

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1440 OF 1995

Thane Zilla Shramik Zopadpatti
Sudhar Sangh and Anr. ... Petitioners
V/s.
The Tahsildar, Palghar and Ors. ... Respondents

Mrs.Anita A. Agrawal for the Petitioners.

Mr.A.R. Metkari, Asstt.Government Pleader for the Respondents.

CORAM : M.S. SONAK, J.

DATE : 22nd APRIL, 2016.

P.C.

1] Heard the learned counsel for the parties.

2] The challenge in this petition is to notices dated 15th March 1995, issued by the Tahsildar of Palghar under Section 50 of the Maharashtra Land Revenue Code, 1966 (LRC) requiring almost 322 persons, whose names and details have been set-out in Exh.A of this petition to vacate the encroachments carried out¹⁴ by them upon public property. This petition has been instituted by the Thane Zilla Shramik Zopadpatti Sudhar Sangh and its Secretary stating that they have the authority to

represent the interest of the 322 persons whose names and details have been set-out in Exh.A to the petition. Mrs.Agrawal, learned counsel for the petitioners submitted that the petitioners had already made applications for regularization of the encroachment. She submitted that the 322 persons referred to in Exh.A are actually residing in the encroached properties and they have documents like Ration Cards, Identity Cards, Election Cards, Electricity Bill etc. She submitted that there are several schemes in terms of which such occupation is being regularized by the respondents. In these circumstances, she submitted that the respondents acted in excess of jurisdiction in issuing the impugned notices, even before the plea for regularization could be considered.

3] Mr.Metkari, learned Asstt. Government Pleader submitted that the 322 persons referred to in Exh.A to the petition are encroachers upon the public property. Without prejudice Mr.Metkari submitted that in the year 1992, the encroachers were called upon to furnish documents which are referred to in paragraph (2) of the affidavit-in-reply filed by

Sudhakar Bhiva Jadhav, Tahsildar of Palghar in order to consider the issue of regularization. Mr. Metkari, however submitted that the said 322 persons failed to submit the documents. The petitioners, who claimed to espouse of the 322 persons also failed to furnish the requisite documents. In these circumstances, there was no question of even taking into consideration the plea for regularization. On this basis Mr. Metkari submitted that the impugned notices have been rightly issued and the same warrants no interference in the exercise of extraordinary jurisdiction of this court. Mr. Metkari also submitted that encroached property is required for State Transport Corporation, Palghar, which is a public purpose.

4] By virtue of interim order made by this court on 19th February 1996, the impugned notices have not been executed. There is no clarity in the matter of schemes of regularization, if any. The circumstances that the 322 persons whose cause, the petitioners espouse, may have paid taxes, electricity charges or they have obtained Ration Cards, Identity Cards, Election Cards, Electricity Bill, is not, by itself, sufficient for assailing the legality

and validity of the impugned notices. However, if there are indeed any schemes for regularization or rehabilitation, then, by virtue of these documents, the said 322 persons are at least entitled to have their case for regularization considered in accordance with law and on its own merits. This is up-course on the basis that there are such schemes in existence.

5] Shri Sudhakar Bhiva Jadhav, Tahsildar of Palghar has filed affidavit-in-reply for and on behalf of respondent no.1/State of Maharashtra. In paragraph (2) of the said affidavit-in-reply, the deponent has stated thus;

“2. In the year, 1992, in view of the statement made by the then Revenue Minister on the floor of the house in the Assembly on 10th August, 1990, the production of the following documents were called from the Petitioners for regularising their encroachments. Accordingly, following documents were called for in order to regularise the said encroachment :

- 1) 7/12 extract of the disputed land.
- 2) No objection Certificate by Grampanchayat, Palghar.
- 3) Village Form No.1-E.
- 4) Domiciles Certificate of the encroachers.
- 5) Income Certificate.
- 6) Caste Certificate.

Inspite of repeated requests by my office, the President, Thane Zilla Shramik Zopadpatti

Sudhar Sangh, Palghar, failed to produce the abovementioned documents which were required for regularising the encroachments. I deny the contention of the Petitioners regarding the compliance of the requirement and submission of his Reply. The Petitioners failed to produce the documents mentioned hereinabove inspite of the letter dated 20th March, 1990 addressed by my office to the Thane Zilla Shramik Zopadpatti Sudhar Sangh. Not only he failed to produce required documents but also he had simply produced the list showing the details of encroachers for regularising the land under Maharashtra Land Revenue Code. In order to get the benefit of the regularisation of the encroachment, every member of the Petitioner's Society should have given the list of documents prescribed by the Government so that it would have been easier for the Government to entertain the proposal separately. I further say and submit that the Petitioner's Society could not comply with the requirements within time limits prescribed by the Government. The land in dispute could not be regularised and the question regarding communication of the decision to the Petitioners does not arise.

I say and submit that by Government letter No. P.S.P.-1089/400007/267/LC -8 dated 18.11.1989, the land bearing Survey No.75 Part, 76 Part and 77 Part admeasuring 5 Acres is to be transferred to State Transport Corporation of Palghar. As the land admeasuring 1 Acre 8 Gunthas is under encroachment, it could not be transferred and only 3 Acres 32 Gunthas has been transferred on 27th November, 1991 to State Transport Corporation, Palghar. In these circumstances, the land under encroachment is required for State Transport Corporation, Palghar for public purpose, and hence, it is necessary to

remove the encroachment. I further say and submit that there is no policy of the Government to grant land for the rehabilitation purpose to unauthorised occupants of the Government land.

In view of the facts, circumstances, and reasons mentioned above, I say that the Petitioners are not entitled for any of the reliefs prayed for by them in this Petition and the same may be dismissed with costs.”

6] At this point of time it will not be appropriate to permit the removal of encroachments to proceed merely on the basis of the aforesaid statement, that at the relevant time i.e. in the year 1992, the 322 persons failed to furnish the documents which they were called upon to furnish in order to consider their case for regularization. Considering the passage of time it is only proper that some further time is granted to the said persons, so that they are in position to furnish such documents in order that their cases are considered for regularization. However, considering that the property encroached is necessary for the State Transport Corporation at Palghar, which is undoubtedly a public purpose, some time bound directions are necessary, so that this entire process does not continue for some indeterminate period.

7] Therefore, the 322 persons referred to in Exh.A to this petition whose cause the petitioners espouse, are permitted to individually made fresh applications seeking regularization, within a period of eight weeks from today. Such applications to be accompanied by the documents, if available, as referred to in paragraph (2) of the affidavit-in-reply of Sudhakar Bhiva Jadhav, Tahsildar of Palghar which is referred to herein above. If such applications are indeed made within a period of eight weeks from today to the Tahsildar of Palghar, then, the Tahsildar of Palghar shall forward the same to the appropriate authority of the Government for considering the issue of regularization, if at all, there are any schemes in operation and such schemes permit such consideration. The respondents (the appropriate authorities) to take necessary decision in the matter of regularization, if any, in accordance of law and on its own merits within a period of four months from the date of receipt of such applications. During this period of four months, the impugned notices shall not be implemented/executed. If, however, the respondents take a decision against regularization of encroachments, then, there shall be no bar to the

execution/implementation of the impugned notices. In that eventuality also, the respondents shall grant reasonable period at least three months to the 322 persons in order to make some alternate arrangements.

8] It is clarified that this court has not gone into the issue as to whether the aforesaid 322 persons are indeed entitled to regularization or not. The directions issued as aforesaid are in the context of the affidavit-in-reply filed by the Tahsildar. Accordingly, it is clarified that all such issues are left open for decision by the respondents in accordance with law and on its own merits.

9] The rule is accordingly made absolute to the aforesaid extent only.

10] There shall be no order as to costs.

11] All concerned to act on the basis of the authenticated copy of this order.

(M.S. SONAK, J.)