

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.3905 OF 2023
IN
PUBLIC INTEREST LITIGATION NO.168 OF 2022
WITH
PUBLIC INTEREST LITIGATION NO.168 OF 2022**

Sunil Sureshchandra Agarwal : Applicant/Orig.Petitioner.
Vs.
Navi Mumbai Municipal Corporation
(NMMC) & ors. : Respondents.

Mr. Subhash Jha a/w Mr. Ritesh Kesarwani and Advocate
Praveena Venkatraman i/by Law Global for the
Applicant/Petitioner.

Mr. Tejesh Dande a/w Mr. Bharat Gadhavi for Respondent No.1-
NMMC.

Mr. Vikram Nankani, Senior Advocate a/w Mr. Saket Mone and
Ms. Anchita Nair i/by Vidhii Partners for Respondent No.4.

Mr. P. P. Kakade, GP a/w Mr. O. A. Chandurkar, Addl. GP and Mrs.
R. A. Salunkhe, AGP for the Respondent-State.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.
DATE : 07th FEBRUARY, 2024**

P.C. :

1. The above matter was listed on board pursuant to a
praecipe dated 7th November, 2023 filed by the Advocates for the

Applicant seeking recall of the order dated 31st October 2023 passed by this Court.

2. Mr. Jha, learned counsel appearing on behalf of the Applicant, has invited our attention to paragraph 4 of the order dated 31st October 2023 and pointed out that the observations made therein gravely prejudice the Applicant and his Advocates. He then submitted that on the date when the order came to be passed, he was to appear in the matter, however, was unable to do so for the reasons set out in the said praecipe. He thus submitted that the full and complete facts leading up as to why and in what circumstances the Applicants had sought listing of the matter before this bench could not be placed before this Court, and it was thus that this Court had been persuaded to make the observations more particularly contained in paragraph 4 of the order dated 31st October 2023.

3. Mr. Jha then submitted that there was no deliberate attempt to have the captioned matter listed before this Court or to avoid any bench of this Court. He submitted that the above

matter had been assigned by the then Acting the Hon'ble Chief Justice before the bench headed by Justice G.S. Patel since two other Division Benches who were then assigned Public Interest Litigations were unable to take up the matter. He submitted that thereafter since this Court had the roster for Public Interest Litigations, three Advocates from his office had personally visited the Registry to ascertain as to whether there was any administrative order passed by the then Acting Chief Justice assigning the captioned Petition permanently to the Bench of Justice G. S. Patel. He submitted that all the three Advocates were informed by the Registry that there was no such administrative order in existence and that the captioned Public Interest Litigation ("PIL") would be heard as per the roster which assignment was with this Bench. He submitted that it was thus that the praecipe was filed on 23rd October 2023 seeking circulation of the matter before this Bench given the grave urgency in the matter. Mr. Jha then submitted that the observations made in paragraph 4 of the order dated 31st October 2023 ought to be expunged given the Advocates for the

Applicant had acted on the bonafide belief that the assignment for hearing of the captioned PIL was with this Court.

4. Though various arguments were canvassed by both sides qua the role of the Hon'ble the Chief Justice as the master of the roster etc. it is not necessary for us to go into that aspect in light of the fact that Mr. Jha has submitted that the matter was mentioned before this bench only because the advocates were so informed by the Registry. Given this we accept the explanation given by Mr. Jha for mentioning the matter before this Court. Mr. Nankani Learned Senior Counsel very fairly did not join issue with this explanation.

6. Hence for the reason stated above, we deem it fit and proper to expunge the observations made in paragraph 4 of the order dated 31st October 2023 which are hereby treated as expunged. Since the matters are specifically assigned to the bench headed by the Hon'ble Justice G.S. Patel, the same shall be taken up and heard by that bench.

7. The praecipe is therefore disposed of in the aforesaid terms.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)