

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

PUBLIC INTEREST LITIGATION NO. 182 OF 2016.

(Pramod Wasudeorao Pannase .vs. The State of Maharashtra & others)

WITH

WRIT PETITION NO. 2871 OF 2017

(Gendsingh s/o Johar Singh Pawar .vs. State of Maharashtra & others)

WITH

WRIT PETITION NO. 567 OF 2017

(Subhash Suryabhan Bagde & others .vs. State of Maharashtra & others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI & ROHIT B. DEO, JJ.

DATED : JULY 26, 2017.

Heard Mr. V.N. Patre, learned Advocate for petitioner in PIL No. 182/16, Mr. A.P. Raghute, learned Advocate for petitioner in Writ Petition No. 2871/17 and Mr. A.P. Raghute, learned Advocate informs that he is filing Vakalatnama for petitioners in Writ Petition No. 567/17 also.

Mr. U.K. Bisen, learned Advocate has appeared for Secretary of Gram Panchayat, Khairi in all the matters. Mr. N.S. Khubalkar, learned Advocate has appeared for respondent no.5 Sarpanch and respondent no.6 Up-Sarpanch in P.I.L. Mr. N.H. Joshi, learned A.G.P. has appeared for respondent State Government, Divisional Commissioner and Collector.

The prayer in P.I.L. is to direct the respondent nos. 1 & 2, i.e. the State Government and Divisional Commissioner to remove encroachment on Government land earmarked as Zudpi

jungle.

The respondent no.4 Secretary points out that the said land has been reserved as Zudpi jungle and out of the said land one hectare has been given to Lok Seva Vikas, Khairi. The Gram Panchayat vide communication dated 9.12.2015 requested Tahsildar, Hingna to enquire into the matter for removal of encroachment. According to the Gram Panchayat, it is Revenue Department and Forest Department which has to take action for removal of encroachment. On 16.1.2017 Gram Panchayat has passed Resolution and again resolved that encroachment needs to be removed by Forest Department. Accordingly, a communication has been sent to the Tahsildar on 16.1.2017. A meeting conducted on 20.1.2017 and special drive for removal of encroachment is also pointed out. It is further stated that Tahsildar, Hingna has issued communication dated 23.1.2017 to Police Station Officer at Hingna for providing police protection. On 27.1.2017 the Gram Panchayat wrote to Deputy Commissioner of Police for granting such protection.

Thus, the Gram Panchayat through its Secretary appears to be taking steps for removal of encroachment. Though there are some allegations against the respondent no.5 Sarpanch and Up-Sarpanch, reply filed by them shows that they are not in favour of protecting the encroachment.

This Court has on 22.12.2016 issued notice in the matter and intervenors were permitted to intervene on 16.3.2017.

The intervenors thereafter have filed Writ Petition Nos. 2871/17 and 567/17. Writ Petition No. 2871/17 is filed by only one person while Writ Petition No. 567/17 is filed by ten persons.

In Writ Petition No. 567/17 only order passed on

27.1.2017 is to place it with the P.I.L. In Writ Petition No. 2871/17 this Court in vacation has directed respondents to maintain status-quo.

Submission of petitioners is they come from poor and socially backward class, have got no other place to reside and the small parts/pieces of land are in their occupation since long. Mr. Raghute, learned Counsel submits that the Gram Panchayat also has started collecting tax from them. He has invited attention to resolution passed by Gram Sabha for deforesting the land, i.e. for deletion of said land from forest. He, however, admits that in 7/12 extract land has been shown as 'forest'. According to him, Gram Sabha has passed a Resolution which shows that the land needs to be deforested and after it is so done, claims of petitioners for regularization of their respective encroachment can be considered. He contends that in view of this resolution, the Government Resolution dated 12.7.2011 relied upon by the respondents cannot be used against the petitioners.

Government Resolution dated 12.7.2011 is in the light of judgment of Hon'ble Apex Court in the case of **Jagpal Singh & others .vs. State of Punjab & others reported in AIR 2011 S.C. 1123.** The judgment of Hon'ble Apex Court and Government Resolution clearly show that the forest land cannot be allowed to be encroached upon and cannot be allowed to be allotted for residential or non-residential purpose. Obligation has been cast upon the concerned local bodies and others to preserve those lands.

However, in the present matter, only some of the encroachers are petitioners before this Court. Others are not parties before the Court.

We, therefore, find that interest of justice can be met with by directing the respondent no.3 Collector and his subordinates as also respondent no.4 Secretary of Gram Panchayat to proceed further for removal of encroachment as per law. The respondents shall serve necessary notices upon encroachers and thereafter, if necessary, apply for police protection. The respondent nos. 1 to 3 shall also arrange for such protection, if necessary.

The steps on lines above shall be initiated within six weeks from today. With these observations, we dispose of all the proceedings. Needless to mention that the interim orders stand vacated. No costs.

Judge

Judge

J.