

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****Writ Petition NO. 1509 OF 2016**

TEMBHURNI VILLAGE PANCHAYAT

...Petitioner(s)

Versus

STATE OF MAHARASHTRA THROUGH
PRINCIPAL SECRETARY, DEPT. OF RURAL
DEVELOPMENT AND ORS.

...Respondent(s)

AND

Public Interest Litigation NO. 211 OF 2015

BASHIR BABASAHEB JAHAGIRDAR

...Petitioner(s)

Versus

THE STATE OF MAHARASHTRA AND ORS.

...Respondent(s)

Mr.Vijay Killedar, for the Petitioner in Writ Petition 1509/16 and for
Respondent No.5 in PIL 211/15.

Mr.Prabhanjan Gujar, for Petitioner in PIL 211/15.

Mr.P.G.Sawant, AGP for the State in Writ Petition 1509/16.

Mr.P.P.Kakade, AGP for the State in PI 211/15.

CORAM: NARESH H. PATIL &
G. S. KULKARNI, JJ

DATED: 4th February, 2016

PC:-

1. The petitioner prays for direction to the Respondents to desist from initiating action of demolition of building situated in the land bearing City Survey No.272 at Karmala Chowk, Tembhurni, District Solapur. Admittedly, the petitioner was party to the suit being Regular Civil Suit No.446 of 2013 filed in connection with the same premises for injunction. The Trial Court i.e. learned Civil Judge, Senior Division, Barshi dismissed the application 'Exhibit 5' by a detail order passed on 17.10.2015. Civil Miscellaneous Appeal Nos.44 and 45 of 2015 were preferred against the said order. By a common judgment and order dated 4.11.2015 the learned District Judge-1, Barshi dismissed Appeal Nos.44 and 45 of 2015.

2. Learned Counsel for the petitioner submits that the petitioner - Panchayat desires that these subject structures be allowed to be auctioned to deserving persons. Admittedly, the Petitioner contested the suit against the plea of the plaintiffs' for regularizing the subject structures and challenging the decision of the concerned

Authorities for demolition of structures. The Civil Court has reached a finding of fact in this matter. We are surprised as to how the petitioner - Panchayat has now decided to approach this Court in its extraordinary writ jurisdiction raising entirely a new plea.

3. Admittedly, plea of the petitioner is contrary to the spirit of finding of the Civil Court. A Public Interest Litigation bearing No. 211 of 2005 is pending in this Court and is also listed today before us. The State has filed affidavit in reply in the said Public Interest Litigation. The petitioner in the Public Interest Litigation urged for direction to the authorities to demolish the illegal structures. Affidavit in reply filed by Niab Tahsildar, Madha, Dist. Solapur, is perused by us. Paragraph 7 is relevant which reads as under:-

“7. I further state that it is necessary to demolish the illegal structure as stated above and both the structures are owned by the Government. The efforts of the illegal occupants to protect structure is already been adjudicated in favour of the Government.”

4. In exercise of writ jurisdiction, we are not inclined to entertain the Writ Petition. The Writ Petition is rejected.

5. In the light of the affidavit filed by the State, the Public Interest Litigation is disposed of.

(G. S. KULKARNI,J.)

(NARESH H. PATIL,J.)