information Act and as to how the entire information was received by him, on the issue, as raised in the present petition. Such information would not be known to any ordinary person unless he is a person who is undertaking development activities within the municipal limit of the Respondent-Corporation. The petitioner appears to be such person. This is fortified in the petitioner's averment in paragraph 7 page 15 of the petition where he states that the source of information for filing this petition is from the record of the Respondents, this as if the petitioner is regularly dealing with the Municipal Corporation.

15. The second aspect is about the requirement of the true and correct disclosure of the petitioner's vocation in the petition, we may observe that nothing prevented the Petitioner from honestly disclosing in the petition that he is in the same business. The petitioner thus has not approached this Court with clean hands and in fact has suppressed material facts in approaching in a public interest litigation. We, therefore, find substance in the contention urged on behalf of Respondent No.4 that the present petition is not bonafide and is an abuse of the process of law.

16. In a recent decision in "***Dnyandeo Sabaji Naik & Anr. Vs. Mrs.Pradnya Prakash Khadekar & Ors.***"[3] the Supreme Court has held that if a litigant takes liberties with truth or with the procedures of the Court, should be left in no doubt about the consequences to follow. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth. The Supreme Court has also held that the Courts across the legal system are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending and pursuing worthless causes. It is held that liberal access to justice does not mean access to chaos and indiscipline and a strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law and unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is thus held that imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases and it is only then, that the courts can set apart time to resolve genuine causes and answer the concerns of those, who are in need of justice.

17. Further, it is well settled that a Public Interest Petition cannot be a camouflage to foster personal dispute. Such petitions are

3 Special Leave Petition(C) No.25331-33 of 2015-dated 1 March 2017

to be thrown out. There must be real and genuine public interest involved in the litigation. Public Interest Litigation cannot be invoked by a person to further his personal causes or satisfy his personal grudge and enmity. It is well settled that courts of justice should not be alloted to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. In making these observations, we are supported by the decision of the Apex Court in the case of "***Dattaraj Nathuji Thaware vs State Of Maharashtra & Ors***.[4]. Their Lordship in paragraphs (9) and (11) have observed thus:-

> "9. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.
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> 10. … … ...
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> 11. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of

4 AIR 2005 SC 540

> information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect." (emphasis supplied)

18. We have therefore no hesitation but to dismiss this Public Interest Litigation with exemplary cost quantified at Rs.5,00,000/- to be deposited by the Petitioner within a period of four weeks from today with the Maharashtra Legal Services Authority, failing which the office to initiate appropriate proceedings for recovery as per law.

19. Petition is accordingly dismissed.

(G. S. KULKARNI, J.) **(CHIEF JUSTICE)**