

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10001 OF 2015

Tahera Nabilal Sayyed and Others. .. Petitioners
Vs
The Divisional Manager, Solapur Division,
Solapur and Others. .. Respondents
—
Shri D.S. Mhaispurkar for the Petitioners.
Shri Suresh Kumar for the Respondent Nos.1 and 2.
Shri Manish Pabale, AGP for the Respondent No.4.
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CORAM : A.S. OKA & A.K. MENON, JJ
DATED : 14TH SEPTEMBER 2016

P.C.

1. Heard learned counsel appearing for the first and second Respondents and the learned AGP for the fourth Respondent.

2. Rule. The learned counsel appearing for the first and second Respondents waives service. The learned AGP waives service for the fourth Respondent. As no relief is claimed against the third Respondent, notice to third Respondent is not necessary. Forthwith taken up for final disposal.

3. The challenge in this Petition under Article 226 of the Constitution of India is to the public notice published by the second Respondent on 3rd September 2015 in daily “Lokmat” directing that the

structures erected by encroachers on the land held by the Railways at Barshi, shall be removed on or before 13th September 2015 and that the Railways shall take action of removal of encroached structures.

4. It is not necessary for us to go into the question of title to the land on which the structures of the Petitioners are situated. Suffice it to say that if the first and the second Respondents desire to demolish the structures of the Petitioners and take possession of the land below the structures of the Petitioners, the first and the second Respondents will have to adopt due process of law. The impugned notice is completely illegal being in breach of the principles of natural justice.

5. We, therefore, dispose of the Petition by passing the following order:

ORDER :

- (a) The Rule is made absolute in terms of prayer clause (a) with modification that it will be open for the first and second Respondents to adopt due process of law for demolishing the structures claimed by the Petitioners and for taking possession of the land below the structures of the Petitioners;

- (b) We make it clear that all contentions of the parties as regards the issue of ownership of the land and legality of the structures thereon are expressly kept open and no adjudication is made on this aspect;
- (c) In the event, the order of demolition and/or dispossession is passed by the first and/or second Respondents, actual action of demolition/ dispossession shall not be taken for a period of two weeks from the date on which the order is served upon the Petitioners;
- (d) All contentions of the parties on merits are kept open.

(A.K. MENON, J)

(A.S. OKA, J)