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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.24 OF 2016
WITH
CIVIL APPLICATION NO.23 OF 2016 IN
IN
PUBLIC INTEREST LITIGATION NO.122 OF 2010

Jasmeet Kaur J Chabra ...Applicant

(in C.A 23 of 2016)

Kewalbai Dyanoba Waghmare ...Applicant

(in C.A 24 of 2016)

Vs.

Anil Narayan Joshi & Ors.Respondents

Mr.Mathews Nedumpara a/w Ms Rohini M. Amin, S.
Sevakumari and Rohini Sorte for the applicant in CA
24 of 2016

Mr.Bijoy K. Adhiary, Senior Advocate i/b Parvinder
Singh Sethi for applicant in CA 23 of 2016

Mr.Shriram S. Kulkarni a/w Mr.Sachin Chavan for the
Petitioner in PIL

Mr.A.B.Vagyani, GP a/w Mr.V.P.Malvankar, AGP `A'
Panel for the respondent Nos.1 to 5 and 7 in PIL.

Mr.R.S.Apte, Senior Advocate i/b Mr.Mandar Limaye
for the respondent No.6 in PIL

CORAM : A.S.OKA, & C.V.BHADANG, JJ.

DATE : FEBRUARY 4, 2016

P.C.:

1 We have heard the learned counsel for the
applicants in both the applications at some length.

2 The Public Interest Litigation in which these

applications have been filed has been already admitted for final hearing. The grievance made in the PIL is about the failure of the State Government as well as the Municipal Corporation to remove large scale encroachments on the lands vesting in the State Government more particularly described in paragraph 4 of the PIL and the failure to demolish more than 2500 illegal structures made on the said lands. The representations and grievances made by the petitioners to various Authorities before filing of the petition have been relied upon in the petition. A writ of mandamus is sought seeking action of demolition and removal of encroachments on the public properties. Interim orders have been passed directing demolition of illegal structures in accordance with law.

3 It is claimed by the learned counsel for the two applicants in these applications that they represent the persons who are occupying the structures on the lands subject matter of the PIL. Various contentions are raised such as PIL itself is not maintainable as the PIL petitioners have not satisfied the Court about their locus and that the PIL does not satisfy the tests laid down by the Apex Court. Reliance is placed on Order I of Rule 3 as well as order I of Rule 8 of the Code of Civil Procedure, 1908 by submitting that though notice to all affected parties was a must, in fact, no notice was ordered to be issued by this Court. The submission is that the orders passed by this Court are nullity. Their submission is that hundreds of

occupants of the structures which are sought to be demolished have been adversely affected by the interim orders of this Court. Their submission is that the orders of this Court are nullity and PIL should be dismissed. It is urged that on the basis of the orders passed by this Court, the Authorities of the State Government and the Municipal Corporation have taken action of demolition without following due process of law and without giving an opportunity of being heard to the affected persons.

4 We have perused the orders passed by this Court from time to time. We must note here that the stand of the State Government as reflected from the affidavits on record and as reflected from the orders passed by this Court from time to time is that substantial number of occupants have been protected by a policy of the State Government. In fact, the orders of this Court show that the State Government is carrying out a survey to identify the protected structures though so far the alleged policy is not placed on record.

5 The orders passed by this Court in the PIL also note that the State Government has issued notices under sub-section (1) of section 50 of the Maharashtra Land Revenue Code, 1966 (for short "said Code") to some of the persons who have encroached upon the Government lands. There are remedies available of appeals and revisions provided under the said Code to the affected persons against the said action. Moreover, under the said Code, the

affected persons have a remedy of applying for regularization of the encroachments. Various orders of this Court and in particular order dated 16th December 2015 make it very clear that the action of demolition is to be carried out by the Municipal Corporation and the State Government strictly in accordance with due process of law.

6 The basic grievance of the PIL petitioners is that though the Authorities are under an obligation to remove alleged encroachments on Government lands and to remove the alleged unauthorised structures, they have failed to perform their statutory duty. A writ of mandamus can always be issued in such cases enjoining the Authorities to perform their statutory duty. Hence, the PIL is very much maintainable. The 7-12 extracts annexed to the PIL prima facie show that the lands are vesting in the State. Therefore, it is the statutory duty of the Authorities to protect public property from encroachments. The meaning of the interim orders passed by this Court is very clear. If the Municipal Corporation is satisfied that the illegal structures have been erected, it will have to take action of demolition after following due process of law which includes giving a notice to the affected persons and giving an opportunity of being heard to the affected persons. If the State Government is satisfied that some of the prevailing structures are not protected by the policy of regularization or toleration of the structures, action of removal of encroachment will have to be taken by the State Government under sub-

section (1) of section 50 of the said Code by issuing show cause notices to the persons who have made encroachments on the Government land. It is not the scope of the PIL to decide which particular structures are illegal. That issue will have to be decided by the Municipal Corporation/State Government after hearing the affected parties. Hence, there is no merit in the contention that necessary and proper parties have not been heard. Hence, there is no merit in the contention that the applicants and others whom they are allegedly representing have a right of intervention. Their remedies against Authorities are always open.

7 We have already observed that the grievance of the PIL petitioners is that the respondents have failed to perform their statutory duty. This grievance can be always gone into in the writ petition under Article 226 of the Constitution of India and if this Court finds that the statutory Authorities are not performing their duties, this Court can always issue a writ of mandamus and direct them to follow due process of law and perform their statutory obligation. Therefore, we do not agree with the submission that this Court has no jurisdiction to entertain the PIL and to pass orders which have been already passed.

8 We do not agree with the submission that the job of directing demolition of illegal structures is not of the writ Court and the writ Court cannot entertain this petition. The Writ Court can always

entertain such petition and direct the statutory authorities to perform their statutory obligations.

9 We make it clear that no action of demolition or removal of encroachments can be taken against any person in occupation of the structures on the lands subject matter of the PIL without following due process of law and without complying with the principles of natural justice. We decline to entertain the Civil Applications as there is no merit in the case made out. Subject to what is observed above, Civil Applications are rejected.

10 At this stage, the learned counsel for the applicant made a grievance that hundreds of persons to whom the applicants are representing are present in the Court compound today but only 15-16 persons were allowed entry in the Court Room.

11 We may note here that normally on the Daily Board of this Court there are more than 100 matters and therefore, there are large number of litigants and Advocates present in the Court. The size of the Court Room is relatively small and, therefore, it cannot accommodate large number of Advocates and litigants. Moreover, today is the day of final hearing of Family Court Appeals. Therefore, to avoid inconvenience to others, the Security Personnel/Police were fully justified in ensuring that only 15 or 20 representatives of the hundreds of occupants are allowed entry in the Court Room. The applicants are represented by their respective Advocates on

record and the arguing counsel. It is the responsibility of the members of the Bar to ensure that in such cases, large number of litigants do not enter the Court rooms and cause inconvenience to the Advocates and other litigants present in the Court. The decorum of the Court must be maintained. Hence, there is no merit in this grievance made across the bar.

12 Place the PIL under the caption of 'Directions' on 23rd March 2016 for reporting compliance by the State .

(C.V.BHADANG,J.)

(A.S.OKA,J.)