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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 1356 OF 2017

Shri Nitin Balkrishan Tupe ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

Mr. Sandeep Madhukar Phatak, for the Petitioner.

Mr. S. L. Babar, AGP for the Respondent - State.

CORAM : V. M. KANADE, &
C. V. BHADANG, JJ.

DATE : MARCH 27, 2017

PC.

1. Heard the learned counsel appearing on behalf of the Petitioner at length and with lot of enthusiasm. The Petitioner is an Ex. Dy. Sarpanch. The Petitioner is aggrieved by an order passed by the Lokayukta dismissing the complaint filed by the villagers. It is their case that one private party has encroached on a land, which is designated as Gairan land. The learned Lokayukta, however, was pleased to dismiss the complaint stating that the issue raised by the complainant is regarding encroachment by a private person, and

therefore, it is not a social issue. He, therefore, refused to initiate a proceeding under section 10(1)(a) of the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971 (for short the “said Act”). He further reserved the right of the complainant to approach an appropriate alternate forum which was available to him. Being aggrieved by the said order, petitioner has filed this petition, seeking following substantive reliefs:

“[A] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, quashing and setting aside the order dated 6th June, 2016 passed by the learned Lokayukta, Maharashtra State, in the Complaint bearing No. LA / COM / 4975 / 2012 [T-1] and be pleased to allow the said Complaint.

[B] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950 directing the Respondent Government Authorities to take immediate action of demolishing the illegal and unauthorised construction carried out by the private Respondents on Survey No. 206, which is a Government Gairan land.”

2. After having perused the impugned order passed by the learned Lokayukta, we are of the view that there is no reason to interfere with the said order. Section 10(1)(a) of the said Act reads as under:

“10. (1) Where the Lokayukta or an Upa-Lokayukta proposes (after making such preliminary inquiry, as he deems fit) to conduct any investigation under this Act, he—

(a) shall forward a copy of the complaint or, the case of any investigation which he proposes to conduct on his own motion, a statement setting out the grounds therefore, to the public servant concerned and the competent authority concerned.”

3. The learned counsel appearing on behalf of the Petitioner submits that the complainant was asking the Lokayukta to take action against the public servant who refused to carry out measurement under Section 10(1)(a) of the said Act. We disagree with the said submission made by the learned counsel for the Petitioner, since the issues whether the land in question is a Government gairan land or a private land, and whether there is an encroachment or not, are in dispute which will have to be challenged before an appropriate civil court or revenue court, as the case may be. The learned Lokayukta is therefore, justified in refusing to initiate proceeding under section

10(1)(a) of the said Act.

4. So far as prayer clause (B) is concerned, firstly, we are of the view that all the questions raised by the Petitioner in this petition are disputed questions of fact, and therefore, this Court while exercising writ jurisdiction cannot give finding on the issues as to whether the land in question is a Government gairan land, or there is an encroachment by a private person. The Petitioner can exhaust an alternate remedy which is available to him.

5. Secondly, we have doubt whether the Petitioner who claims to be an Ex. Dy. Sarpanch has any locus to file this petition on behalf of the villagers or Gram Panchayat. We therefore, decline to issue any direction, as sought by the Petitioner in prayer clause (B). It is, however, clarified that rights of the Petitioner to agitate these issues before the competent forum by exhausting alternate remedy available to him, are kept open. All contentions of the Petitioner to that extent are kept open. Writ petition is accordingly disposed of in the aforesaid terms.

Sd/-
[C. V. BHADANG, J.]

Sd/-
[V. M. KANADE, J.]