

**(2009) 03 BOM CK 0129**

**Bombay High Court**

**Case No:** Public Interest Litigation No. 18 of 2005

Venkatesh Pradyumnacharya  
Varakhedakar (Since deceased  
by his heirs and legal  
representatives Bheemacharya  
(Bheemasen) Vyankatesh  
(Balacharya) Varakhedakar)

APPELLANT

Vs

Maharashtra State and Others

RESPONDENT

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**Date of Decision:** March 23, 2009

**Acts Referred:**

- Constitution of India, 1950 - Article 25, 26, 29

**Citation:** (2009) 6 BomCR 472 : (2009) 4 MhLj 476

**Hon'ble Judges:** Swatanter Kumar, C.J; D.Y. Chandrachud, J

**Bench:** Division Bench

**Advocate:** Bheemacharya Vyankatesh Varakhedakar, for the Appellant; V.S. Masurkar, Government Pleader, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Swatanter Kumar, C.J.

This Public Interest Litigation has been brought by Mr Bheemacharya Vyankatesh Varakhedakar, legal heir of late Mr Venkatesh Pradyumnacharya Varakhedakar, the Petitioner, with the prayer the records and proceedings of the cases referred in the Petition be called for and Review Petition Stamp No. 28623 of 2004 in Second Appeal No. 521 of 1983 be withdrawn from the Court of Mr. Justice A.S. Oka and be placed for decision in accordance with law before any other Bench.

2. The Petitioner had filed a Suit being Regular Civil Suit No. 562 of 1980 with a prayer that he is member of Sanatan Vaidic Hindu religion, Vaishnhav Bhagavat society and has a right to perform the puja and also to demand dakshina by

performing the religious ceremonies in the Vitthal Rukminhee temple. He also claims that he possesses the right of management in view of Articles 25, 26 and 29 of the Constitution of India and according to him his fundamental rights were being infringed. The Suit was based with reference to the provisions of the Pandharpur Temple Act, 1973 and, therefore, the Suit for declaration was filed. Reference to other facts including the properties of the temple was also made and the leave for injunction was also claimed against the Defendants in the Suit. This Suit came to be dismissed by the learned Trial Court. First Appeal was also dismissed by the learned District Court. Second Appeal preferred by the Petitioner was admitted vide order dated 11th October 1983 on the question framed therein. This Appeal was finally heard by the learned Single Judge and came to be dismissed on 26th July 2004. Thereafter, the present Petitioner filed a Review Petition being Review Petition No. 11 of 2005 seeking review of the order of dismissal of the Second Appeal by the learned Single Judge. This Review Petition, as per record, was fixed from time to time for admission and there the Petitioner raised the contention that Review Petition should be heard by another Court. Taking note of this, the learned Single Judge had placed the matter before the Chief Justice, wherein it was directed that the Review Petition may be heard by the said Court as per the High Court Appellate Side Rules. Thereafter, the Review Petition was again adjourned. The Petitioner submitted his written submissions and the Review Petition also came to be dismissed vide order dated 24th October 2008. A Division Bench of this Court vide order dated 23rd February 2005 passed in the present Public Interest Litigation directed that the Review Petition be listed before the same Judge which passed the order. After passing of the order dated 24th October 2008 dismissing the Review Petition, the Petitioner has filed the present application for listing the Public Interest Litigation and for transfer of the Review Petition from the Bench of the learned Single Judge.

3. We find that such a request would not be maintainable though in the facts of the present case the Review Petition has also been dismissed and the Petitioner is entitled to take recourse to legal remedies available to him in accordance with law. Filing of Public Interest Litigation in fact is an abuse of the process of the Court and cannot be entertained by the Court. We expect the Petitioner to act in a circumscribed manner and not to keep on filing frivolous Petitions. The Supreme Court in the case of [Janata Dal Vs. H.S. Chowdhary and Others](#), , had stated that the jurisdiction of public interest litigation can hardly be invoked for personal gain and/or private profit and/or oblique consideration and it is intended not to encourage vexatious litigation.

4. Public Interest Litigation and the present application for transfer thus both are dismissed leaving the parties to bear their own costs. The Petitioner is at liberty to take such action as is permissible to him in accordance with law.