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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.9395/2017

Diwansing Rupsing Rajput.
...Petitioner..

Versus

The State of Maharashtra & others.
...Respondents...

.....

Shri Prakashsing B. Patil, Advocate for petitioner.
Shri S.G. Karlekar, AGP for respondent nos.1 to 4.

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**CORAM: S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE: 27.07.2017

ORDER :

1] The only submission canvassed before us is that Annexure 'E' at page no.15 of the petition is a document, which will show that there are encroachments by number of people, but the petitioner is singled out for issuance of a notice u/s 53(3A) of the Bombay Village Pachayat Act, 1958. It is claimed that the petitioner is residing in the structure, which is put up on the site for last 30/35 years.

2] It is stated that the petitioner is also known

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as Diwansing Rupsing Girase though in the records at some place, the name of the petitioner is referred as Diwansing Rupsing Rajput. These persons are one and the same, and the writ petitioner is the same person to whom notice has been issued.

3] Our attention is invited to the final notice dated 22.1.2015, which has been issued to the petitioner to remove the unauthorized construction on Gaothan land. The same was followed by another notice and by which the petitioner was called upon to remove this structure within 15 days from 9.2.2016. Since this order was not complied with, the petitioner apprehends that now Police assistance will be given to the Grampanchayat to remove the subject construction.

4] The argument canvassed is that of all the persons whose names are mentioned in Annexure 'E', the petitioner is singled out for drastic action like demolition. The others have been allowed to retain their structures and this is discrimination. The Grampanchayat cannot pick and choose unauthorized structures for demolition in this manner.

5] Pertinently, the petitioner does not dispute

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that he has carried out construction. The petitioner claims that he was permitted to construct a house on plot of size 21 x 23 ft. equivalent to 483 Sq.Ft. by the then Sarpanch about 30/35 years back. The petitioner relies upon report of the Collector dated 17.4.2009 and thereafter no objection of the Grampanchayat to mutate his name in the records pertaining to this construction / structure. The petitioner claims that he is residing in the structure constructed on this plot and many like him have constructed houses, but admitting that the land is Gaothan. There is no alternative site. The respondent no.5 is troubling the petitioner unnecessarily. At the same time, it is argued that the Divisional Commissioner has also issued directions to the respondent no.5 to remove encroachments of all the villagers. The petitioner has claimed that he has not encroached on the Gaothan land, but made a lawful construction. Pertinently, the petitioner does not challenge the assertions in the notice and the order of the Grampanchayat dated 9.2.2016. He also does not question power of the Divisional Commissioner and the Grampanchayat to cause removal of any unauthorized

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construction or encroachment. That he claims that there is no encroachment is patently incorrect, for, at more places than one, the records indicate that such construction is made by the petitioner and others on Gaothan land.

6] The very concept of Gaothan would indicate as to how there is a community interest, which is protected and the entire village can have access to such land for the use of the villagers. On such lands and which are appropriated unto themselves, people have constructed houses and merely because they are existing for 30/35 years, is no ground to tolerate them.

7] It is well settled that Article 14 of the Constitution is a positive concept. It is not a negative one. Two wrongs do not make one right. Merely because one illegality is tolerated by an order of the Court, another illegality cannot be perpetuated or continued on that basis. This will be a mockery of the rule of law and the principle enshrined in Article 14 of the Constitution of India. If any support is required for this principle, reference can usefully be made to the judgment of the Hon'ble Supreme Court in *Union of India &*

another v. International Trading Co. & another (**AIR 2003 SC 3983**) and especially the observations contained in paragraph no.14 as under :

"14. What remains now to be considered, is the effect of permission granted to the 32 vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as 32 vessels are concerned. But it cannot come to the aid of respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case; direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India, 1950 (in short 'the Constitution') cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on par. Even if hypothetically it is accepted that wrong has been committed on some other cases by introducing a concept of negative equality respondents cannot strengthen their case. They have to establish

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strength of their case on some other basis and not by claiming negative equality."

8] We, therefore, cannot accept the argument of the petitioner that he has been singled out for a drastic action of demolition and, therefore, we should interfere in writ jurisdiction. Since that is the only contention raised, the petition has no merit and hence the same is dismissed. No costs.

(MANGESH S. PATIL, J.) (S.C. DHARMADHIKARI, J.)