

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PIL WRIT PETITION NO. 2116 OF 2005

Kirit Somaiya

.... Petitioner

Versus

State of Maharashtra & Ors.,

.... Respondents

WRIT PETITION

M/s. Dhruve Liladhar & Co.
Advocates for the Petitioner
13 A/B, Ismail Building, 3rd Floor,
381, Dr. D. N. Road, Fountain,
Mumbai – 400 001.

Sr. No.	Particulars	Page Nos.
12.	by the then Minister of Environment & Forests to the Petitioner. <u>Exhibit "E"</u>	49
13.	Copy of the letter dated 1.05.2003 addressed by the then Minister of State for Environment & Forests to the Petitioner. <u>Exhibit "F"</u>	50 to 51
14.	Copy of the letter dated 28.4.2003 addressed by the Ministry of Environment & Forests to the Secretary (Environment, Govt. of Mah.) <u>Exhibit "G" Colly.</u>	52 to 58
15.	Copies of the Photographs of the Mithi river taken on 3.5.2003 during on site inspection. <u>Exhibit "H"</u>	59
16.	Copy of the unstarred question No.5987 to be answered on 5.5.2003. <u>Exhibit "I"</u>	60
17.	Copy of the letter dated 8.07.2003 addressed by the then Minister of Environment & Forests to the Petitioner. <u>Exhibit "J"</u>	61 to 62
18.	Copy of the letter dated 11.07.2003 addressed by the Petitioner to the then Municipal Commissioner of Mumbai. <u>Exhibit "K"</u>	63
19.	Copy of the letter dated 17.07.2003 addressed by the Chairman of the Respondent No.7 to the Petitioner. <u>Exhibit "L"</u>	64
20.	Copy of the letter dated 22.07.2003 addressed by the Petitioner to the Chairman of the Respondent No.8. <u>Exhibit "M"</u>	65
21.	Copy of the letter dated 30.08.2003 addressed by the Maharashtra Coastal Zone Authority to the Petitioner. <u>Exhibit "N" Colly.</u>	66 to 71

Sr. No.	Particulars	Page Nos.
---------	-------------	-----------

Copies of the photographs of the Mithi river taken on 8.8.2005

22. **Exhibit "O"** 72

Copy of the article dated 9.8.2005 appeared in the Asian Age newspaper.

23. Affidavit-in-support of Petition 73

24. Advocates' Certificate 74

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SYNOPSIS

		The present Petition in Public Interest Litigation is filed with a view to bring to the notice of the Hon'ble Court the abject apathy and utter negligence on the part of the Respondents to deal with problem of Mithi River pollution ad the lapses and omissions on their part while dealing with the illegal encroachment and unauthorized units which have reduced the Mithi river to a Gutter Nullah. Therefore this Petition.
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DATES & EVENTS

<u>Sr.No.</u>	<u>Dates</u>	<u>Particulars</u>
1.	1999	The Petitioner was elected as a Member of Parliament to the Lok Sabha from Mumbai North-East Constituency of Mumbai, which includes Kurla, Saki-Naka, Powai and parts of the city of Mumbai.

2.		The Petitioner was a Member of Parliament (Lok Sabha) representing to the people of the constituency took up the issue of large scale of pollution of the Mithi river which caused constant floods on many parts of this constituency.
3.	27.01.2003	<p>The Petitioner lodged a complaint with the Central Pollution Control Board by a letter in which he stated that the Mithi river adjoining the Mumbai Airport flowing from east to west has become Gutter Nullah. All the nearby industries throwing their garbage in the Mithi nathi. BMC has also failed to treat the sewage water which flows in the Mithi Nathi was itself over polluted.</p> <p>The Petitioner also had several personal meetings with other authorities to discuss and pursue the matter.</p>
4.	13-02-2003	Mr. Dilip Biswas, the Chairman of CPCB by a letter assured the Petitioner that the matter of Mithi River pollution would be investigated by the joint team comprising of the representatives of both the Central Pollution Control Board and the Respondent No. 5.

5.	05-03-2003	The joint team comprising of the representative of the Central Pollution Control Board and the Respondent No. 5 investigated the matter of Mithi River pollution. They took several water sample for analysis and for making report.
6.	26-03-2003	Mr. T.R. Baalu, the then Minister of Environment & Forests by a letter gave assurances to the Petitioner to get the matter investigated by the joint committee of Central Pollution Control Board and Respondent No. 5.
7.	15-04-2005	The Petitioner addressed another letter to the then Minister of Environment & Forests pointed out the depreciate with the Mithi river due to the mushrooming illegal commercial encroachments along the banks of the Mithi river and also voiced his fear of impending mass disaster if concrete steps were not taken of its remedy forthwith.
8.	21-04-2003	The then Minister of Environment & Forests addressed a letter to the Petitioner acknowledging receipt of the letter dated 15 th April, 2003 and assuring the Petitioner of having the matter look into by another round on site inspection

		of the Mithi river.
9.	25-04-2003	The Petitioner addressed a letter to the then Municipal Commissioner informing him of the impounding visit by the consultant to the Minister of Environment & Forests , Chairman of CPCB and other office for an on-site inspection of the Mithi river.
10.	28-04-2003	The Chairman of the Central Pollution Control Board addressed a letter to the Petitioner enclosing therewith a copy of the report of the joint team comprising representatives of the Central Pollution Control Board and the Respondent No. 5 which had investigated the matter of the Mithi river pollution on 4 th and 5 th March, 2003. The said report supported the complaint lodged by the Petitioner made several shocking observations and findings and issued several recommendations.
11.	28-04-2003	The Government of India informed Shri Jayant Kawale, Secretary (Environment, Government of Maharashtra of the Itinerary of the second round of on-site inspection of the Mithi river.
12.	01-05-2003	Mr. Dilip Singh Jadev, the then Minister of

		State, Environment & Forests addressed a letter to the Petitioner officially informing him of the second on-site inspection of the Mithi river by a team of senior officers.
13.	05-05-2003	The Petitioner as a Member of a Parliament (Lok Sabha) representing the people of North-East Constituency of Mumbai, which includes Kurla, Saki-Naka, Powai and parts of the city of Mumbai constantly affected by the floods due to uneven flow of the water on account of the almost choked Mithi river raised this matter with the Ministry of Environment & Forests as unstarred question no. 5987 to be answered on 5 th may, 2003 as several questions regarding this matter and received some revealing answers.
14.	08-07-2003	The then Minister of Environment & Forests addressed a letter to the Petitioner accepting that the Mithi river is highly polluted and informed the Petitioner that the Chairman of Central Pollution Control Board had asked the Chairman of the Respondent No. 5 to preparing an action plan involving the Respondent Nos. 2 and 4.

15.	11-07-2003	The Petitioner addressed a letter to the then Municipal Commissioner informing him of his discussions with the then the Hon'ble Minister of Environment and Forests as has also discussions during joint visit by the Government of India, Government of Maharashtra and Respondent No. 2 and 4. The Petitioner once again pointed out growing pollution of the Mithi river and over flow which had already been found to have taken place in and around the Mithi river.
16.	17-07-2003	Mr. Dilip Biswas, the Chairman of the Central Pollution Control Board informed the Petitioner that he had asked the Respondent No. 5 to expedite the preparations of plan of action for the control of pollution of Mithi Nadi involving the Respondent Nos. 2 and 4.
17.	22-07-2003	The Petitioner addressed a letter to the Chairman of Respondent No. 5 and informed him of the discussions which had taken place between the Petitioner and Mr. A.K. Mago, Metropolitan Commissioner and once again requested all the department to expedite the matter to do the needful.

18.	30-08-2003	Maharashtra Coastal Management Authority addressed a letter to the Petitioner informing him of the decision taken by the Principal Secretary, Urban Development, Government of Maharashtra to convene a meeting of all the concerned authorities and to find a solution to the problem of the pollution of the Mithi river.
19.		The Petitioner entered into several other correspondence with the Respondents and other concerned authorities in reference to this problem. Further, the Petitioner also raised this matter few times in the Parliament (Lok Sabha). The Petitioner also released several press articles to move a public conscience of this issue.
20.	26-07-2005	Unprecedented rainfalls received by the city of Mumbai, submerged several portion of the city of Mumbai. Areas worst affected were in and around the Mithi river.
21.	01-08-2005	The concerned authority Department declares the Virar Lake has over flowed and that this may cause massive flood in the areas among banks of the Mith river.

		The Respondents failed to take any steps in order to mitigate and avert future repetition of such mass disaster resolving the problem of Methi river pollution.
22.		Since then the number of articles have appeared in various newspapers. Hence this Petition.

II. POINTS TO BE URGED:

- (a) There is no reason or justification as to why the Respondents have not taken any action in response to the recommendations and directions issued by the Ministry for Environment & Forests and the report of the joint team to initiate actions to remedy the pollution of the 'Mithi river'
- (b) Because of the delay on the part of the Respondents for initiating any action pertaining to the Mithi river due to which several people in and around the areas through which the river flows have been put to severe difficulty and have suffered loss of life, livelihood, property and health.
- (c) All the powers to take the said remedial measures are vested with the Respondents. Consequently, the Respondents being a State and other statutory authorities are expected to discharge these directions and recommendations as efficiently as possible and without any delay. This not reflect in the response given by the

Respondents to the various correspondence initiated by the Petitioner for the same.

- (d) The total inaction of the part of the Respondents not responding to the reports, recommendations, directions and correspondence to remedy the pollution of the Mithi river even after a period of almost 2 years is unjust and unpardonable, inter alia, because such delay is causing tremendous loss of life, livelihood, property, health and hygiene to thousands of citizens of Mumbai living in and around the areas through which the Mithi river flows.
- (e) The lapses and omissions on the part of the Respondents in not dealing with several unauthorised units and encroachments have reduced the Mithi river to a "Gutter Nullah" shows abject, apathy towards the plight of the people living in and around the areas through which the Mithi river flows and presents the constant danger of the repetition tragic events ensuing heavy rains fall on 26th July, 2005.
- (f) The Constitution of India guarantees right to live. This right is being denied to the several people living around the areas through which Mithi river flows by such wrongful conduct of the Respondents.
- (g) Financial promises made for the Mithi river has not had any effect on reducing to pollution but has caused impending loss to the state exchequer.

- (h) The Respondent No.9 has unnaturally altered the course of the river risking the life, livelihood and property of several thousands of people living in the areas through which the Mithi River flows.

III. ACTS TO BE RELIED UPON

- A. Constitution of India
B. Environment Act.

IV. AUTHORITIES TO BE CITED

Nil at present.

For **M/s. Dhruve Liladhar & Co.,**

**Partner
Advocates for the Petitioner**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PIL WRIT PETITION NO. 2116 OF 2005

In the matter of:

(i) Article 226 of the Constitution of India;

AND

(ii) Article 21 of the Constitution of India;

AND

(iii) Total inaction on part of the Respondents to take any concrete measures to remedy the pathetic condition of the 'Mithi Nadi'.

AND

(iv) Abject apathy and utter negligence on part of the Respondents' to alleviate the plight of the people who suffered loss of life, livelihood and property.

AND

(v) Lapses and omissions on part of the Respondents while dealing with the illegal encroachments and unauthorised units which have reduced the 'Mithi Nadi' to 'Gutter Nallah'

AND

(vi) Unaccounted financial provisions kept aside every year for the cleaning of the Mithi river.

Kirit Somaiya, a Social Worker and)
Ex-Member of Parliament, residing at)
Neelam Nagar, Mulund (East),)
Mumbai – 400 081.) ... Petitioner

Versus

1. State of Maharashtra,)
through the Chief Secretary)
Mantralaya, Mumbai – 400 032)
to be served through Government)
Pleader, High Court, (O.S), Mumbai.)
2. The Principal Secretary, Urban)
Development Department,)
Government of Maharashtra,)
Mantralaya, Mumbai – 400 032)
3. Municipal Corporation of Greater)
Mumbai, a statutory body)
Incorporated under the provisions)
of the Mumbai Municipal Corporation)
Act, 1888, through its Commissioner ,))
Having its office at, Mahapalika)

- Bhavan, Mahapalika Marg,)
Mumbai – 400 001.)
4. Additional Municipal Commissioner)
(Projects), having office at Municipal)
Head Office Annexe Bldg., 3rd Floor,)
Mahapalika Marg, Mumbai 400 001.)
5. Collector of Mumbai Suburban)
District, having office at Collectorate)
Building, Government Colony,)
Bandra (East), Mumbai – 400 051.)
6. Mumbai Metropolitan Regional)
Development Authority through its)
Vice President i.e. Commissioner,)
having office at Plot C-15/16, E-Block,))
Bandra-Kurla Complex, Bandra (East),))
Mumbai – 400 051)
7. Central Pollution Control Board ,)
through its Chairman, having office)
at Parivesh Bhavan, CBD-cum-Office)
Complex, East Arjun Nagar,)
Delhi – 110 032)
8. Maharashtra State Pollution)
Control Board, a statutory body)
Under the Water (Prevention &)
Control of Pollution) Act, 1974,)

through its Member Secretary,)
having office at Kalpataru, 4th floor,)
Sion Matunga Scheme, Road No. 8,)
Near Sion Circle, Sion (East),)
Mumbai – 400 021.)

9. Airport Authority of India, through)
its Chairman, Rajiv Gandhi Bhavan,)
Safdarjung Airport,)
New Delhi 110 003)

10. The Secretary (Environment),)
Government of Maharashtra,)
Mantralaya, Mumbai – 400 032.) Respondents

**TO:
THE HON'BLE THE CHIEF JUSTICE AND THE OTHER
PUISINE JUDGES OF THE HON'BLE HIGH COURT
OF JUDICATURE AT BOMBAY**

**THE HUMBLE PETITION OF THE
PETITIONER ABOVENAMED:**

MOST RESPECTFULLY SHEWETH:

1. The Petitioner is a well known Social Worker and an Ex-Member of Parliament (Lok Sabha) and associated with various organisations working for the benefit of the citizens of Mumbai. Most of the areas through which the 'Mithi river' flows falls in the territorial constituency which he represented in the last Lok Sabha. Even now he is actively

involved in various welfare projects in and around the areas of Kurla, Saki-Naka, etc., In fact the Petitioner during his tenure as a Member of Parliament had raised his concern and fear for the well being of the people in parts of the city through which the Mithi river flows. Therefore, the Petitioner is personally aware of the facts of the present case.

2. The Respondent No. 1 is the State of Maharashtra. The Chief Secretary of the Government of Maharashtra is the overall in-charge of the various department concerned with the Mithi river. The Respondent No. 2 is the Principal Secretary of the Urban Development Department of the Government of Maharashtra, who has the right to exercise superintending powers over the Respondent Nos. 3, 4 and 6. The Respondent No. 3 is the Municipal Corporation incorporated under the provisions of the BMC Act and Respondent No. 4 is its Officer. The Respondent No. 5 is the Collector of the Mumbai Suburban District, who is the statutory in-charge of rivers in the limits of the city of Mumbai. The Respondent No. 6 is a statutory body responsible for infrastructure and development of the city of Mumbai and nearby areas. The Respondent No. 7 is a statutory body incorporated under the provisions of the Environment Act. The Respondent No. 8 is a statutory body incorporated under the provisions of the Water (Prevention & Control of Pollution) Act, 1974. The Respondent No. 9 is a statutory body of the Government of

India. The Respondent No. 10 is the Secretary in-charge of environment and also co-ordinating department of Respondent Nos. 7 and 8.

3. The Petitioner has been constrained to approach this Hon'ble Court under Article 226 of the Constitution of India after witnessing the heavy rain showers which besieged the city of Mumbai on 26th July, 2005 and the tragic aftermath which saw several thousands of people losing life, livelihood and property.
4. The areas in the vicinity of the Mithi River suffered the most damage. This tragedy happened inspite of prior repeated urgings and pleadings on the part of this Petitioner to the Respondent Nos. 1 to 4 and 6 to 8 and 10 and other authorities to clean the Mithi River in order to ease the flow of the river which would have gone a long way to avoid this mass disaster.
5. By this Petition, the Petitioner is impugning total inaction on the part of the Respondent Nos. 1 to 8 and 10 and other Authorities to salvage the deteriorated Mithi River and the flagrant diversions of its course by the Respondent No. 9 which could have averted the man-made disaster. This Petition is a last fervent plea on the part of the Petitioner, as a conscientious citizen of Mumbai, to this Hon'ble Court to remedy this dire situation after seeing sufferings of the thousands of people by the side of the Mithi River as the Respondents and other concerned

authorities have shown nothing but abject apathy and utter negligence towards this problem.

6. Briefly the facts of the present case are as follows:-
 - (a) The Petitioner abovenamed was elected to the Lok Sabha in the year 1999 from the Mumbai North-East Constituency which includes Kurla to Mulund which are parts of the city of Mumbai. In the monsoon of year 2004 2002 the roads adjacent to Air India colony and Kalpana Talkies at Kurla near the Mumbai North-East Constituency then represented by the Petitioner remained closed for many days on account of being submerged in flood water. The Petitioner being the Member of Parliament from the Constituency decided to investigate the reasons for the same. After consulting several experts the Petitioner came to know that his Constituency which he represents includes regions like Kurla, Saki-Naka, Powai, which are topographically the low lying regions of Mumbai. Also it is through these areas that the Mithi River flows. The said experts said that the reason why these areas are constantly flooded during the period of monsoon is because of their proximity to the Mithi River which is highly polluted on account of the several illegal activities like illegal oil processing, drum washing and other illegal activities carried out by the almost four hundred

(400) unauthorised commercial units operating by the river side. On account of these pollutants and discharges, the flow of the river becomes uneven. During the season of monsoon, flooding has become a characteristic feature of these areas as the flood water finds no outlet through the choked Mithi River. This coupled with the illegal encroachment makes flooding an annual event in these areas. But as no Government or other authority had ever taken cognizance of this problem and effected any remedial measures the Petitioner as the then local Member of Parliament felt it his responsibility to create awareness of this problem and try to find a viable solution to it.

- (b) The Petitioner decided to pursue this matter as an environmental problem and hence lodged a complaint with the Respondent No.7 vide his letter bearing Ref. No. KS/DEL/Env./2003 dated 27th January, 2003. It was stated in the said complaint that the "Mithi Nadi adjacent to Mumbai Airport flowing from East to West have become a Gutter-Nallah. All the nearby Industries are throwing their garbage in the said Nadi. (BMC had also Nallah which fall in the Nadi.) With the result that it has become over polluted". The Petitioner had also personal meetings with other authorities to discuss and pursue this matter. In fact, the Petitioner had

sent a copy of this letter to the then Minister of Environment & Forests, Government of India, Mr. T.R. Baalu. The Petitioner craves leave to refer to and rely upon the copy of the said letter dated 27/1/2003 as and when produced.

- (c) In reply to the aforesaid letter the then Chairman of Respondent No.7, Mr. Dilip Biswas by his letter dated 13th February, 2003 bearing Ref. No. B-12015/60(57)/2003-AS/4942 assured the Petitioner that the matter would be investigated by the Zonal Office (West), Vadodara and Respondent No.8.
- (d) As assured by the Chairman of the Respondent No.7, on the 4th – 5th March, 2003, a joint team comprising representatives of Respondent No.7 & Respondent No.8 investigated the matter. The report of this team was submitted on 28th April, 2003 along with the letter of the Chairman of Respondent No.7 of the same date bearing reference no.CCB/01/2003/9768. The said report supported the complaint lodged by the Petitioner and blamed the domestic waste/sewage from hutments, other residential areas and other unauthorised units carrying on illegal activities for the large scale pollution of the Mithi river. It also revealed some shocking findings like "the river water is polluted and not fit for use even at high tidal condition when there is huge tidal

water for dilution". The report recommended preparation of fresh/updated list of polluters to stop all unauthorised units causing pollution to discharge waste in river water; BMC must properly treat the waste at STP and constitute a time bound action plan to implement these recommendations. It is the humble submission of the Petitioner that in spite of the passing of two years from the submission of this report, the Respondents and/or any other concerned authority have failed to implement these recommendations. The failure on the part of the Respondents to take any concrete steps in this regard shows the abominable attitude lack of intent and of foresight on their part towards the growing environmental problem and health hazard that the pollution of Mithi river poses. Hereto annexed and marked as **Exhibit "A-Colly."** are the copies of the said letters dated 13th February, 2003 and 28th April, 2003 and the report of the joint team alongwith the tables annexed thereto.

- (e) Even Mr. T.R. Baalu, the then Minister of Environment & Forests, by his letter dated 26th March, 2003 bearing Ref. No. I-13012/1/2003-NRCD gave an assurance to the Petitioner to get the matter investigated by a joint committee of the Respondent Nos.7 & 8. Hereto annexed and marked as **Exhibit "B"** is a copy of the letter dated 26th March, 2003.

- (f) The Petitioner submits that in the intermittent period between the visit of the joint team of Respondent Nos.7 & 8 on 4th and 5th March, 2003 and the submission of its report on 28th April, 2003, the Petitioner sensing the urgency of this matter and dreading the advent of monsoon and the possibility of a mass disaster wrote another letter bearing reference No. KS/DEL/2003 to the then Minister of Environment & Forest on 15th April, 2003 pointing out the depreciating width of the Mithi river on account of the mushrooming of illegal commercial encroachments along the bank of the river. Further, the overflow (flood water) of the three important lakes of Mumbai, viz. Tulsi, Vihar & Powai is diverted to the Mithi River. These alongwith the rising pollution could in the season of monsoon cause "a major flood, disastrous crisis in this (from Powai/Vihar lake to Mahim creek) 10 km area affecting more than 10 lakhs people". Hereto annexed and marked as **Exhibit "C"** is the copy of the said letter dated 15.4.2003, a copy of which was also sent to the Chairman of Respondent No.7.
- (g) The Petitioner humbly submits that it is an unfortunate irony that the tragic events ensuing the heavy rainfall of 26th July, 2005 bear an uncanny resemblance to the warning given by this Petitioner in his letter dated 15.4.2003. In fact, the heavy

rainfall of 1st August 2005 which was of quite normal intensity compared to the heavy rains showers of every year and its aftermath make the Petitioner's letter dated 15.4.2003 sound prophetic. It is an undisputable fact that on 1.8.2005 the concerned authority declared that the Vihar lake had overflowed and hence there was every possibility of a large-scale flood in the vicinity of the Mithi river. This created a wave of panic amongst the people living close to the Mithi River which they could have done without after having already faced the wrath of flood water about two days ago.

- (h) The Petitioner humbly submits that he is no expert environmentalist. Neither is he learned experienced meteorologist nor is he a scientist or involved in any business/profession which gives him knowledge of what happens if the rainfall is heavy. He is just a common social worker who with a lot of effort and use of common sense could predict a looming disaster. Thus, it is incomprehensible to the Petitioner that the Respondents who possess the know-how as well as the tools could not do the same. In fact the report of the joint team hereto annexed as Exhibit "A-colly" claims that the Respondent No. 8 kept a constant watch on the level of pollution in the Mithi River. This should have stirred them to take active steps to prevent the

almost certain disaster. But the conduct of the Respondents to the contrary shows their cavalier and careless attitude towards such a serious problem.

(i) The Petitioner submits that on 21st April, 2003, the then Minister of Environment & Forests addressed a letter to the Petitioner bearing WEF/Diary No.315/VIP acknowledging the receipt of the letter dated 15th April, 2003 and assuring the Petitioner of having the matter looked into. This led to another round of on site inspection of the Mithi River this time also involving the presence of the Chairman of Respondent No.7. This second inspection took place on 3rd May, 2003 as was decided in the meeting between the MPCB & BMC officials. Further, the Minister of State, Environment & Forests, heralded the on site inspection comprising of Shri. R.P.Sharma, Consultant, the Chairman of Respondent No.7 along with the senior officers of the Government by his letter dated 1st May, 2003 bearing reference No. J-11017/2/2003 NRCD-II. The copies of the said letters dated 21.4.2003 and 1st May, 2003 are hereto annexed and marked as **Exhibits "D & E"** respectively.

(j) The Petitioner submits that the Petitioner addressed a letter bearing reference No. KS/POLLUTION/SK/5508/03 dated 25th April, 2003 to

the then Municipal Commissioner, Mr. K.Srivastava, informing him of the proposed on site inspection at the Mithi river on 3rd May, 2003 by a team comprising of the Chairman of the Respondent No.7. Further, the Government of India through the Ministry of Environment & Forests, National River Conservation Directorate addressed a letter dated 28th April, 2003 bearing reference No.J-39018/3/2000 NRCD-II to the then Secretary (Environment), of the Respondent No.1, Mr.Jayant Kawale, informing him of the itinerary of the team comprising of Shri R.P.Sharma, Consultant alongwith the Chairman of Respondent No.7 for the on site inspection of the Mithi river which the latter were going to undertake on 3rd May, 2003 a copy of which was sent to the then Municipal Commissioner. The copy of the letter dated 28.4.2003 is hereto annexed and marked as **Exhibit "F"**. The Petitioner craves leave to refer to and rely upon the said letter dated 25.4.2003 as and when produced.

- (k) The Petitioner submits that the onsite visit of the Mithi river which took place on 3rd May, 2003 brought to light the shocking degree of devastation which the Mithi river had suffered and the brazen non-chalance with which the Respondents were treating this problem. The inspecting team took photographs at various vantage points through which

the Mithi river flows like Saki Naka – Andheri Link Road, Near Tunga Village, Kapadia Nagar, Bail Bazaar and others which revealed complete negligence of the river on the part of the respondents and the need for urgent action to stem the tide. It is important to note that all these areas are engulfed by floods annually in the monsoons with the choked Mithi River being the main culprit. Therefore, the inaction on the part of the Respondents is unjustifiable and only bears a further testimony to the lethargy that has crept in its rank. Hereto annexed and marked as **Exhibit "H-colly"** are the copies of the said photographs, referred to hereinabove.

(I) The Petitioner submits that he had raised the issue of the Mithi river pollution as unstarred Question No. 5987 to the Government of India, Ministry of Environment, Lok Sabha to be answered on 5th May, 2003 in which the Petitioner as a Member of Parliament representing the areas through which the river flows asked questions which inter alia read as under.

a)

b)

c)

- d) *whether Environment activists and local Member of Parliament have lodged complaints against the pollution and encroachments*
- e) *if so, the details thereof indicating the impact of such encroachments and pollution; and*
- f) *the action taken by the Government against the industrial units encroachers, etc involved in the matter?*

The Hon'ble Minister of State in the Ministry of Environment and Forests, Shri Dilip Singh Judev answered the questions as follows:

a) ...

b)

c)

(d) & (e) Complaint about the pollution in Mithi Nadi has been raised by local Member of Parliament. It has been stated in the complaint that Mithi Nadi has become a gutter-Nallah. It has been further pointed out that all the nearby industries are throwing their garbage into the river. In addition, wastewater of some areas of the Municipal Corporation of Greater Mumbai is also discharged into this river through drains. As a result, the river has become over polluted.

f) *State pollution Control Board has been asked to take necessary action in this matter.*

(m) Thus, it is clear that the then Government of India had taken all the steps necessary on their part to grease the wheels of the machinery of Respondent No.1 but the latter alongwith the other Respondents had failed to take any action inspite of the decision taken by the Government of India. Hereto annexed and marked as **Exhibit "H"** is the copy of the said unstarred question and its answers.

(n) The Petitioner further submits that the then Minister of Environment by his letter dated 8th July 2003 bearing D.O.No. I-13012/1/2003-NRCD informed the Petitioner that in order to combat the large scale pollution of the Mithi River the Chairman, Respondent No.7 had asked the Chairman of the Respondent No.8 to prepare an action plan involving the Respondent Nos. 3 & 6. However, it is an undeniable fact that no such action plan has yet been formulated. It is pertinent to note that, in light of the abominable events ensuing the heavy rainfall of 26th July, 2005 the omissions committed by the Respondents can be seen in their true colours. Hereto annexed and marked as **Exhibit "I"** is the copy of the said letter dated 8th July, 2003.

(o) The Petitioner submits that by this time in the chain of events, the monsoons had gained momentum. Mumbai had been pelted with heavy rain showers and the areas from Bandra (East) to Andheri- Saki Naka i.e. the stretch of land through which the Mithi river flows had as always been flooded due to the uneven flow of the rain water on account of the garbage and pollution choking the Mithi river. The Petitioner had pointed out these facts to the then Municipal Commissioner, Shri K.C. Srivastava by his letter dated 11th July, 2003 bearing reference No.KS/MITHI/VM/53/2003 and demanded the details of the plan of action formulated after the joint visit of 3rd May, 2003 to deal with this problem. The Petitioner never received a reply to the said letter dated 11th July, 2003. Hereto annexed and marked as **Exhibit "J"** is the copy of the said letter dated 11.7.2003.

(p) The Chairman of Respondent No.7, Mr.Dilip Biswas, by his letter dated 17th July, 2003 bearing reference No. (D.O.No.)B-12015/60(57)/2003-AS/14504 addressed to the Petitioner acknowledged the receipt of the letter dated 11.7.2003 and sent a copy of the report of the investigation carried out by the 18 member joint team comprising of the representatives of Respondent No.7 and the Respondent No.8. The

Chairman of the Respondent No.7 had further requested the Chairman of the Respondent No.8 to expedite the preparation of the action plan for control of the pollution of the Mithi River involving the Respondent No.3 and 6. Once again the Respondents were seen to be dragging their feet instead of giving this issue the importance and urgency it deserves. Further more, in spite of this request made almost two years ago, something concrete has yet to fructify. Hereto annexed and marked as **Exhibit "K"** is the copy of the letter dated 17.7.2003.

- (q) The Petitioner further submits that by a letter dated 22nd July, 2003 bearing reference No. KS/Del/E&F/2003 the Petitioner forwarded a copy of the letter dated 17.7.2003 addressed to the Petitioner by the Chairman of Respondent No.7 to the Chairman of Respondent No.8 and the Chief Officer, Environment Section of Respondent No.6 Shri Pednekar. The Petitioner also informed them of his discussion with Shri A.K. Mago, Metropolitan Commissioner of Respondent No.6 and the then Municipal Commissioner in which the latter had asked his officials to send an official request to the Respondent No.6 to conduct a full fledged study of the Mithi River. The Respondent No. 6 had agreed to

the request and had started the study. In fact it was also decided by the Respondent Nos. 3 & 6 to immediately measure the water level and water logging during the peak of monsoon to help prepare the action plan. Hereto annexed and marked as **Exhibit "L"** is the copy of the said letter dated 22.7.2003.

(r) It is the humble submission of the Petitioner that the said discussion clearly shows that the Respondents agreed that the water logging during monsoon was to be attributed to the rise in pollution of the Mithi river and were aware of the risk it posed to the thousands of people living by the river side. Thus, the utter negligence on the part of the Respondents to take any action in this regard in spite of the knowledge is possessed in unpardonable and unjustifiable. It is the ultimate breach of people's trust.

(s) The Petitioner further submits that the Maharashtra Coastal Zone management Authority having its office at that of the Respondent No.8 by its letter dated 30th August, 2003 bearing reference No. MCZMA/B-5709 acknowledged the receipt of the letter dated 22.7.2003 addressed to the Respondent No.5 and informed the petitioner that the Principal Secretary

of the Urban Development Department of the Respondent No.1 to whom the Respondent Nos. 3 & 6 are directly responsible had agreed to convene a meeting of all concerned to find a solution to the problem of the Mithi river pollution. The Petitioner submits that, if the meeting had taken place at all no concrete steps had been taken to remedy this problem. Hereto annexed and marked as **Exhibit "M"** is the copy of the letter dated 30.8.2003.

- (t) The Petitioner submits that since 30th August, 2003 he has continued to pursue this issue with the concerned authorities. The Petitioner also took up this issue in the Lok Sabha a few times. Even after losing the elections of the last General Assembly, the Petitioner still continues to hold personal meetings with various authorities on this problem. But unfortunately during the ensuing heavy rainfall of 26th July, 2005 flood water entered the Petitioner's office destroying all the records of correspondence post August, 2003. It is respectfully submitted that all the efforts of the Petitioner have been in vain as the respondents have failed to initiate even some preliminary steps for the resolution of the problem of the Mithi River. Thus, disillusioned the Petitioner sent a notice dated 4th August, 2005 to the Respondents through his Advocates and other

concerned demanding immediate formulation of an action plan to deal with this problem and simultaneously has lodged a criminal complaint against them for the omissions and lapses committed by them. The Petitioner craves leave to refer to and rely upon all these correspondences and unstarred questions as and when produced.

7. The Petitioner humbly submits that the history of correspondence between the Petitioner and the Respondents and other authorities shows the knowledge and deep concern that the Petitioner has of this problem. On the other hand, all the Respondents have done is to form committees, formulate reports and give false and empty assurances. In fact, the Respondent No. 7 is a statutory body with authority to monitor the working of the Respondent No. 8 or even take independent action in order to remedy any problem related to pollution. In spite of this power, the Respondent No. 7 has taken no steps to ensure that its directions and recommendations are implemented. This shows the lack of any sort of inclination on the part of the Respondents to deal with this issue. Time and again the Respondents has failed and totally neglected to take any action to remedy this situation. Thus, failing to achieve any progress over this issue with the Respondents, the Petitioner is constrained to approach this Hon'ble Court to get reliefs.

8. The Petitioner further submits that this issue is of grave importance and deserves urgent attention of this Hon'ble Court as the pollution of the Mithi River which causes flood in the adjoining areas not only poses the problem of destruction of life, livelihood and property only but it also poses a great threat to the health and hygiene of the people. Article 21 of the Constitution of India reads as under :-

Article 21- "No person shall be deprived of his life or personal liberty except according to procedure established by law".

This right to life guaranteed by our founding fathers forms the very basis of democracy in India. Various judgements of the Hon'ble Supreme Court of India have expanded its ambit to include the right to livelihood, healthy life among other things. The floods which occurred after the rainy day of 26th July, 2005 in and around the areas by the Mithi river not only took away several lives but also destroyed the properties and sources of livelihood of the people living in these areas. Not only this, but the floods have now posed the danger of epidemics like gastroenteritis and have affected the basic hygiene of the people with sewage water getting mixed with drinking water and other such offshoots. Thus, the right to life of the people of these areas has been reduced to a mere mockery of democracy. It is indeed shocking to see the abject apathy that the

Respondents have shown to the plight of the people of these areas. The omissions committed by the Respondents in their failure to act at all deserves to be censured and condemned. The Respondents which form part of the executive have failed to execute anything at all and therefore the Petitioner now relies only on this Hon'ble Court as the last beacon of hope to alleviate the plight of people of these areas.

10. The Petitioner respectfully submits that several newspapers also have published articles regarding the danger posed by the Pollution of the Mithi River. In fact the Maharashtra Times by its article dated 3rd May, 2003 voice its fear of the possibility of the lakhs of people drowning on account of floods in monsoon if Mithi river was not cleaned. Other newspapers like Sakal (by its article dated 2nd May, 2003), Daily News & Analysis, the Times of India (article dated 7.8.2005, 8.8.2005 & 9.8.2005) and others. The petitioner says and submits that it was by the Times of India's article dated 7th August, 2005 that the petitioner became aware of the fact that the Respondent No. 9 has committed several lapses and breaches by which they have unnaturally diverted the course of the Mithi river. Such a breach has made the Mithi river an ever present threat during the monsoon. The Petitioner craves leave to refer to and rely upon the said articles as and when required.

11. The Petitioner further submits that almost 2 years have past since the Ministry of Environment & Forests, issued directions to the Respondents to take action in order to remedy problem of the Mithi river pollution. Hence all the powers to initiate such remedial action vests with the Respondents only. In spite of the same, the Respondents have not taken cognisance of the same.

12. The Petitioner says and submits that every year the Respondent No.6 makes financial provisions for 4 to 5 kms. Stretch of the Mithi river from the Bandra Kurla Complex to Kurla. But no change has yet taken place in this stretch of the river. Floods in this stretch of are most severe nature. Similarly, the Respondent No.3 also makes financial provisions for the Mithi river year after year. But the condition of this river has deteriorated over the last few years. The Petitioner understands that Respondent No.6 has now appointed a consultant to prepare an action plan for resolving the problem of the pollution of the Mithi river for a one time fee of Rs.16 lakhs. Hereto annexed and marked as **Exhibit "N"** Colly. Are the photographs of the Mithi river taken out on 9.8.2005.

13. The Petitioner humbly submits that it has just come to the attention of the Petitioner vide the article published in the Asian Age Newspaper on 9th August 2005 that blame

games and shirking of responsibility has already began in earnest amongst the Respondents. Each Respondent is trying to show that it has done its job but the floods occurred to the inaction and lapses of the other. This being testimony to the kind of misadministration due to which several people have suffered irreparable loss of life, livelihood and property. Hereto annexed and marked as **Exhibit - "O"** is the copy of the said article.

14. In this circumstances, the Petitioner is approaching this Hon'ble Court.

15. The Petitioner submits that total inaction on the part of the Respondents in taking any steps pursuant to the recommendations and directions made by the higher authorities is absolutely wrongful, capricious, unjustified and is impugned in the present Petition on the following amongst other grounds which are without prejudice to one another and in the alternative.

GROUND

- (a) There is no reason or justification as to why the Respondents have not taken any action in response to the recommendations and directions issued by the Ministry for Environment & Forests

and the report of the joint team to initiate actions to remedy the pollution of the 'Mithi river'

- (b) Because of the delay on the part of the Respondents for initiating any action pertaining to the Mithi river due to which several people in and around the areas through which the river flows have been put to severe difficulty and have suffered loss of life, livelihood, property and health.
- (c) All the powers to take the said remedial measures are vested with the Respondents. Consequently, the Respondents being a State and other statutory authorities are expected to discharge these directions and recommendations as efficiently as possible and without any delay. This is not reflected in the response given by the Respondents to the various correspondence initiated by the Petitioner for the same.
- (d) The total inaction of the part of the Respondents not responding to the reports, recommendations, directions and correspondence to remedy the pollution of the Mithi river even after a period of almost 2 years is unjust and unpardonable, inter alia, because such delay is causing tremendous loss of life, livelihood, property, health and hygiene to thousands of citizens of Mumbai living

in and around the areas through which the Mithi river flows.

- (e) The lapses and omissions on the part of the Respondents in not dealing with several unauthorised units and encroachments have reduced the Mithi river to a "Gutter Nallah" shows abject, apathy towards the plight of the people living in and around the areas through which the Mithi river flows and presents the constant danger of the repeated tragic events ensuing heavy rains fall on 26th July, 2005.
- (f) The Constitution of India guarantees right to live. This right is being denied to the several people living around the areas through which Mithi river flows by such wrongful conduct of the Respondents.
- (g) Financial promises made for the Mithi river has not had any effect on reducing to pollution but has caused impending loss to the state exchequer.
- (h) The Respondent No.9 has unnaturally altered the course of the river risking the life, livelihood and property of several thousands of people living in the areas through which the Mithi River flows.

The Petitioners crave leave to add to alter and/or amend all or any of the aforesaid grounds.

16. In the circumstances the Petitioner prays that this Hon'ble Court may be pleased to issue Writ of Mandamus or any other appropriate Writ, Order and Direction of this Hon'ble Court under Article 226 of the Constitution of India, ordering and directing the Respondents their subordinates, officers, servants and agents to take necessary steps required to deal with the problem of the large scale Mithi river pollution at the earliest. The Petitioner submits that unless the order as prayed for herein are granted grave harm, injury, loss and prejudice which cannot be compensated in terms of money will be caused to the people living and around the areas through which the Mithi river flows. The balance of convenience and equity are in favour of the Petitioner and against the Respondents.
17. The Petitioner has not filed any Writ Petition in this Hon'ble Court or in any other High Court in India or Supreme Court of India pertaining to the subject matter of this Petition. The writs, orders and reliefs prayed for in this Petition, if granted, will be complete.
18. Shri Kirit Somaiya, the Petitioner abovenamed is conversant with the facts of the case has signed and verified this Public Interest Litigation.
19. The Mithi River is situated in Mumbai. The Pollutants of the Mithi River are carrying their illegal and unauthorised acts in Mumbai. The Respondents have their offices in Mumbai.

The Respondents have not initiated any concrete steps to fructify the recommendations and directions in Mumbai, within the jurisdiction of this Hon'ble Court. The entire cause of action has arisen in Mumbai within the jurisdiction of this Hon'ble Court. This Hon'ble Court therefore has jurisdiction to entertain, try and dispose off the Petition.

20. The Petitioners have paid the court fees of Rs._____/ - in respect of this Petition.
21. The Petitioners will rely upon the documents, a list whereof is annexed hereto.
22. The Petitioner, therefore, prays:-
 - (a) that this Hon'ble Court be pleased to issue a writ of Mandamus or a writ, order or directions in the nature of Writ of Mandamus or any other appropriate writ, order or direction ordering and directing the Respondents its officers, servants and agents to take concrete steps to implement their recommendations and directions made by the Government of India through its Ministry of Environment & Forests and Respondent No.7 to remedy the large scale pollution of the Mithi river in order to avert the future repetition of the tragic events ensuing the heavy rainfall of 26th July, 2005, in Mumbai.
 - (b) That this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of certiorari or any

other appropriate writ, order or direction calling for the records pertaining to the budgetary and/or other financial provisions made by the Respondents or its officers, servants, and agents to take appropriate steps for the purposes of the Mithi river;

- (c) that this Hon'ble Court be pleased to issue a Writ of Mandamus or Writ, Order or direction in the nature of Writ of Mandamus or any other appropriate Writ, Order or directions ordering and directing the Respondents, its officers, servants and agents to take appropriate steps for dealing with the several unauthorised units and encroachments and stop them from discharging their sewage water in the Mithi river and properly treat this sewage, if any, discharged in the Mithi river at all.

- (d) That this Hon'ble Court be pleased to appoint a Court Commissioner to oversee, supervise and superintend the said committee;

- (e) That this Hon'ble Court be pleased to appoint a committee consisting of senior officials of the Respondents to prepare a plan of action to clean the Mithi river and deal with the illegal encroachments expeditiously and also appoint

- (f) for costs of this Petition; and
- (g) for such further and other writs, order and directions and reliefs as this Hon'ble Court deems fit and proper in the nature and circumstances of the case.

Petition drawn by us:

For M/s. Dhruve Liladhar & Co.

Kirit Somaiya

Partner
Advocates for the Petitioner

Petitioner

VERIFICATION

I, **KIRIT SOMAIYA**, an Ex-Member of Parliament (Lok Sabha) and an active Social Worker, the Petitioner abovenamed, residing at Neelam Nagar, Mulund (East), Mumbai – 400 081, do hereby solemnly state and declare that what is stated in paras ___ to ___ is true to my knowledge and what is stated in the remaining paragraphs ___ to ___ is based on the information and belief and I believe the same to be true and correct.

Solemnly declared at Bombay]
this 10th day of August, 2005.]

For M/s. Dhruve Liladhar & Co.]
Before me,

Partner
Advocates for the Petitioner

(We are not members of the Advocates Welfare Fund. Hence stamp of Rs.2/- is not affixed.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PIL WRIT PETITION NO. OF 2005

In the matter of:

(iii) Article 226 of the
Constitution of India;

AND

(iv) Article 21 of the
Constitution of India;

AND

(vii) Total inaction on part of the
Respondents to take any
concrete measures to
remedy the pathetic
condition of the 'Mithi Nadi'.

AND

(viii) Abject apathy and utter
negligence on part of the
Respondents' to alleviate the
plight of the people who
suffered loss of life,
livelihood and property.

AND

(ix) Lapses and omissions on part
of the Respondents while
dealing with the illegal
encroachments and
unauthorised units which
have reduced the 'Mithi Nadi'
to 'Gutter Nallah'

AND

(x) Unaccounted financial provisions kept aside every year for the cleaning of the Mithi river.

Kirit Somaiya, a Social Worker and)
Ex-Member of Parliament, residing at)
Neelam Nagar, Mulund (East),)
Mumbai – 400 081.) ... Petitioner

Versus

1. State of Maharashtra,)
through the Chief Secretary)
Mantralaya, Mumbai – 400 032)
to be served through Government)
Pleader, High Court, (O.S), Mumbai.)
2. The Principal Secretary, Urban)
Development Department,)
Government of Maharashtra,)
Mantralaya, Mumbai – 400 032)
3. Municipal Corporation of Greater)
Mumbai, a statutory body)
Incorporated under the provisions)
of the Mumbai Municipal Corporation)
Act, 1888, through its Commissioner ,))
Having its office at, Mahapalika)
Bhavan, Mahapalika Marg,)
Mumbai – 400 001.)

4. Additional Municipal Commissioner)
(Projects), having office at Municipal)
Head Office Annexe Bldg., 3rd Floor,)
Mahapalika Marg, Mumbai 400 001.)
5. Collector of Mumbai Suburban)
District, having office at Collectorate)
Building, Government Colony,)
Bandra (East), Mumbai – 400 051.)
6. Mumbai Metropolitan Regional)
Development Authority through its)
Vice President i.e. Commissioner,)
having office at Plot C-15/16, E-Block,))
Bandra-Kurla Complex, Bandra (East),))
Mumbai – 400 051)
7. Central Pollution Control Board ,)
through its Chairman, having office)
at Parivesh Bhavan, CBD-cum-Office)
Complex, East Arjun Nagar,)
Delhi – 110 032)
8. Maharashtra State Pollution)
Control Board, a statutory body)
Under the Water (Prevention &)
Control of Pollution) Act, 1974,)
through its Member Secretary,)
having office at Kalpataru, 4th floor,)
Sion Matunga Scheme, Road No. 8,)
Near Sion Circle, Sion (East),)

- Mumbai – 400 021.)
9. Airport Authority of India, through)
its Chairman, Rajiv Gandhi Bhavan,)
Safdarjung Airport,)
New Delhi 110 003)
10. The Secretary (Environment),)
Government of Maharashtra,)
Mantralaya, Mumbai – 400 032.) Respondents

To,
The Prothonotary & Senior Master
High Court,
Bombay.

Madam,

I, the Petitioner abovenamed, do hereby nominate,
constitute and appoint **M/s. Dhruve Liladhar & Co.,**
Advocates, Solicitors & Notary, to act, appear and plead for me
in the above matter.

In Witness Whereof, I have hereunto set and subscribed
my hands and seals to this writing.

Dated this the 10th day of August, 2005.

ACCEPTED:

M/s. Dhruve Liladhar & Co.

Partner
Advocates for Petitioner
13 A/B, Ismail Building, 3rd Floor,
381, Dr. D. N. Road, Fountain,
Mumbai – 400 001

KIRIT SOMAIYA
Petitioner

Registration No.91

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PIL WRIT PETITION NO. OF 2005

Shri. Kirit Somaiya ... Petitioner

Versus

State of Maharashtra & ors. ... Respondents

AFFIDAVIT IN SUPPORT

I, KIRIT SOMAIYA, Ex-Member of Parliament, of Mumbai, Indian Inhabitant, the Petitioner abovenamed, residing at Neelam Nagar, Mulund (East), Mumbai-400 081, do hereby solemnly affirm and say as under:-

1. I say that what is stated in paras ____ is true to my own knowledge, information and I believe the same to be true. I say that I crave leave to refer to and rely upon the said Petition as if the same is forming part and parcel of my affidavit.

2. I, therefore, respectfully say and submit that the Petition be admitted and be made absolute.

Solemnly affirmed at Mumbai]

this day of August, 2005.]

Before me,

For Dhruve Liladhar & Co.,

Partner
Advocate for the Petitioner.

IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL
JURISDICTION
PIL WRIT PETITION NO. OF 2005

Kirit Somaiya ... Petitioner

Versus

State of Maharashtra
& Ors., ... Respondents

WRIT PETITION

DATED THIS 10TH DAY OF AUGUST 2005

M/S. DHRUVE LILADHAR & CO.,
ADVOCATES FOR THE PETITIONER,