

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

PUBLIC INTEREST LITIGATION NO. 126 OF 2014

**RAMDAS NAMDEO KAKADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
WRIT PETITION NO.1426 OF 2015**

**DATTU GANPAT KAKADE AND OTHERS.
-VERSUS-
THE STATE OF MAHARASHTRA AND OTHERS.**

**WITH
WRIT PETITION NO.10614 OF 2016**

**SHARAD BAJIRAO KOLTE AND OTHERS.
-VERSUS-
THE STATE OF MAHARASHTRA AND OTHERS.**

...

Advocate for Petitioners : Shri Jadhav Narsing B.
AGP for Respondents/ State : Shri S.G.Karlekar.
Advocates for the respective Respondents : Shri U.B.Bondar, Shri
S.A.Gaikwad, Shri B.A.Dhengle, Shri S.S.Thombre and Shri A.S.Kadam.

...

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

DATE :- 14th June, 2017

PC.:

1 In all these proceedings, the issue raised is of encroachment.
The encroachment may be, as claimed by the Petitioners in these petitions,

on Gairan or Gavthan land, but none the less it is termed as encroachment.

2 In PIL No.126/2014, an affidavit has been filed on behalf of the State which affidavit was affirmed by none other than the District Collector, Aurangabad. In that affidavit, there is a specific statement that there was complaint filed by the villagers about encroachment, but the Block Development Officer informed the Gram Panchayat that it is responsibility of the Gram Panchayat to remove encroachment on Gat No.28. Then, again the complaint was made to the Chief Executive Officer, Zilla Parishad, Aurangabad. Thereafter, the inquiry was conducted and the report was submitted to the Zilla Parishad. There are near about 250 to 300 encroachments on Gat No.28. Therefore, the Block Development Officer, by his communication dated 15.12.2014, again informed the Gram Panchayat to remove the encroachment, or else action for disqualification against the members of the Gram Panchayat would be initiated and the disciplinary proceedings would also be taken against the Gram Sevak. The Gram Panchayat was reluctant to remove encroachment from Gat No.28. It is in these circumstances that eventually, a report was called for from the Chief Executive Officer, Zilla Parishad, Aurangabad and it was discovered that the Petitioner in this PIL has encroached upon such land. It is in these circumstances that apart from disqualification proceedings, the responsibility of the authorities to remove encroachment having not

been discharged, that the instant petition is filed.

3 Our attention was invited to annexures to the petition and equally the affidavits placed on record. Once the PIL Petitioner was found to have indulged in illegal acts and of encroaching on the land belonging to village/ common use/ Gairan / Gavthan land, naturally he has avoided appearing before this Court. However, the cause projected and involved in the petition is in public interest. In order to sub-serve a larger public interest, we allowed prosecution of this petition and it was heard with the aid and assistance of the Advocates in other petitions.

4 There are also petitions filed and invoking writ jurisdiction of this Court so as to protect structures and by urging that these are not encroachments on Gairan land. There is Gavthan at the best and the structures have been constructed or standing on such lands and they are in existence for decades together. Therefore, they cannot be termed as encroachment or sudden occupation in an unauthorized and illegal manner. The argument is that the difference and essentially in law between "Gavthan" and "Gairan" must be recognized before any directions are issued.

5 After we have heard both sides and at great length, we found that whatever may be the nature of the land or property, it is for common use of the villagers. It is a village site. Once it is a village site and earmarked and designated as such, then, nobody has vested right to

occupy it. This is not a case where we can condone the use and occupation of such sites merely because the structures thereon have been constructed and are in existence for decades together. Eventually, the construction has to be removed, but some rehabilitative measures have to be adopted. The Authorities by now could have chalked out a complete programme in that behalf.

6 We inquired from the occupants of these structures as to whether, they are ready and willing to shift to alternate sites and if the same are provided within the very village limits. The learned Advocates appearing for them, on instructions, agreed to such course, but prayed that a reasonable time be granted to vacate the same and if at all the structures are not vacated within a given time, only then they can be demolished and by the process known to law.

7 We clarify that another elaborate process in the form of issuance of show cause notices, hearing and reasoned order following the same and thereafter, appeals and revisions, is not in our contemplation at all. That is not the course which is to be permitted. Now that this is a Public Interest Litigation and essentially inaction of the public authorities having been brought to our notice, we cannot remain silent spectators and allow the people to indulge in further litigation. That would not serve the public interest because it is now established and proved that the encroachment or construction is on village sites. The process of inquiries

and reports has already been carried out and completed in accordance with law. It is the action thereafter, which was expected from public officials, that has not been taken and it is their inaction which is projected in this PIL. Hence, we are of the view that once alternate sites are offered after due identification, it is bounden duty of the Petitioners and all such occupants to remove themselves from the structures and enable demolition/ removal of the same. The site has to be cleared. It will remain a village site and open to sky for common use and enjoyment of the villagers. None can dispute that even in villages, there could be congestion and houses and structures in close proximity will cause environmental problems. Breathing spaces and areas open to sky are needed in villages as well and that is how open and unconstructed village sites have been contemplated by the planners.

8 In these circumstances we direct that by 30th November, 2017, the process of identifying and allotting alternate sites to such of those occupants who are eligible, shall be completed together with their shifting and removal of structures. If despite the sites being offered, documents in that regard are duly handed over and permission to occupy alternate sites being granted, these structures are not vacated, then, the Authorities can use such force as is necessary to pull down the structures and cause their removal. All the authorities including Revenue and Police shall render their requisite assistance so as to carry out the directions and

orders of this Court.

9 Needless to clarify that any occupation of the land after the time stipulated by this order, would in addition to initiation of contempt proceedings against public officials and public bodies, would also invite such other legal measures including launching of criminal prosecution. We will not tolerate any dereliction of duties or negligence by public officials and public bodies. It is not for this Court to go on issuing directions for removal of encroachments on public sites and properties. The duty to safeguard and protect public properties has to be performed and discharged by public officials, namely, revenue officials as also police machinery. Once their inaction results in such litigation, then, we do not countenance any multiplicity of applications or litigations on this issue and as far as the subject village is concerned.

10 All the Writ Petitions and the Public Interest Litigation are disposed of with these directions.