

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1826 OF 2015
WITH
CIVIL APPLICATION NO. 438 OF 2015
WITH
WRIT PETITION NO. 1827 OF 2015

Sudhakar Vithal Todankar	....	Petitioner
V/s		
The State of Maharashtra and others	....	Respondents

WITH
WRIT PETITION NO. 1828 OF 2015
WITH
CIVIL APPLICATION NO. 439 OF 2015
IN
WRIT PETITION NO. 1828 OF 2015

Shantilal Pratapchand Jain	....	Petitioner
V/s		
The State of Maharashtra and others	....	Respondents

WITH
WRIT PETITION NO. 1829 OF 2015

Khalil Ahmed Datey	....	Petitioner
V/s		
The State of Maharashtra and others	....	Respondents

WITH
WRIT PETITION NO. 1830 OF 2015
WITH
WRIT PETITION NO. 1831 OF 2015
WITH
CIVIL APPLICATION NO. 440 OF 2015
IN
WRIT PETITION NO. 1831 OF 2015

Mr. Aziz Abbas Bodlaji	....	Petitioner
V/s		
The State of Maharashtra and others	....	Respondents

WITH
WRIT PETITION NO. 1832 OF 2015
WITH
WRIT PETITION NO. 1833 OF 2015
WITH
CIVIL APPLICATION NO. 441 OF 2015
IN
WRIT PETITION NO. 1833 OF 2015

Avinash Satnak	....	Petitioner
V/s		
The State of Maharashtra and others	....	Respondents

WITH
WRIT PETITION NO. 1834 OF 2015
WITH
WRIT PETITION NO. 1835 OF 2015

Aziz Undre	....	Petitioner
V/s		
The State of Maharashtra and others	....	Respondents

WITH
CIVIL APPLICATION NO. 442 OF 2015
IN
WRIT PETITION NO. 1835 OF 2015

Mr. Abdul Aziz Undre	....	Petitioner
V/s		
The State of Maharashtra and others	....	Respondents

WITH
WRIT PETITION NO. 1836 OF 2015
WITH

WRIT PETITION NO. 1837 OF 2015
WITH
CIVIL APPLICATION NO. 443 OF 2015
IN
WRIT PETITION NO. 1837 OF 2015

Imran Iqbal Fakji	....	Petitioner
V/s		
The State of Maharashtra and others	....	Respondents

WITH
WRIT PETITION NO. 1838 OF 2015
WITH
CIVIL APPLICATION NO. 444 OF 2015
IN
WRIT PETITION NO. 1838 OF 2015

Khalil Ahmed Datey	....	Petitioner
V/s		
The State of Maharashtra and others	....	Respondents

WITH
WRIT PETITION NO. 1839 OF 2015

Shantilal Pratapchand Jain	....	Petitioner
V/s		
The State of Maharashtra and others	....	Respondents

WITH
WRIT PETITION NO. 1840 OF 2015
WITH
WRIT PETITION NO. 1841 OF 2015
WITH
CIVIL APPLICATION NO. 445 OF 2015
IN
WRIT PETITION NO. 1841 OF 2015

Himmatlal Pratapchand Jain	....	Petitioner
V/s		

The State of Maharashtra and others Respondents

WITH

PUBLIC INTEREST LITIGATION NO. 102 OF 2010

Ratnakar Kashinath Todankar and others Petitioners

V/s

The State of Maharashtra and others Respondents

Ms. Jai Kanade a/w Parag Tilak & Sumit Kothari for Petitioner in all Writ Petitions

Mr. Ashutosh Gole for Petitioner in PIL 102 OF 2010

Mr. P. P. Kakade AGP for State

**CORAM : NARESH H. PATIL AND
VL. ACHLIYA, JJ.**

DATED : 27th March 2015.

PC.

- 1) Heard. By an order dated 31/07/2014, Division Bench (Coram : A. S. Oka and A. S. Chandurkar, JJ) of this Court passed following order.

“A) We direct the District Collector to nominate the appropriate Revenue Officer to take action of demolition as well as the action of removal of encroachment. As regards 36 structures as set out in the affidavit of Shri Shrikant R. Bangar, the Officer so appointed shall take an appropriate action in accordance with law for removal of the said illegal structures and for removal of encroachment on the public property. The action shall be completed as expeditiously as possible and in any event on or before 31st October, 2014;

B) The Advocate for the petitioners shall produce an authenticated copy of this order in the office of the District Collector. The District Collector shall act upon an authenticated copy of this order;

- C) The petition is disposed of on above terms;
- D) A compliance affidavit shall be filed by the officer nominated by the Collector on or before 7th November, 2014;
- E) For reporting compliance, the petition shall be listed on 10th November, 2014 under the caption “directions”.

2) Review Petition was filed in respect of the said order. By an order dated 10/11/2014, Division Bench disposed of the Review Petition by observing;

“2. The order is based on statements made in the affidavit of Shri Shrikant R. Bangar, Sub-Divisional Officer, Public Works Department. The direction issued by this Court in PIL makes it very clear that the action of removal of illegal structures and the action of removal of encroachments on the public property shall be taken in accordance with law. Thus, the order makes it clear that the officers concerned will have to follow the due process of law. The order does not take away the remedies available in law to the persons who are aggrieved by the action. Hence, there is no error apparent on the face of the record and even otherwise there is no ground for review. In view of what is stated above, even a case for modification of the order dated 31st July, 2014 is not made out. Subject to what is observed above, the Review Petitions are rejected. We must note here that the notices on which the Review Petitioners have relied upon in the Review Petitions have been withdrawn. Apart from this fact, there is no document annexed to the Review Petitions to show that the structures have been constructed after

obtaining permission of the competent authority.”

3) Petitioners were issued a fresh notice for demolition by the Sub-Divisional Office. Said notices were challenged by the petitioner before District Collector, Raigad. By an order dated 28/01/2015, Additional District Collector Raigad dismissed the said appeals by giving reference to the High Court's order. Additional Collector did not prescribed any independent reasons for dismissing the appeal.

4) Being aggrieved by the order passed by the Additional Collector, petitioner approached Divisional Commissioner of the region in second appeal. Appeal is said to be still pending for consideration of Divisional Commissioner of the region.

5) Learned counsel appearing for the petitioner submits that in view of the clarification sought from the Review Court, it was incumbent upon the concerned Authorities to independently deal with the issue raised by the petitioner in the proceedings initiated challenging the demolition notices. Instead, appeal came to be dismissed by the Additional Collector, without prescribing any reasons.

6) Learned APP submits that petitioners are encroachers. They are in illegal occupation of the subject premises. They are located across the proposed high-way. Land acquisition proceedings was initiated and

completed and possession receipt is secured.

7) We do not express any opinion on merits of the petitioners' contentions and the respondent's submissions at this stage.

8) We find that order of review passed by this Court is clear. That the Authorities shall take appropriate action to remove encroachers in accordance with law by adopting due process of Law. The remedies which are available in Law to petitioners are made available to them, meaning thereby that in case petitioner raise any challenge to the notice of demolition before appropriate forum, such Authorities would deal with it independently on its own merits and pass brief reasoned order in respect of the subject matter involved.

9) In this premise, We direct Divisional Commissioner of the region to dispose of the appeals filed by the petitioners, on its own merits. After hearing the petitioners and going through the record, Divisional Commissioner shall pass final orders within 8 weeks from today and communicate the same to the petitioners. Interim protection shall continue till 8 weeks. In case, Divisional Commissioner passes an adverse order against the petitioners, petitioners may file an application for seeking relief before Divisional Commissioner itself.

10) Learned counsel for the petitioners submit that they have also filed

an application for regularization of the structures and this application is not decided on the ground that proceedings initiated by the petitioners against order of notices of demolition are pending before High Court and the applications were rejected by the Authorities concerned.

11) We observe and clarify that it would be appropriate for the petitioners to first get the appeals challenging notices of demolition decided.

12) In the light of this order, Writ Petition Nos. 1830 of 2015, 1832 of 2015, 1840 of 2015, 1836 of 2015, 1829 of 2015, 1839 of 2015, 1827 of 2015 & 1834 of 2015 stand disposed of.

13) In view of the order passed in the main petition, We are not inclined to entertain Civil Application Nos. 438 of 2015, 439 of 2015, 440 of 2015, 441 of 2015, 442 of 2015, 443 of 2015, 444 of 2015 & 444 of 2015. They stand rejected.

14) All petitions and Civil Applications stand disposed of.

15) Parties to act on the authenticated copy.

(VL. ACHLIYA, J.)

(NARESH H. PATIL, J.)