

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO. 74 OF 2013
WITH
INTERIM APPLICATION (L) NO.19120 OF 2023
WITH
INTERIM APPLICATION (L) NO. 2881 OF 2023**

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Altamount Road Area Citizens Committee & Anr. } Petitioners
Versus
The State of Maharashtra & Ors. } Respondents

Mr. Darius Shroff, Senior Advocate a/w Mr. Aakash Chandran, Ms. Tanisha Choudhary, Mr. Rohit Jadhav & Ms. Aishwarya Bapat i/by Vis Legis Law Practice, Advocates for the Petitioners.

Mr. Milind V. More, Additional Government Pleader with Ms. Rita Joshi, AGP for Respondent No.1-State.

Dr. Milind Sathe, Senior Advocate a/w Ms. Oorja Dhond i/by Ms. Komal Punjabi, Advocates for Respondent Nos.2 to 12 and 18.

Ms. Anjali Maskar i/b Mr. P. G. Lad for Respondent Nos. 13 and 14-MHADA.

Mr. Ashish Kamat, Senior Advocate a/w Ms. Pallavi Bali, Mr. Parag Kabadhi and Ms. Anshita Sethi i/by T. D. Deshmukh, Advocates for Respondent No.15.

**CORAM: SHREE CHANDRASHEKHAR, C.J. &
SUMAN SHYAM, J.**

Reserved on : 19th January 2026

Pronounced on : 08th April 2026

JUDGMENT

Per, Shree Chandrashekhar, CJ :

The Altamount Road Area Citizens Committee which is represented through its Chairman, namely, Captain Ashok Batra and one Bhuvneshwari Kumari Jadeja who claimed herself to be a Committee Member have filed this public interest litigation raising certain issues relating to the construction of a building over 21, Altamount Road, Mumbai. The petitioners state that the permissions, concessions, approvals and sanctions granted by the Municipal Corporation of Greater Mumbai and its officers in favor of

15th respondent- M/s Krishna and Company are arbitrary, illegal and in contravention to the Rules, Regulations, Notifications etc. The petitioners are, therefore, seeking an interference by this Court with the plans sanctioned for the subject building from time to time and other permissions and clearances granted for construction of the said building over CTS No.648 which was formerly known as Lincoln House.

2. The petitioners state that Prithvi Apartments Co-operative Housing Society Limited¹ made a complaint to the Municipal Commissioner through the letter dated 12th October 2011 regarding the sanctioned plan and redevelopment of the subject building. Around the same time, Prabhu Kutir Co-operative Housing Society Limited² which is one of the members of the Altamount Road Area Citizens Committee also made a complaint to the Municipal Commissioner on 31st October 2011 and pointed out numerous violations in the sanctioned plan and redevelopment of Lincoln House but the Municipal Commissioner did not respond to the same. The complaints made by Prithvi CHS and Prabhu Kutir CHS did not evoke any response from the Municipal Commissioner and therefore the local residents approached a member of the Legislative Assembly for taking action in the matter. Regarding the illegal construction of the said building, there were newspaper reports published on 9th November 2012 and 12th December 2012 in Mumbai Mirror. The petitioners state that it was in this background that the petitioner no.1 and three other affected Co-operative societies made a complaint to the Municipal Commissioner through the Advocate's letter dated 20th December 2012 for causing an inquiry into the matter. The petitioners further state that Prithvi CHS which was provided with a copy of the Nasti file relating to construction of the

1 Prithvi CHS

2 Prabhu Kutir CHS

subject building shared the said file with them which disclosed that a proposal was submitted by 16th respondent who is the Architect appointed by 15th respondent-Developer for the redevelopment of Lincoln House consisting of two floors over the ground floor and standing over CTS No.648 proposing demolition of Lincoln House and construction of two buildings, one comprising of the ground floor and twelve floors and the other building comprising of a Stilt floor with seven additional floors. A perusal of the Nasti file recorded several startling facts in respect to which complaints were made but no action was taken. Prompted by the inaction on the part of the State-respondents, the petitioners filed this public interest litigation. They took out Chamber Summons on 3rd February 2014 for amending the petition to challenge the amended plan dated 9th December 2011 and they were permitted to carry out the amendments within four weeks vide order dated 26th July 2016. Thereafter, there was another change in the building plan and the petitioners filed interim application vide Interim Application (L) No.2881 of 2023 to lay a challenge to the amended plan dated 15th June 2018.

3. In their affidavit-in-reply, the respondent nos.2 to 12 and 18 have taken a preliminary objection to the maintainability of this public interest litigation on the ground that this petition involves various disputed questions of fact which cannot be gone into in a petition under Article 226 of the Constitution of India. The subject building is constructed over CTS No.648 in Malabar and Cumballa Hill Division which is a residential zone and not affected by any CRZ regulation or reservation. The existing building over the said plot was “A” category cessed structure which was proposed to be redeveloped with necessary NOC from MBRR Board. Later on, a plan for a building comprising of a Stilt floor and three parking floors with fourteen upper floors was approved vide IOD dated 11th January

2002. The plan was further amended and the Commencement Certificate was re-endorsed on 9th May 2007 as per the amended plan. On 9th December 2011, the plan was further amended and a full Commencement Certificate was granted for the subject building comprising of a basement, ground floor, mezzanine floor and fourteen habitable floors with two parking floors and the other Commencement Certificates were also released from time to time. The reports published in Mumbai Mirror are denied and it is stated that a clarification was sent to the said newspaper on the basis of a report submitted by the Deputy Chief Engineer (PP) to the Municipal Commissioner but that was not published by the said newspaper. It is stated that Prabhu Kutir CHS, Prithvi CHS and the petitioners were also provided clarifications with respect to the allegations made in the newspaper report. The petitioners further state that there was a litigation pending in the Bombay City Civil Court in LC Suit No.6224 of 2003 where the Prithvi CHS has challenged the stop work notice dated 20th November 2003 issued by the respondent no.2.

4. Mr. Darius Shroff, the learned senior counsel for the petitioners contended that the concessions granted to 15th respondent-Developer have seriously hampered the basic requirements for good life and affected the guarantee of right to life under Article 21 of the Constitution of India. The provisions for fire protection requirements under DCR-43 make it mandatory that every building for human occupancy shall be provided with exits sufficient to permit safe escape for its occupants in case of fire or other emergency but the amended plans sanctioned by the respondent-authorities virtually leave no space for an escape route.

5. Mr. Darius Shroff, the learned senior counsel further contended that the Commissioner has no power to grant relaxation under DCR-64(b) which will affect safety, fire safety, structural safety

and public safety of the inhabitants of the building and the neighborhood. The Municipal Commissioner can grant relaxation under DCR-64(b) in case of demonstrable hardship and only when the relaxation does not affect health safety, fire safety, structural safety and public safety. The learned senior counsel for the petitioners referred to the decision in “*M/s. West Coast Builders Pvt. Ltd.*”³ wherein a Division Bench of this Court observed that there is a growing tendency amongst the builders to flout each and every regulation framed by the Corporation to regulate the construction in the city. In “*Malad Kokil Co-operative Housing Society*”⁴, this Court held that the hardship referred to under Regulation 64(b) should not be the self-created hardship of the builder, developer or architect and the Commissioner is required to take into account the hardship which may be caused to other directly affected persons such as the residents, purchasers and others. It is further contended that the deviations from the sanctioned plan can be regularized by way of an exception and not as a rule and, in any case, the deliberate deviations should not be condoned and compounded.

6. Mr. Darius Shroff, the learned senior counsel referred to the amended building plans and endeavored to demonstrate with the help of a comparative chart of amended DCRs that the successive building plans sanctioned by the Commissioner were in violation of the applicable DCRs. For the sake of convenience, we would reproduce the comparative chart of the DCRs and the amended DCRs as under:

<i>Provision</i>	<i>DCR 1991</i>	<i>DCR 2012 amendment</i>	<i>DCR 2034</i>
<i>1. Fire Safety Requirements</i>	<i>Regulation 43 (1)(A) ...The approach to the building & open</i>	<i>Regulation 43 (1)A In case of rehabilitation / composite buildings</i>	<i>Regulation 47 (1)(A) In case of</i>

3 *M/s. West Coast Builders Pvt. Ltd. & Anr. v. Collector of Bombay & Ors.* : 1994 SCC OnLine Bom 54.

4 *Malad Kokil Coop. Housing Society Ltd. v. Modern Construction Co. Ltd. & Ors.*: 2012 SCC OnLine Bom 1310.

	spaces on all sides up to 6 m width & their layout shall conform to the requirements of the Chief Fire Officer...	on plots exceeding 600 sq. m and having height more than 24 m , at least, one side other than road side, shall have clear open space of 6 m at ground level, accessible from road side. Provided, if the building abuts another road of 6m or more this condition shall not be insisted.	rehabilitation/ composite buildings having height more than 32 m , at least one side other than road side, shall have clear open space of 6 m at ground level, accessible from road side. Provided, if the building abuts another road of 6 m or more, this condition shall not be insisted upon. Provided, however, if podium is proposed it shall not extend 6 m beyond building line so as to have clear open space of 6 m beyond podium for height up to 70 m & 9 m beyond 70 m. These open spaces shall be free from any obstruction & shall be motorable
2. Open Space	Regulation 2 (64)- Area forming an integral part of a site left open to sky.	No change	<u>Regulation 2 (IV) (83)</u> Marginal open space – Min. distance between the front, rear & sides of the building line & respective plot boundaries. <u>Regulation 2(IV) (64)</u> Front open space – space between the boundary line of plot abutting means of access/road/street & building line. Plots facing two or more means of accesses/

			roads/streets shall be deemed to front on all such means of accesses/roads/streets.
3. Demonstrable hardship	Regulation 64 (b)- In specific cases where a clearly demonstrable hardship is caused, the Commissioner may for reasons to be recorded in writing, by special permission permit any of the dimensions prescribed by these Regulations to be modified, except those relating to floor space indices unless otherwise permitted under these Regulations, provided that the relaxation will not affect the health, safety, fire safety, structural safety and public safety of the inhabitants of the building and the neighborhood.	No change	Regulation 6 (b)- In specific cases where a clearly demonstrable hardship is caused, the Commissioner may for reasons to be recorded in writing, by special permission permit any of the dimensions prescribed by these Regulations to be modified, except those relating to floor space indices unless otherwise permitted under these Regulations, provided that the relaxation will not affect the health, safety, fire safety, structural safety and public safety of the inhabitants of the building and the neighborhood.
4. Max. permissible width of elevation which shall not reduce the marginal open space	Regulation 30 (ii) e - Chajjas, cornices, ornamental projections shall not be more than 1.2m from the face of the building. No chajjas, cornices, ornamental projections shall be allowed which reduce the width of the required open space to less than 2.5m	Regulation 30 (ii) (e) (e)(i) a chajja, cornice, weather shade, sun breaker not more than 1.2 m from the face of the building. No chajja, cornice, weather shade, sun breaker etc. shall reduce the width of the required open space to less than 2.5m. Further chajja, cornice, weather shade, sun breaker or other ornamental projections etc. shall be permissible upto 0.3m	Regulation 42 (ii) (e) (e)(i) A chajja, cornice, weather shade, sun-breaker; at lintel level, only and Vertical fins (excluding columns) projecting not more than 1.2 m from the face of the building. No chajja, cornice, weather shade, sun-breaker etc. shall reduce the width of the

		in Gaothan area for the plots adm. Upto 250 sq. mts. However, in case of redevelopment of cessed buildings, where marginal distances are less, or chajja projections maximum upto 0.45m may be allowed. (ii) the ornamental projections, flower beds etc., projecting not more than 1.2 m from the face of building. No ornamental projection, flower beds, etc. shall be permissible which will reduce the width of required open space to less than 2.5m. Further chajja, cornice, weather shades, sun breaker or other ornamental projections etc. shall be permissible upto 0.3 mts in Gaothan areas for plots adm. upto 250 sq. mts.	required open space to less than 2.5 m. Further chajja, cornice, weather shade, sun breaker or other ornamental projections etc. shall be permissible upto 0.60m in Gaothan area for the plots admeasuring upto 250 sq.m. However, in case of redevelopment scheme under Regulation No. 33(7) where marginal distances are less, chajja projection maximum up to 0.45 m may be allowed. (ii) The ornamental projection, flower beds, etc. projecting not more than 1.2 m from the face of the building. No ornamental projection, flower beds, etc. shall be permissible, which will reduce the width of the required open space to less than 2.5 m.
5. Balcony to not reduce the open space	Regulation 30 (ii) (d) balcony for residential building constructed in conformity with sub-Regulation (22) of Regulation 38, if it does not reduce the width or the clear required marginal open space to less than	No Change	Regulation 42 (ii) (f) Balcony as specified in Regulation No. 37 (20).

	3 m at the rear & sides & 1.5 m in front. Width of balcony to be measured perpendicular to building line & reckoned from that line to the building's outer most edge.		
6. Additional Fire Staircase	Regulation 44 (5) External staircase of fire escape (free of FSI) mandatorily required for multi-storeyed buildings.	Regulation 44 (5) (A) (a) in case of multi-storeyed residential building having height more than 24 m, and less than 70m additional staircase shall be necessary. Provided however, it will not be necessary, if - (i) travel distance does not exceed as mentioned in sub regulation 2(ii)(1) (i and ii) or regulation 43; (ii) if floor area of any floor does not exceed 500 sq. mts. Note: the staircases shall be of enclosed type having minimum width of 1.5mt. (b) Buildings having height of 70m or more, shall be provided with two enclosed type staircases, each having width not less than 2.8m (c) whenever two staircases are necessary, both the staircases shall open and terminate at ground floor or to any other place of safety. The staircase shall be remote as possible.	Regulation 48 (5) (A) (5) (A) Additional Staircase: (a) In case of high-rise Residential buildings of 70 m or less, additional staircase shall be necessary. Provided, however, it will not be necessary, if, (i) Travel distance does not exceed that mentioned in sub regulation (3) (ii)(i) and ii) of regulation 47 and; (ii) If floor area on any floor does not exceeds 500 sq. m. Note- These staircases shall be of enclosed type having minimum width of 2 m.
ELEVATION PROJECTIONS			
7. Balcony definition	Regulation 2 (3) (9) A horizontal	No change	Regulation 2 (IV) (14)

	projection including a parapet, hand-rail balustrade to serve as a passage or sitting out place.		A horizontal projection including a parapet, hand-rail balustrade to serve as a passage or sitting out place.
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7. In short, all that the petitioners claim is that the respondent-authorities have acted arbitrarily and granted approvals, permissions, sanctions etc. in favor of 15th respondent-Developer contrary to the applicable requirements. On the other hand, the State-respondents have justified their actions and stated that after coming into force of the DC Regulations-2034 the plan for the subject building has been converted under DCPR 9(6)(b). Now the provisions of DCR 1991 and DCPR 2034 both are applicable to such a building plan and there is nothing illegal about it. These respondents have further stated as under :-

“3) Post coming into force of the DCPR 2034, the proposal in respect of the said building has been subsequently converted under DCPR 9(6)b by virtue of which provisions of both DCR 1991 and DCPR 2034 are applicable to the said building, as per DCPR 2034.

*4) The plans are amended under No. EB/8640/D/A dated 27.04.2023, hence, all the earlier approved plans in respect of the said building have become subsumed in the latest plan. Also, as per the last approved plans the construction of the said building is completed and part occupation has been granted by the Corporation on 27.04.2023 pursuant to Fire NOC dated 21.04.2023. I say that, although the requirement of R.G./LOS is different for the building under DC Regulation 33(7), in the last amended plans dated 27.04.2023, the Architect has voluntarily proposed recreational open space (LOS) and has provided for LOS/RG on mother-earth that is on the ground level which is 10% (ten percent) of the net plot area. Hereto annexed and marked as "**Exhibit-A**" is a copy of the amended plans under No. EB/8640/D/A dated 27.04.2023.*

5) Further, as per the, last amended plans dated 27.04.2023 the servant toilet area granted free of FSI does not exceed 2.59 sq. mtrs, and remaining is counted in FSI. In the earlier approved plans of the year 2018 also, the area exceeding 2.59 sq. mtrs. of the servant toilet was counted in FSI. Moreover, providing the servant toilets next to the flat is permissible since the plans of the said building were approved prior to 06.01.2012 i.e. before the modified DC Regulation, 1991 coming into force and hence servant toilets were allowed on same

level as that of the flat and the passage which has been provided free of FSI has been granted by recovering premium from the developer/owner and the same is permissible under the relevant DCR and policies in force of the Corporation.

6) I further say that, as per last plan lift machine room has been provided for the lifts as per D.C. Regulations and policies in force. Area beneath the lift machine room which has granted free of FSI is permissible as per the D.C. Regulation and policies in force and the concessions granted to this building like elevation treatment and all other concessions have been also granted to several buildings in Mumbai which were under construction prior to 06.01.2012 as per the D.C. Regulations, 1991 and policies in force.

7) It is pertinent to state that elevation projection of more than 4 (four) feet and similar to the elevation projection granted to the said building has also been granted to other buildings which are in the vicinity of the said building and also to many buildings in Mumbai City. The air-handling unit and lilly-ponds are granted to the said building are within permissible limits and are as per the policy of the Corporation.

8) As per the records with these Respondents, Respondent No.15 viz. M/s. Krishna & Co. is the Owner of C.S.No.648. There were existing cessed structures standing on the C.S.No.648 and the same were also being assessed to taxes. The structures were built prior to 1940 as shown in City Survey Plan and were in existence till permission for redevelopment was granted in January, 2002, and therefore, repair cess was also levied in respect of the same. Therefore plot bearing C.S.No.648 was already built upon and the property was saddled with existing cessed structures and hence the project is under DCR 33 (7).

9) I say that the plans sanctioned by these Respondents are in conformity with D.C. Regulations and policies of the Corporation and the said building has been constructed by Respondent No.15 in accordance with the approvals granted and plans sanctioned by these Respondents on the basis of the relevant D.C. Regulations, 1991 and DCPR 2034 and policies in force.”

8. Dr. Milind Sathe, the learned senior counsel appearing for the State-respondents contended that this public interest litigation is based on incomplete and misleading facts and on erroneous assumptions regarding the applicability of DC Regulations. The learned senior counsel referred to the IOD and CC granted to 15th respondent-Developer and submitted that the building plan was strictly as per the prevailing regulations under DCR 33(7) for providing the minimum open space. There was no violation of the

DC Regulations and the “elevation projection” or “lily ponds” were permissible under DCR 35(2)(c). Aligning with him, Mr. Ashish Kamat, the learned senior counsel appearing for 15th respondent-Developer challenged the very basis of filing of this public interest litigation. The learned senior counsel referred to notifications, clarifications and the applicable regulations for the ongoing projects and submitted that the sanctions, approvals, permissions etc. granted for the subject building are as per the norms.

9. The Lincoln House was in existence since 1st September 1940 and that was a cessed structure. The sanctioned plan for the subject building is a redevelopment plan which is entitled for certain concessions and relaxations. The IOD for the subject building was issued on 11th January 2002 and the Commencement Certificate was granted on 7th November 2002. At that time, the minimum open space requirement was 1.5 meters under the DC Regulation 33(7). Clause 6.11 of the modified DC Regulation dated 15th October 2003 shall not apply to such building plans which were already sanctioned and approved. Dr. Milind Sathe, the learned senior counsel submitted that the plinth of the building which was already laid could not have been changed and, therefore, Regulation-23 has no application in the present case. The two-building plan which according to the petitioners was changed in the 3rd amended plan for a single building has no real effect as the petitioners themselves have stated that only building “A” which has habitable flats is for sale. This is also a matter of record that no permission for any additional construction has been granted in the building plan dated 27th April 2023. Quite clearly, whether the building plans sanctioned up to 9th December 2011 shall comply with the DC Regulations prior to 6th January 2012 is no longer an issue. Even otherwise, we are satisfied that the previous building plans were as per the existing DC Regulations. Dr. Milind Sathe, the learned senior counsel rightly

pointed out that the threshold date for deciding the minimum marginal open space shall be the date when IOD was first granted. There is no illegality in approving the elevation projections for the subject building free of FSI with the sanction of the Municipal Commissioner. We find that the provisions for the servant toilet area, lift machine room, balcony etc. in the sanctioned plan have been approved as per DC Regulations and minor discrepancies, if any, in such permissions cannot be a basis to entertain the writ petition labelled as a public interest litigation. The plan for the subject building was approved prior to coming into force of Clause 6.11 with effect from 15th October 2003 and the amended criteria provided under the modified DC Regulations shall not apply to the subject building. There was no requirement for providing a second staircase before the building plan was sanctioned. Even so, the respondents have stated that a provision for additional staircase has been made in the last approved building plan. Similarly, a provision for RG + LOS has been made in the building plans approved on 27th April 2023. Even assuming for the sake of arguments that the area for the Air Handling Unit (AHU) should be more than 10 thousand sq.ft. under the DCR 35(2)(j)(v), the space provided for AHU is just a little less than what has been claimed by the petitioners.

10. The petitioners state that the respondent-authorities have set a wrong and dangerous precedent by granting arbitrary and illegal permissions, concessions, approvals etc. for construction of the residential building by 15th respondent-Developer. According to them, this issue is of general public importance as such permissions, concessions, approvals etc. would have adverse impact on the civic amenities. The residents around the Altamount Road would face various infrastructural difficulties and this may also impact the safety and security in the neighborhood. Mr. Darius Shroff, the learned senior counsel for the petitioners submitted that there is not

enough space on all four sides of the building for the passage of the fire tender and the subject building is posing a high risk of loss of life and property if fire breaks out in the building. However, we do not find any basis for such apprehensions. The subject building has inbuilt in-house fire fighting systems which are catered with dual power supply and dedicated water-tank for fire extinguishing purposes. The petitioners have clearly failed to demonstrate that the inhabitants of the subject building are likely to suffer safety hazards. In "*Dr. B. Singh*"⁵, the Hon'ble Supreme Court observed that 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. There is no arbitrary exercise of powers by the Municipal Authorities. The deficiency, if any, in providing the amenities shall be a consumer dispute which the flat owners may agitate before the appropriate Consumer Forum. In fact, there should not be an inquiry by this Court in this public interest litigation to examine the allegations of deviations in the building plan.

11. Mr. Darius Shroff, the learned senior counsel for the petitioners referred to the letter of the Architect who claimed elevation treatment free of FSI on the ground of aesthetic. He submitted that a chhajja, cornice, weather shed, sun-breaker etc. cannot extend beyond 1.2 meters from the face of the building and such elevation should not also reduce the width of the required open space to less than 2.5 meters. On the other hand, this is the case pleaded by the respondents that a Notification was issued by the Urban Development Department on 7th October 2013 whereunder the permissible FSI for the subject building could have been claimed from 2.5 to 3 which would squarely answer the allegation of free FSI. Similarly, there was a Government Notification issued on 21st May 2015 which clarified the applicability of pre-2012 DC Regulations for

⁵ *Dr. B. Singh v. Union of India & Ors.* (2004) 3 SCC 363

ongoing projects and, in the meantime, the DCPR-2034 came into force with effect from 23rd September 2022. The government has the power to change the Regulations and the Municipal Authorities are vested with a discretion to grant approvals, permissions, relaxations and concessions. This is not the domain of the Courts to embark upon an inquiry to measure a particular exercise of discretion by the Commissioner and other authorities of the Corporation. In a public interest litigation, the Courts should not interfere in the matters pertaining to subjective satisfaction of the Executives even if the administrative decision is open to criticism. There cannot be any hard and fast rule as to how the Executives should exercise their discretion and the Courts should not interfere with the exercise of discretion unless it is found to be palpably arbitrary. In *“People’s Union for Democratic Rights”*⁶, the Hon’ble Supreme Court observed that this is not the purpose of a public interest litigation to enforce the right of one individual against the other but it is intended to promote and protect the legal rights of a large number of people who are poor, ignorant or in a socially or economically disadvantaged position in life. In *“Balwant Singh Chauhal”*⁷, the Hon’ble Supreme Court observed as under :-

“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

⁶ *People’s Union for Democratic Rights & Ors. v. Union of India & Ors.*: (1982) 3 SCC 235.

⁷ *State of Uttaranchal v. Balwant Singh Chauhal & Ors.*: (2010) 3 SCC 402.

exploitation and injustice and ensure to the weaker sections their rights and entitlements.”

12. A petition filed in the garb of public interest litigation cannot be entertained where no material facts constituting a cause in the larger public interest has been disclosed. Merely because some documents have been produced on record to project a few deviations from the applicable requirements while sanctioning a building plan, the High Court should not entertain such a petition. The petitioners have made multiple prayers in this public interest litigation and are seeking variety of directions and restrain orders including causing of an inquiry in the matter and initiation of criminal proceedings against the respondents who are responsible for granting approvals, sanctions, concessions etc. in favor of 15th respondent which is a private Developer. A public interest litigation with prayers such as: (a) a direction to produce the records; (b) a direction to produce the materials on the basis of which a building plan was sanctioned and (c) a direction to the respondent authority to justify its action are liable to be dismissed at the threshold. Such public interest litigations cause serious apprehensions in the mind of the State authorities, obstruct functioning of the government machinery and result in wastage of Court's invaluable time. In our opinion, the Right to Information Act, 2005 has been enacted with a noble purpose to make the government decisions transparent and not to espouse personal grudge.

13. The interim application vide Interim Application (L) No. 2881 of 2023 was filed more than five years after the amended plans were sanctioned on 15th June 2018. This interim application remained pending for more than two years and was never prosecuted. The petitioners have filed Interim Application (L) No. 19120 of 2023 seeking further amendments in the petition and this interim application has also remained pending since then. In these facts, it is

not difficult to say that the process of the Court has been abused by the petitioners and this Court must refuse to proceed further with the matter. The learned senior counsel for the petitioners referred to the decisions in “*Sanjeev Builders*”⁸, “*Surendra Kumar Sharma*”⁹, “*Pankaja*”¹⁰, “*Sampat Kumar*”¹¹ and “*LT Foods*”¹² and submitted that a delay in applying for the amendment cannot be a ground to refuse the amendment and the amendments vide Interim Application (L) Nos.2881 of 2023 and 19120 of 2023 deserve to be allowed as these amendments shall really subserve the ultimate cause of justice and avoid further litigation. These judgments cited on behalf of the petitioners do not avail any help to them to answer the accusations that this public interest litigation was filed not for any genuine cause and the petitioners did not take any step in the matter for oblique reasons. The powers of the Court to permit amendment in the pleadings are exercised in furtherance of justice, equity and good conscience. This is also necessary at the same time to keep in mind that a writ petition which is filed with certain prayer is not spilled over all the places by virtue of amendments sought in the petition. The conduct of the petitioners is not above board and this public interest litigation lacks *bona fide*. In “*Tehseen Poonawalla*”¹³, the Hon’ble Supreme Court observed that the jurisdiction of the High Court has been brazenly misutilized by the persons with personal agenda and by those who are motivated by a desire to seek publicity. In “*Kushum Lata*”¹⁴, the Hon’ble Supreme Court held that a “public interest litigation” should not be a “publicity interest litigation” or “private interest litigation” or “politics interest litigation” or as the latest trend is “paise income litigation”.

8 *LIC v. Sanjeev Builders Pvt. Ltd. & Anr.*: (2022) 16 SCC 1.

9 *Surendra Kumar Sharma v. Makhan Singh*: (2009) 10 SCC 626.

10 *Pankaja & Anr. v. Yellappa by Lrs. & Ors.*: (2004) 6 SCC 415.

11 *Sampath Kumar v. Ayyakannu & Anr.*: (2002) 7 SCC 559.

12 *LT Foods Ltd. v. Sachdeva & Sons Rice Mills Ltd. & Ors.*: (2014) 215 DLT 39 (DB).

13 *Tehseen Poonawalla v. Union of India & Anr.* (2018) 6 SCC 72

14 *Kushum Lata v. Union of India & Ors.*: (2006) 6 SCC 180.

14. There is considerable force in the submission of Mr. Kamat, the learned senior counsel that the petitioners suppressed the material facts and made misleading statements in the petition so as to create a picture as if they are espousing a public cause. A permission to inspect the entire records was given to the advocate for the petitioners on 27th November 2013 and the photocopies of the amended plans, part OC plan and CFO NOC were provided to him but the petitioners did not disclose the true and correct facts to this Court. This public interest litigation is a targeted attack on the subject building constructed by 15th respondent-Developer and this is a classic example of abuse of the public interest litigation jurisdiction. The learned senior counsel referred to the decision in “*Narmada Bachao Andolan*”¹⁵ wherein the Hon’ble Supreme Court observed as under:

“161. A person seeking relief in public interest should approach the court of equity, not only with clean hands but also with a clean mind, clean heart and clean objective. Thus, he who seeks equity must do equity. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores, means that it is a law of nature that one should not be enriched by the loss or injury to another. The judicial process should never become an instrument of oppression or abuse or means to subvert justice.

162. “The interest of justice and public interest coalesce. They are very often one and the same.” Therefore, the courts have to weigh the public interest vis-à-vis the private interest. A petition containing misleading and inaccurate statement(s), if filed, to achieve an ulterior purpose, amounts to an abuse of the process of the court and such a litigant is not required to be dealt with lightly. Thus, a litigant is bound to make “full and true disclosure of facts”. The court is not a forum to achieve an oblique purpose.

163. Whenever the court comes to the conclusion that the process of the court is being abused, the court would be justified in refusing to proceed further with the matter. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of the court by deceiving it. However, the concealed fact must be a material one in the sense that had it not been suppressed, it would have an effect on the merit of the case/order. The legal maxim jus ex injuria non oritur means that a right cannot arise out of a wrongdoing, and it

¹⁵ *State of Madhya Pradesh v. Narmada Bachao Andolan & Anr.*: (2011) 7 SCC 639.

becomes applicable in a case like this. [Vide Ramjas Foundation v. Union of India [1993 Supp (2) SCC 20 : AIR 1993 SC 852] , Noorduddin v. Dr. K.L. Anand [(1995) 1 SCC 242] , Ramniklal N. Bhutta v. State of Maharashtra [(1997) 1 SCC 134 : AIR 1997 SC 1236] , Sabia Khan v. State of U.P. [(1999) 1 SCC 271] , S.J.S. Business Enterprises (P) Ltd. v. State of Bihar [(2004) 7 SCC 166] and Union of India v. Shantiranjan Sarkar [(2009) 3 SCC 90 : (2009) 1 SCC (L&S) 575]

164. It is a settled proposition of law that a false statement made in the court or in the pleadings, intentionally to mislead the court and obtain a favourable order, amounts to criminal contempt, as it tends to impede the administration of justice. It adversely affects the interest of the public in the administration of justice. Every party is under a legal obligation to make truthful statements before the court, for the reason that causing an obstruction in the due course of justice “undermines and obstructs the very flow of the unsoiled stream of justice, which has to be kept clear and pure, and no one can be permitted to take liberties with it by soiling its purity”. (Vide Naraindas v. Govt. of M.P. [(1975) 3 SCC 31 : 1974 SCC (Cri) 727 : AIR 1974 SC 1252] , Advocate General, State of Bihar v. M.P. Khair Industries [(1980) 3 SCC 311 : 1980 SCC (Cri) 688 : AIR 1980 SC 946] and Afzal v. State of Haryana [(1996) 7 SCC 397 : 1996 SCC (Cri) 424] .)

15. The public interest litigation jurisdiction cannot be invoked by a person to further his personal cause or satisfy his personal grudge and enmity. The materials on record clearly indicate that there was a litigation pending between the Municipal Corporation and Prithvi CHS and this public interest litigation seems to have been filed at its instance. In “*R & M Trust*”¹⁶ the Hon’ble Supreme Court referred to the previous decisions in “*Balco Employees’ Union (Regd.)*”¹⁷ and “*Dattaraj Nathuji Thaware*”¹⁸ and held as under:

24. Public interest litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been abused by some interested persons and it has brought a very bad name. Courts should be very very slow in entertaining petitions involving public interest: in very rare cases where the public at large stand to suffer. This jurisdiction is meant for the purpose of coming to the rescue of the downtrodden and not for the purpose of serving private ends. It has now become common for unscrupulous people to serve their private ends and jeopardise the rights of innocent people so as to wreak vengeance for their personal ends. This has become

16 *R & M Trust v. Koramangala Residents Vigilance Group & Ors.*: (2005) 3 SCC 91.

17 *Balco Employees’ Union (Regd.) v. Union of India*: (2002) 2 SCC 333.

18 *Dattaraj Nathuji Thaware v. State of Maharashtra*: (2005) 1 SCC 590.

very handy to the developers and in matters of public contracts. In order to serve their professional rivalry they utilise the service of the innocent people or organisation in filing public interest litigation. The courts are sometimes persuaded to issue certain directions without understanding the implications and giving a handle in the hands of the authorities to misuse it. Therefore, the courts should not exercise this jurisdiction lightly but should exercise in very rare and few cases involving public interest of a large number of people who cannot afford litigation and are made to suffer at the hands of the authorities. The parameters have already been laid down in a decision of this Court in the case of Balco Employees' Union (Regd.) v. Union of India [(2002) 2 SCC 333] wherein this Court has issued guidelines as to what kind of public interest litigation should be entertained and all the previous cases were reviewed by this Court. It was observed as under: (SCC pp. 376-77, paras 77-80)

“77. Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz. ‘litigation in the interest of the public’.”

16. The scope of judicial review under Article 226 of the Constitution of India and, that too, in a matter projected as public interest litigation is very limited. The writ Court cannot interfere with the decision of the Executives so long as a reasonable procedure is adopted and followed by the Executives. The writ Court shall not interfere with the decision of the Executives even where some procedural compliances are not made. This also cannot be a legal ground to entertain a public interest litigation that necessary approvals were granted by the Executives by exercising their discretionary powers. There is no violation of any statutory right of the petitioners or the public at large. There is no material on record

except an endeavor to make out some case out of the amended DCRs to demonstrate that the public interest was compromised. This writ petition bearing the mask of a public interest litigation seems to be intended to stall the construction of the subject building. This is not the object behind entertaining a public interest litigation that the complaint of a private nature with personal interest or political motivation are encouraged. The Court while entertaining a public interest litigation is required to be careful. In “*A Parent of a Student of Medical College, Simla*”¹⁹, the Hon’ble Supreme Court held that the writ Court should intervene only where the Executive is found remiss in discharging its obligation under any law or the Constitution and to ensure that the deprived and vulnerable sections of the community are able to realize their social and economic rights. No such case is made out in this public interest litigation. The motive behind filing of this public interest litigation is not in doubt and there is a clear objective in making 15th respondent-Developer a target of attack and there is no genuine public interest involved in this matter.

17. For the foregoing reasons, this public interest litigation is dismissed. Consequently, the interim order dated 27th July 2018 is vacated.

18. Pending Interim Applications stand disposed of.

[SUMAN SHYAM, J.]

[CHIEF JUSTICE]

¹⁹ *State of Himachal Pradesh v. A Parent of a Student of Medical College, Simla & Ors.* (1985) 3 SCC 169