**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**PUBLIC INTEREST LITIGATION PETITION NO. 33 OF 2011.**

Telang Road Residents Association & Ors. … Petitioners

Versus

State of Maharashtra & Ors. … Respondents

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**SYNOPSIS**

The Petitioners are the residents of Telang Road and Bhaudaji Road, Matunga, Mumbai-400 019 and seek to enforce their fundamental rights under Article 21 of the Constitution of India which confers upon every person in India the right to have a clean and pollution free environment.

The present Public Interest Litigation has been interalia filed as the statutory authorities have failed to act in the matter of stopping the contractors engaged by the Solid Waste Management Department of the Corporation from dumping of garbage, house gully material such as refuse, plastic bags, thermocole, food and other waste, etc. while transferring the same from smaller vehicles to larger vehicles in utter disregard to the health of the residents, school children and devotees on Telang Road and Bhaudaji Road and parking their vehicles loaded with garbage, house gully material such as refuse, plastic bags, thermocole, food and other waste, etc. at ‘no parking spots’ on Telang Road and Bhaudaji Road as well as at the places where parking is available in the residential, devotional and educational area. The Respondent No. 4 has even admitted in a letter dated 14.9.2009 that a new ML Chowky has been constructed near Wadala Railway Station in a non-residential and un-crowded area which has minimal traffic movement for moving the ML Chowky out of the F/North ward office but has yet not been moved.

They are also filing the present Petition to inter alia assail the illegal constructions done by the Municipal Corporation of Greater Mumbai, F/North Ward Office on Bhaudaji Road to house the M.L. Chowky, Pest Control Office and Civil Defence Office. The said construction has been done without demolishing the structures undertaken to be demolished and also by committing a series of violations of D.C. Regulations as is evident from a comparison of the site structures and the Block Plan.

The Petitioners brought these facts before the Statutory Authorities through a legal notice sent by their Advocate in May, 2010. In the said legal notice, the statutory authorities were called upon to take action as mandated by law, including the removal of the Motor Loader Chowky from the densely populated residential, educational and devotional area of Telang Road and Bhaudaji Road and also to stop the parking of garbage trucks and vans loaded with garbage, house gully material such as refuse, plastic bags, thermocole, food and other waste, etc. indiscriminately on both sides of the said roads which are no parking/ no halting roads/ silent zones.

**LIST OF DATES**

|  |  |  |
| --- | --- | --- |
| **Sr. No.** | **Dates** | **Events** |
|  | 2 Sep 2006 | Petitioners letter to Respondent Nos. 4 and 5 informing them about the problems caused by the parking of garbage trucks on Telang Road and Bhaudaji Road. |
|  | 5 Sep 2006 | Petitioner No. 13’ RTI Application enquiring into the illegal constructions of M.L. Chowky and Civil Defence office. |
|  | 6Sep 2006 | Letter to Respondent No. 5 complaining about problems created by illegal parking of garbage trucks, under “No-Parking” and “No-Halting” signs. |
|  | 27 Oct 2006 | Petitioner No. 13’ RTI Application enquiring into the illegal constructions of M.L. Chowky and Civil Defence office. |
|  | 7 Nov 2006 | Reply to RTI application Annexure ‘A’ dated 5 Sep 2006 and Annexure ‘B’ on 27 Oct 2006, stating merely that ML chowky is in the BMC F/North ward office building compound and that A.E. (Environment) would send a reply. |
|  | 27 Feb 2007 | Reply from Respondent No. 5 regarding RTI application dated 23 Feb 2007 saying 44 cases of violations of garbage trucks were noted and fined and that Respondent No. 4 was notified that they must shift the ML chowky |
|  | 6 Mar 2007 | Letter to Respondent No. 5 at traffic headquarters complaining about problems created by illegal parking of garbage trucks, under “No-Parking” and “No-Halting” signs. |
|  | 8 Mar 2007 | RTI Application to Respondent No. 5 at traffic headquarters complaining about problems created by illegal parking of garbage trucks (with their license plate numbers), under “No-Parking” and “No-Halting” signs. |
|  | 23 Mar 2007 | Municipal Architect’s letter to the Petitioner No. 13, calling upon him to collect the block plan of the BMC F/North office building along with adjoining BMC School Building. **Block plan collected.** |
|  | 26 Mar 2007 | Reply to RTI dated 8 Mar 2007 which requested details of the 44 cases, states that jumbo towing trucks are available but no towing was done |
|  | 20 Apr 2007 | Letter to Respondent No. 4 and 5, complaining about problems created by illegal parking of garbage trucks (with their license plate numbers), under “No-Parking” and “No-Halting” signs. |
|  | 7 May 2007 | Letter to Respondent No. 5 stating that the block plan shows that there cannot be any construction within the compound wall. |
|  | 7/9 May 2007 | Letters to Respondent No. 4 and 5, complaining about problems created by illegal parking of garbage trucks (with their license plate numbers), under “No-Parking” and “No-Halting” signs. |
|  | 14 Aug 2007 | Letters to Respondent Nos. 4 and 5, complaining about problems created by illegal parking of garbage trucks (with their license plate numbers), under “No-Parking” and “No-Halting” signs. |
|  | 22 Aug 2007 | Respondent No. 4 replies to RTI application dated 16 Aug 2007, saying ML chowky was constructed many years ago and there is no record of construction. |
|  | 30/31 Aug 2007 | Letter to Respondents Nos. 4 and 5, complaining about problems created by illegal parking of garbage trucks, under “No-Parking” and “No-Halting” signs. |
|  | Sept 2007 | Respondent No. 5’s reply to RTI application dated 30 August 2007, stating that Respondent no. 4 has been instructed to shift the ML chowky |
|  | 9 Jan 2008 | Letter to Respondent Nos. 4 and 5 complaining about problems created by illegal parking of garbage trucks, under “No-Parking” and “No-Halting” signs. |
|  | 19 March 2008 | Reply to RTI application dated 25 Feb 2008, states that 7 cases of fines were imposed on garbage trucks. |
|  | 23 Apr 2008 | BMC Solid waste management office reply to RTI Application dated 17 Apr 2008, says matter regarding shifting date of ML chowky, as verbally promised by BMC officials, will be decided by local BMC F/North office |
|  | 30 Apr 2008 | Letter to Respondent No. 4 complaining about problems created by illegal parking of garbage trucks, under “No-Parking” and “No-Halting” signs. |
|  | 28 May 2008 | BMC reply to RTI application (Annexure B) dated 26 Feb 2007, mentions that ML and Civil defence chowky exists since inception and that there are land constraints. |
|  | 13 June 2008 | BMC F/North reply to RTI application of 4 June 2008, states that there is no proposal to shift ML chowky and that garbage trucks are loading and unloading for only 5 minutes and instructions are given to truck driver to reduce traffic hazards (hence admitting that there are traffic hazards). |
|  | 29 Aug 2008 | Two letters to Respondent No. 4 complaining about problems created by illegal parking of garbage trucks and blocking the fire exit of F/North building and BMC Telang road school AND that there is illegal construction in the BMC school playground. |
|  | 10 Oct 2008 | BMC reply to RTI application dated 15 Sep 2008 states that shifting of ML chowky decision is with higher authorities and no illegal construction has taken place in the BMC school playground, but an existing structure was repaired by AE (Environment). |
|  | 9 Feb 2009 | Letter to Respondent No. 4 complaining about problems created by illegal parking of garbage trucks. |
|  | 13 Feb 2009 | Letter from Respondent No. 7 states that trucks are not parked on Bhaudaji Rd but then adds that drivers are instructed not to park for a long time. BMC also states that the department is trying to relocate the ML chowky. |
|  | 20 Feb 2009 | BMC reply to RTI Application Annexure B of 19 Dec 2008 and Annexure C of 21 Jan 2009 states that temporary structure in school playground will be verified and petitioner will be informed. |
|  | 17/23 Mar 2009 | Letters to Respondent Nos. 4 and 6 complaining about the illegal parking of the garbage trucks, under “No-Parking” and “No-Halting” signs. |
|  | 21 Apr 2009 | Letters to Respondent No. 4 and 6 complaining about the illegal parking of the garbage trucks, under “No-Parking” and “No-Halting” signs. |
|  | 22 May 2009 | Letter to State Information Commissioner that there is no reply to RMA 38219 appeal 2157 |
|  | 28 Jul 2009 | Letter to Respondent No. 5 at traffic headquarters complaining about the illegal parking of the garbage trucks, under “No-Parking” and “No-Halting” signs. |
|  | 13 Aug 2009 | Letter to Respondent Nos. 4 & 5 complaining about problems created by illegal parking of garbage trucks. |
|  | 11/ 13 Aug 2009 | Two letters to State Information Commissioner that there is no reply to RMA 38219 appeal 2157 |
|  | 13 Sep 2009 | Reply from Respondent No. 4 to letter dated 5 Aug 2009 of Respondent No. 6, stating that MCGM is planning to shift some trucks from Telang Road to RA Kidwai Rd, Wadala. |
|  | 2009 – 2010 | Bi-monthly meetings with BMC officials on alternate locations for the ML chowky. |
|  | 3 May 2010 | The Petitioners Advocate sent a notice to Respondent No. 4 and to respondents No. 5 and Matunga police station calling for the removal of the M.L. Chowky and Pest Control Office from the compound of the F/North Ward Office and summarizing all their other complaints. |
|  | 10 May 2010 | Letter to Respondent Nos. 4 & 5 complaining about problems created by illegal parking of garbage trucks. |
|  | 3 Aug 2010 | Letter to Respondent No. 4 regarding a major accident where the garbage truck runs over a 3 ½ year old school going girl and consequently FIR was filed against the driver under section 279 and 338. Meeting of all the relevant BMC officials where in the BMC promise of shifting the ML chowky was re-iterated. |
|  | 5 Aug 2010 | Letter by Petitioner No. 7 to Respondent No. 4, stating that his daughter was run over by the garbage truck and a copy of the FIR attached. |
|  | 11 Aug 2010 | Letter to Respondent No. 4 complaining about problems created by illegal parking of garbage trucks. |
|  | 27 Sept 2010 | Letter to Respondent No. 4 complaining about problems created by illegal parking of garbage trucks. |
|  | 29 Oct 2010 | Letter to Respondent No. 4 complaining about problems created by illegal parking of garbage trucks. |
|  | 4/5/11 Feb 2011 | Letter to Respondent No. 4, 5 and Matunga police station stating that there is a Supreme Court judgement disallowing garbage trucks creating nuisance near places of worship |

**POINTS TO BE URGED**

1. Illegal parking of garbage vans in No parking areas
2. Motor Loader Chowky permitted against Rules- this is permitted only in non-residential areas and away from schools and temples.
3. To comply on paper the provisions of the D.C. Regulations, 1991. Areas meant for Open spaces are utilized to construct a Motor Loader Chowky, Civil Defence Chowky and Pest Control Office. No adequate means of access available for the said land
4. As per DC Regulations, independent open spaces are required for each building- no such open spaces provided for each distinct building
5. Extra FSI used in an illegal manner-the area utilized by structures on account of Motor Loader Chowky, Civil Defence Chowky and Pest Control Office not deducted from the total FSI and part of the means of access
6. The entire footpath on Bhaudaji Road side is at a raised level and converted into a car park attached to the building and forcing pedestrians to use the road to walk on.
7. Almost zero front open space/setback on the east side of the impugned building-no approval could have been granted
8. False plans put up to show that the open spaces are adequate- means of access shown where Motor Loader Chowky, Civil Defence Chowky and Pest Control Office structures are standing.

**ACTS AND RULES TO BE REFERRED**

1. Constitution of India
2. Municipal Corporation Act, 1888
3. Maharashtra Regional and Town Planning Act, 1966
4. Development Control Regulations of 1991
5. The Municipal Solid Waste (Management & Handling) Rules, 2000
6. The Maharashtra Non-biodegradable Garbage (Control) Act, 2006

**AUTHORITIES TO BE CITED**

1. Down Mangor Valley Residents Welfare Association & Anr. Vs. Mormugao Municipal Council, Goa & Ors.- AIR 2002 Bom 258=2002(3)BomCR29
2. All India Harijan League- (1989) Suppl.2 SCC 289
3. Almitra H. Patel- (2000) 2 SCC 679
4. M.C. Mehta vs. Union Of India- (2004) 6SCC 588
5. Noise Pollution (V)- (2005) 5 SCC 733

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**PUBLIC INTEREST LITIGATION PETITION NO. 33 OF 2011**

In the matter of Articles 14, 21, 48A, 51A and 226 of the Constitution of India;

AND

In the matter of the Bombay Municipal Corporation Act, 1888;

And

In the matter of the Bombay Police Act, 1951;

And

In the matter of the illegal parking of garbage trucks on Telang Road and Bhaudaji Road;

And

In the matter of the unauthorized construction and structures in the Corporation’s F/North Ward Office.

1. Telang Road Residents Association, )

having its address c/o Gangjibhai )

Dedhia, 405, Kesar Kunj, 2nd Floor, )

Telang Road, Matunga, Mumbai )

400019. )

2. Bhaudaji Road Residents Association,)

having its address c/o Dr. Meena )

Vora, 95/9, Vishwadeep, Bhaudaji )

Road, Matunga, Mumbai 400019. )

3. Dr. (Mrs.) Roshan Bhakta, )

Indian Inhabitant, residing at )

Bhakta Nivas, 438 Shradhanand )

Road, Off Bhaudaji Rd, Matunga CR, )

Mumbai 400019. )

4. Dr. (Mrs.) Meena Vora, )

having clinic at 95/9, Vishwadeep, )

Bhaudaji Road, Matunga, Mumbai )

400019. )

5. Sanjay Someshwar, )

Indian Inhabitant, residing at 417-2, )

Vasant Niwas, Bhaudaji Cross Road )

No. 10, Opp. Municipal Office, )

Matunga, Mumbai 400019. )

6. Somel Thakkar, )

Indian Inhabitant, residing at 437, )

Vedanta, Shraddhanand Road, Off )

Bhaudaji Road, Matunga (CR), )

Mumbai 400019. )

7. Mahesh Ramesh Vyas, )

Indian Inhabitant, residing at Plot )

444, Devi Sadan, 2nd Floor, )

Mahilashram Road, Off Bhaudaji Rd, )

Matunga (CR), Mumbai 400019. )

8. Mitesh Shah, )

Indian Inhabitant, residing at 51/2, )

Ranchod Das Villa, Bhaudaji Cross )

Road, Matunga Central Railway, )

Mumbai 400019. )

9. Gaurang Dinesh Damani, )

Indian Inhabitant, residing at 1102 )

Avanti Apartment, Opp King’s Circle )

Station, Sion, Mumbai 400022. )

10. S. Ramkrishanan, )

Indian Inhabitant, residing at 1/108, )

Sri Lakshmi Niwas, Telang Road, )

Matunga (CR), Mumbai 400019. )

11. Ramaswamy N. Iyer, )

Indian Inhabitant, residing at 5/100, )

Laxmi Villa, Rambaug Lane, )

Matunga (CR), Mumbai 400019. )

12. Mohmad Habib Sarvaiya, )

Trustee of Mosque next to )

MCGM Ward Office, Telang Rd )

Matunga (CR), Mumbai 400019. )

13. Gangjibhai Dedhia, )

Indian Inhabitant, residing at 405, )

Keshar Kunj, Telang Road, 2nd Floor, )

Matunga, Mumbai 400019. ) ... Petitioners

Versus

1. State of Maharashtra. )

2. Municipal Corporation of Greater )

Mumbai, Mahapalika Marg, Mumbai )

400001. )

3. The Municipal Commissioner, )

Municipal Corporation of Greater )

Mumbai, Mahapalika Marg, Mumbai )

400001. )

4. Assistant Municipal Commissioner, )

F/North Ward, Municipal Corporation )

of Greater Mumbai, 96, Bhaudaji )

Road, Matunga, Mumbai 400019. )

5. Joint Commissioner of Police )

(Traffic), Sir Pochkhanwala Road, )

Worli, Mumbai 400018. )

6. The Senior Police Inspector, )

Matunga Division Traffic Chowky, )

having his office at Dr. Babasaheb )

Ambedkar Road, Opposite Aurora )

Theatre, Matunga (CR), Mumbai )

400019. ) … Respondents

**TO,**

**THE HON’BLE THE CHIEF JUSTICE AND HIS**

**COMPANION JUDGES OF THE HON’BLE**

**HIGH COURT OF JUDICATURE AT BOMBAY**

**THE HUMBLE PETITION OF THE PETITIONERS ABOVENAMED**:

**MOST RESPECTFULLY SHEWETH**:

1. Petitioner Nos. 1 and 2 are unregistered Associations of residents of the buildings on Telang Road and Bhaudaji Road, Matunga (“the said roads”), respectively, both of which are situated in the F/North Ward.  All the residents of Telang Road are the members of Petitioner No. 1 and all the residents of Bhaudaji Road are the members of Petitioner No. 2. Petitioner Nos. 3 to 8 are all residents of Bhaudaji Road and Petitioner Nos. 10 to 13 are all residents of Telang Road. Petitioner No. 9 is a resident of the neighbouring area. Respondent No.1 is the State of Maharashtra. Respondent No.2 is the Municipal Corporation of Greater Mumbai (“Corporation”), a statutory authority incorporated under the provisions of the Bombay Municipal Corporation Act, 1888. Respondent No.3 is the Municipal Commissioner for Greater Mumbai who exercises powers and functions under various statutes. Respondent No.4 is the Assistant Municipal Commissioner, MCGM, F/North ward, and is in-charge of the ‘F/North’ Ward in Mumbai in which the said roads are located. Respondent No. 5 is the Joint Commissioner of Police for Mumbai. Respondent No. 6 is the Senior Inspector of Matunga Division Traffic Chowky under whose jurisdiction the Bhaudaji and Telang Roads are situated.
2. (i) The Petitioners are filing this Petition in private as well as public interest primarily on account of the violation of their right to a clean and pollution free environment which is guaranteed to them under Article 21 of the Constitution of India. The Petitioners are also seeking reliefs in respect of certain unauthorised constructions carried out by the Corporation in its premises viz., the F/North Ward Office situated at Bhaudaji Road, Matunga (C.R.).
3. As more particularly stated below, the garbage trucks of the Corporation are parked on Telang Road as well as Bhaudaji Road everyday. These trucks come to the F/North Ward Office of the Corporation in view of the fact that the truck drivers report at the Motor Loader Chowky situated in the F/North Ward Office before and after they proceed / return from garbage collection trips. In view of the large number of trucks used for garbage collection i.e. approximately 55 in number, there are several trucks parked on Telang Road and Bhaudaji Road throughout the day and night. These trucks create a nuisance inasmuch as they give out an unbearably foul stench which is carried to the homes of the Petitioners and other residents of the area. Apart from the stench, there have been instances where the garbage trucks have caused accidents in the area sometime even resulting in the death of pedestrians. These garbage trucks are brazenly parked on Telang Road and Bhaudaji Road despite the same being ‘no parking’ zones. In the circumstances, the Petitioners are seeking reliefs against the parking of these garbage trucks on Telang Road and Bhaudaji Road.
4. The Petitioners further say that they have recently learnt that the Motor Loader Chowky itself is unauthorised inasmuch as the structure which houses the Chowky is not shown on the sanctioned plan of the F/North Ward Office. It is clear that the Motor Loader Chowky has been erected by the Corporation unauthorisedly and without securing the proper permissions. Accordingly, in this Petition, the Petitioners are also seeking demolition, inter alia, of this Motor Loader Chowky.
5. As stated above, the Petitioners are all residents of Telang Road, Bhaudaji Road and the immediately neighbouring areas in Matunga, Mumbai. A map of the area in which the Petitioners reside is hereto annexed and marked Exhibit “A”. The map clearly shows the location of Telang Road and Bhaudaji Road and other interconnecting roads in the area. The map also shows the location of the F/North Ward Office of the Corporation, the Kanyaka Parameshwari temple, the Shiv temple, the Shankara Matham temple, the Bhajana Samaj temple, the Telang Road Matunga Mosque, the Telang Road Marathi Shala and the Premier High School. There are totally six schools in the area viz. BMC’s Telang Road school; Ommedchand Shah School for the deaf and dumb; BMC’s Lakshmi Narayan school and Junior college; BMC’s Mahilashram Road school; Matunga Lion’s Pioneer school and Poddar Jumbo Kids play school. In addition there are 2 orphanages viz. BJ Home and Shradhanand Mahilashram.
6. The Petitioners say that the side of Telang Road touching the F/North Ward Office is a ‘no parking’ zone and both sides of Bhaudaji Road are ‘no parking’ zone. Hereto annexed and marked Exhibits “B1” and “B2” are photographs showing the ‘no parking’ signs on Telang Road andExhibit “C” are photographs showing the ‘no parking’ signs on Bhaudaji Road.
7. The Petitioners say that pursuant to an application made by Petitioner No. 13 to the Corporation under the Right to Information Act, 2005, the Corporation vide its letter dated 23rd March, 2007 forwarded to him a certified true copy of the Block Plan of the B.M.C. F/North Ward Office. The Petitioners say that the structures existing in the F/North Ward Office of the Corporation are not in accordance with this Block Plan inasmuch as the Block Plan does not show the existence of the Motor Loader Chowky, the Pest Control Office and the Civil Defence Office. Despite this, these structures have been constructed by the Corporation in its F/North Ward Office compound. Hereto annexed and marked Exhibit “D” is a copy of the said letter dated 23rd March, 2007 along with the Block Plan. Hereto annexed and marked Exhibit “E” is a sketch plan of the F/North Ward Office showing the various structures existing thereon as on date.
8. The Petitioners say that one of the structures in the F/North Ward Office is a Motor Loader Chowky. This Chowky serves as an office where the drivers of the garbage trucks report before and after they proceed / return from garbage collection trips. There are approximately 55 garbage trucks used for garbage collection in the F/North. All these trucks report at this Motor Loader Chowky before they proceed for garbage collection and after they return therefrom. The drivers of these trucks park the same on Telang Road and Bhaudaji Road while they proceed to the Motor Loader Chowky to report their attendance. The Petitioners say that at any given time of the day, both these roads are packed with garbage trucks.
9. The Petitioners say that Telang Road is a 60 feet wide road on which parking is permitted only on one side viz., the side on which the residential buildings are located. The other side of Telang Road is a ‘no parking’ zone. Bhaudaji Road is a 90 feet wide road, both sides of which are of ‘no parking’ zone. That side of Telang Road on which parking is permitted is used by the residents of the buildings situated on Telang Road to park their cars and is always full. The Petitioners say that the garbage trucks are always parked on the ‘no parking’ side of Telang Road and in the ‘no parking’ zone of Bhaudaji Road. The Petitioners say that the Petitioners have repeatedly complained to the Respondents about the illegal parking of the garbage trucks in the ‘no parking’ zones of Telang Road and Bhaudaji Road both in writing and during meetings with the Respondents. The Petitioners however say that till date no action has been taken by the Respondents and the garbage trucks continue to park in the ‘no parking’ zones on Telang Road and Bhaudaji Road. Hereto annexed and marked Exhibit “F” (colly) are photographs showing the garbage trucks parked on these two roads even as on the date of filing of the suit. Hereto annexed and marked Exhibits “G1” to “G22” are copies of various letters addressed by the Petitioners to the Respondents.
10. The Petitioners say that while the garbage trucks are parked, they even transfer garbage from one truck to another. This results in the spillage of the garbage on to the road. The garbage spilled on the road invariably lies there till the next day. Hereto annexed and marked Exhibits “H1” and “H2” (collectively) are photographs showing the transfer of garbage from one truck to another and the littering thereof on the road.
11. The Petitioners say that the Corporation has accepted the position that Telang Road is not the proper place for a Motor Loader Chowky. Accordingly, the Corporation has constructed three other Motor Loader Chowkys in the F/North Ward – one at the Sion Hindu Crematorium, the other at R.A. Kidwai Road, Wadala and the third at Antop Hill near the Fire Brigade Station. The Petitioners say that the Motor Loader Chowky at Wadala is ideal for use inasmuch as the same is situated at a location where there are no residential buildings or shops. It is situated right next to a Corporation Office. On one side of this Motor Loader Chowky are the railway tracks and on the other is an approximate 154 feet wide road which is broad enough to accommodate parking for the garbage trucks. The Petitioners say that the Corporation has acknowledged the viability and suitability of using this Wadala Motor Loader Chowky as an alternate site in its letter dated 14 September 2009 addressed to the Traffic Police. The Petitioners understand that the Traffic Police has given its no objection to the Motor Loader Chowky at Wadala being made operational and being used as such. Hereto annexed and marked Exhibit “I-1” is a copy of the said letter dated 14th September, 2009, with a translation Hereto annexed and marked as Exhibit “I-2” and Exhibit “J” (collectively) are photographs of the proposed Motor Loader Chowky at R.A. Kidwai Road, Wadala. That by the petitioners Advocate letter dated 3 May 2010, the petitioners brought some of the above facts to the notice of Respondents 3, 4 and 5, and called upon them to take immediate steps to rectify the situation. Hereto annexed and marked as Exhibit “K” is a copy of the said notice dated 3 May 2010.
12. In the circumstances aforesaid, the Petitioners say and submit that the action / inaction of the Respondents in permitting / not preventing the garbage trucks from being parked on Telang Road and Bhaudaji Road, permitting /not preventing the garbage trucks from transferring garbage from one truck to another, not shifting the Motor Loader Chowky from the F/North Ward Office to R.A. Kidwai Marg, Wadala and constructing unauthorized structures in the F/North Ward Office are illegal, invalid, null and void and of no effect whatsoever on the following amongst other grounds which are without prejudice to one another :-
    1. The Petitioners submit that Article 21 of the Constitution of India guarantees to the Petitioners the right to life which includes the right to a clean and pollution free environment. The Petitioners say that the garbage trucks parked on Telang Road and Bhaudaji Road emit an unbearably foul stench which makes it virtually impossible for the Petitioners and the other residents of the area to live there. The garbage trucks also bring with them diseases like malaria and dengue which again afflict the Petitioners and other residents of the locality. The Petitioners therefore submit that by permitting garbage trucks to be parked on Telang Road and Bhaudaji Road, the Respondents have violated and continue to violate the right of the Petitioners under Article 21 of the Constitution of India.
    2. The Petitioners submit that apart from violating the Petitioners’ rights under Article 21 of the Constitution of India, these garbage trucks also cause a nuisance to the Petitioners and the other residents of the areas. The Petitioners submit that under the provisions of the Indian Penal Code, 1860 and the Bombay Police Act, it is the duty of the Respondents to remove such a nuisance and to ensure that the same is not caused again. Despite this, the Respondents have failed to do so.
    3. The Petitioners say that there have been occasions when these garbage trucks have been involved in accidents with pedestrians. In fact, there have been occasion when persons have even lost their limbs. On one occasion, a garbage truck knocked down and crushed the hand of a 3 and a half year old girl Yashvi M Vyas, who was standing on the footpath on 2 August 2010. This is again a violation of the rights of the citizens under Article 21 of the Constitution of India.
    4. The Petitioners further submit that the garbage trucks cannot be parked on Telang Road as well as Bhaudaji Road in view of the fact that the same are no parking zones as stated above. Despite this, the trucks continue to park on these roads and the Respondents continue to take no action whatsoever to stop this brazen violation of law.
    5. As stated above, the Motor Loader Chowky at Wadala is much more suitable than the one at Telang Road. Accordingly, the Respondents ought to shift the operations of the Motor Loader Chowky to Wadala.
    6. The Petitioners further submit that from the block plans of the F/North Ward Office it is apparent that the Motor Loader Chowky, the pest control office and the civil defence office are all housed in structures which are unauthorized and therefore illegal. These structures have been constructed by the Corporation without securing the required permissions and consequently the same are in violation of the Development Control Regulations for Greater Mumbai, 1991.
    7. The Petitioners say that from the map at Exhibit “A” hereto, it is clear that there are four temples, a mosque and six schools in the area where the garbage trucks are parked. Apart from being the environmental and safety hazard, the garbage trucks also interferes with the purity and sanctity of temples and a mosque and the education of the students. This again is a violation of the rights of the citizens under Article 21 of the Constitution of India.
    8. The Petitioners submit that the actions / inactions of the Respondents are also arbitrary, unfair and unreasonable and irrational and consequently violative of Article 14 of the Constitution of India.
13. In the circumstances aforesaid, the Petitioners say and submit that this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order, or direction under Article 226 of the Constitution of India:
14. directing the Respondents to ensure that no garbage truck is parked either on Telang Road or Bhaudaji Road or on any of the neighbouring roads viz. Shradhanand Road, Mahilashram marg, Bhaudaji Cross Roads 8, 9 and 10, Telang Cross Roads 2 and 3; Lakshmi Narayan lane amongst others.
15. directing the Respondents to take stringent action against errant drivers of garbage trucks who park their trucks either on Telang Road or Bhaudaji Road or on any of the said neighbouring roads;
16. directing the Corporation to forthwith demolish the unauthorized structures in its F/North Ward Office including the Motor Loader Chowky, the Civil Defence Office and the Pest Control Office as shown on the plan being Exhibit “E” hereto;
17. directing the Respondents to take all necessary steps to forthwith shift the operations of the Motor Loader Chowky from the F/North Ward Office to the Motor Loader Chowky situated at R.A. Kidwai Road, Wadala.
18. The Petitioners submit that in view of the seriousness of the violations committed by the Respondents and its impact on the Petitioners and the other residents of the areas, the Petitioners are also entitled to interim reliefs in the matter. The Petitioners therefore submit that pending the hearing and final disposal of the present Petition, this Hon’ble Court be pleased to:
    1. direct the Respondents to ensure that no garbage truck is parked either on Telang Road or Bhaudaji Road or on any of the neighbouring roads viz. Shradhanand Road, Mahilashram marg, Bhaudaji Cross Roads 8, 9 and 10, Telang Cross Roads 2 and 3; Lakshmi Narayan lane amongst others.
    2. direct the Respondents to take stringent action against errant drivers of garbage trucks who park their trucks either on Telang Road or Bhaudaji Road or on any of the said neighbouring roads;
    3. direct the Corporation to forthwith demolish the unauthorized structures in its F/North Ward Office including the Motor Loader Chowky, the Civil Defence Office and the Pest Control Office as shown on the plan being Exhibit “E” hereto;
    4. direct the Respondents to take all necessary steps to forthwith shift the operations of the Motor Loader Chowky from the F/North Ward Office to the Motor Loader Chowky situated at R.A. Kidwai Road, Wadala.

The Petitioners submit that unless the aforesaid reliefs are granted, grave and irreparable loss, harm and injury will be caused to the Petitioners, the balance of convenience is also in favour of the Petitioners.

1. The Petitioners have demanded justice but the same has been denied to them.
2. The Petitioners do not have any other equally efficacious alternative remedy and if the reliefs prayed for herein are granted, the same will meet the end of justice.
3. The Petitioners have not filed any other Petition in this Hon’ble Court or in any other High Court in India or in the Hon’ble Supreme Court of India in respect of the subject matter of this Petition.
4. The Petitioners will rely on documents, a list whereof is annexed hereto.
5. The Petitioners have paid the fixed court fees of Rs. \_\_\_\_ in respect of this Petition.
6. The impugned actions / inaction of the Respondents have taken place in the F/North Ward Office of Mumbai which is in Mumbai. The entire cause of action has therefore arisen in Mumbai. This Hon’ble Court therefore has jurisdiction to entertain and try the present Petition.

The Petitioners, therefore, pray:

* + 1. that this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order, or direction under Article 226 of the Constitution of India :

1. directing the Respondents to ensure that no garbage truck is parked either on Telang Road or Bhaudaji Road or on any of the neighbouring roads viz. Shradhanand Road, Mahilashram marg, Bhaudaji Cross Roads 8, 9 and 10, Telang Cross Roads 2 and 3; Lakshmi Narayan lane amongst others.
2. directing the Respondents to take stringent action against errant drivers of garbage trucks who park their trucks either on Telang Road or Bhaudaji Road or on any of the said neighbouring roads;
3. directing the Corporation to forthwith demolish the unauthorized structures in its F/North Ward Office including the Motor Loader Chowky, the Civil Defence Office and the Pest Control Office as shown on the plan being Exhibit “E” hereto;
4. directing the Respondents to take all necessary steps to forthwith shift the operations of the Motor Loader Chowky from the F/North Ward Office to the Motor Loader Chowky situated at R.A. Kidwai Road, Wadala;
   * 1. that pending the hearing and final disposal of the present Petition, this Hon’ble Court be pleased to :
   1. direct the Respondents to ensure that no garbage truck is parked either on Telang Road or Bhaudaji Road or on any of the neighbouring roads viz. Shradhanand Road, Mahilashram marg, Bhaudaji Cross Roads 8, 9 and 10, Telang Cross Roads 2 and 3; Lakshmi Narayan lane amongst others.
   2. direct the Respondents to take stringent action against errant drivers of garbage trucks who park their trucks either on Telang Road or Bhaudaji Road or on any of the said neighbouring roads;
   3. direct the Corporation to forthwith demolish the unauthorized structures in its F/North Ward Office including the Motor Loader Chowky, the Civil Defence Office and the Pest Control Office as shown on the plan being Exhibit “E” hereto;
   4. direct the Respondents to take all necessary steps to forthwith shift the operations of the Motor Loader Chowky from the F/North Ward Office to the Motor Loader Chowky situated at R.A. Kidwai Road, Wadala;
      1. for ad-interim reliefs in terms of prayer clause (b);
      2. costs of the Petition be provided for;
      3. for such further and other Writs, Orders and directions under Article 226 of the Constitution of India as this Hon’ble Court may deem fit and proper.

Dated this day of 2011

Advocate for the Petitioner

**VERIFICATION**

I, Gaurang Dinesh Damani, the Petitioner No. 9 above named residing at 1102 Avanti Apt, Flank Road, Sion East, Mumbai 400022, do hereby solemnly state that what is stated in paragraphs No \_\_ to \_\_ is true to my knowledge and that what is stated in the remaining paragraphs No. \_\_ to \_\_ is stated on information and belief, and I believe that the same to be true.

Solemnly declared at Bombay

This day of 2011 before me

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. 33 OF 2011

Telang Road Residents Association & Ors. … Petitioners

Versus

State of Maharashtra & Ors. … Respondents

**AFFIDAVIT OF THE PETITIONERS ABOVE-NAMED**

I, Gaurang Dinesh Damani, the Petitioner no 9 abovenamed, residing at 1102 Avanti Apt, Opp King’s Circle station, Sion, Mumbai 400022, do hereby do hereby solemnly affirm and say as under:-

1. The Petitioners have filed the present Petition inter-alia for the reliefs more particularly contained in the said Petition. I repeat, reiterate, adopt the statements in the Petition as if the same are incorporated herein and forming part of the present Affidavit. I crave leave to refer to and rely upon the papers and proceedings in the petition when produced.
2. In the circumstances I say and submit that the reliefs prayed for be granted to the Petitioners. I say and submit that the Petitioners have reasonable chances of succeeding in the Petition. I say and submit that the Petition be made absolute with costs

Solemnly affirmed at Mumbai )

This day of 2011 )

Before me

Advocate for the Petitioners

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. 33 OF 2011

Telang Road Residents Association & Ors. … Petitioners

Versus

State of Maharashtra & Ors. … Respondents

To:

The Prothonotary and Senior Master

O.O.C.J.

High Court of Bombay

Madam,

Please enter my note of appearance in the above Petition.

My address for the service is as under:

Advocate for the Petitioners

Dated this day of 2011

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. 33 OF 2011

Telang Road Residents Association & Ors. … Petitioners

Versus

State of Maharashtra & Ors. … Respondents

**MEMORANDUM OF ADDRESS**

Telang Road Residents Association,

having its address c/o Gangjibhai Dedhia,

405, Kesar Kunj, 2nd Floor,

Telang Road, Matunga, Mumbai 400019.

Shri Shailesh Redekar,

Advocate for the Petitioners,

Room No. 8, Ground floor,

Amachi Savli C.H.S. Ltd.,

Hukmill Lane, Near Podar Mill,

N.M. Joshi Marg,

Mumbai 400011.

Advocate for the Petitioners

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. 33 OF 2011

Telang Road Residents Association & Ors. … Petitioners

Versus

State of Maharashtra & Ors. … Respondents

**LIST OF DOCUMENTS**

1. All documents annexed to the petition

2. All documents referred to and relied in the petition

3. Correspondences prior to filing of the petition

4. Any other documents with the prior permission of this hon’ble court.

Advocate for the Petitioners

IN THE HIGH COURT

OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

P. I. L. NO. 33 OF 2011

Telang Road Residents Association & Ors.

… Petitioners

Versus

State of Maharashtra & Ors.

… Respondents

**PUBLIC INTEREST LITIGATION**

Dated this day of 2011

**ADVOCATE FOR THE PETITIONERS**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[RULE 4(e) OF THE BOMBAY HIGH COURT

PUBLIC INTEREST LITIGATION RULES, 2010]

P.I.L. NO. 33 OF 2011

Telang Road Residents Association & Ors. … Petitioners

Versus

State of Maharashtra & Ors. … Respondents

**PUBLIC INTEREST LITIGATION PETITION**

**1.** Particulars of the cause/order against which the petition is made:-

**(1) Subject matter in brief:**

**2. Particulars of the Petitioner(s):-**

3. That a thorough research has been conducted in the matter raised through the petition and all the relevant material in respect of such research has been annexed with the petition.

4. That to the best of the petitioners’ knowledge and research, the issue raised was not dealt with or decided and that a similar or identical petition was not filed earlier by them.

5. That the petitioners have understood that in the course of hearing of this petition the Court may require any security to be furnished towards costs or any other charges and the petitioner/petitioners shall have to comply with such requirements.

**4.** Facts in brief, constituting the cause, are as stated in the main petition as attached.

**5.** Source of Information is Right to Information, etc. The petitioners have verified the facts personally.

**6.** Nature and extent of injury apprehended is that health loss and mental anguish to local residents of the area.

**7.** Several representations made to the Respondents and there is no relief.

**8.** There has been no delay in filing of petition.

**9.** Documents relied upon include various RTI replies received by several residents.

**10.** Relief(s) prayed for:-

Immediate intervention by the Respondents, to grant relief to the local residents.

**11.** No Interim order, if prayed for.

**12.** That no notice has been received of lodging a caveat by the opposite party.

Petitioner No. 9 Cell no./ Email/ PAN: 9322658196

[damanig@diehardindian.com](mailto:damanig@diehardindian.com)

AADPD1692A

Occupation: Software consultant and civic activist

Solemnly affirmed at Mumbai,

Dated this day of 2011 Before me,

Advocate for the Petitioners

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. 33 OF 2011

Telang Road Residents Association & Ors. … Petitioners

Versus

State of Maharashtra & Ors. … Respondents

To:

The Prothonotary & Sr. Master

High Court O.O.C.J Bombay

Madam,

**C E R T I F I C A T E**

I, Gaurang Dinesh Damani the Petitioner No 9, do hereby certify, declare and state that the facts and issues mentioned in the present Petition would be required to be entertained by the Division Bench of this Hon’ble Court, as per the amended Rule 636(1)(b) of the High Court Original Side Rules,

Dated this day of 2011

Advocate for the Petitioners