

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12602 OF 2015

Shri Bala Jiwaba Patil and others. ... Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

Tanaji Mhatugade for the petitioners.
PP.Kakade, AGP for the State.

**CORAM : DR.MANJULA CHELLUR, C.J.
AND G.S.KULKARNI, J.**

DATE : 16th January 2017.

PC. :

Heard learned counsel for the petitioners as well as learned Government Advocate.

2. According to learned counsel for the petitioners, in lieu of losing their land for Dudhganga Irrigation Project they were allotted land being Gat No.1027/1 admeasuring 1 Hectore and 21 Ares, situated at village- Udgaon, taluka- Shirol, district- Kolhapur. According to them, in terms of Exh.A dated 31st October 1995, a Panchanama was drawn and the petitioners were put in possession of

the land and since then they are cultivating the said land. It is further contended that in the year 2001, the petitioners applied for measurement of the land in their possession. After measurement, they noticed that certain portion of the land was encroached by the original owner of the land and, therefore, they made a representation to the State Government for removal of the said encroachment. By the prayer made in the writ petition, the petitioners seek removal of encroachment at the cost of State exchequer.

In order to consider the relief sought in the writ petition what is required to be considered is whether the said encroachment was existing in year 1995 when the petitioners were put in possession of the land or whether it has come up subsequently. If the petitioners claim to be in possession of the land in terms of Panchanama (Exh.A) and are cultivating the same personally since then, it is for them to protect their land as absolute owners having interest in the property and they cannot depend upon the State exchequer for maintenance of their land and its protection from encroachment. If the measurement made in the year 2001 reveals that there is encroachment, which was not noticed in the year 1995 while drawing Panchanama (Exh.A), then definitely the encroachment is subsequent to the handing over of possession of the land to the petitioners. It only reflects negligence or carelessness on

the part of the petitioners in protecting their land. However, the petitioners are at liberty to get the said encroachment removed in accordance with due process of law. We are, however, of the opinion that we cannot issue a writ of mandamus directing the State to remove the encroachment and put back the petitioners in possession of the entire land.

3. With the aforesaid observation, the petition is disposed.

(G.S.KULKARNI, J.)

CHIEF JUSTICE