

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2565 OF 2018
(Sayyed Samdani and others Vs. The State of Maharashtra and
others)

Mr.V.D.Hon, Sr.Counsel h/f Mr.S.P.Urgunde, Advocate for the
petitioners.
Mr.S.K.Tambe, AGP for State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 07/03/2018

PER COURT :

1. The petitioners are aggrieved by the order of the District Collector dated 27/01/2018, by which the measurement of the properties possessed by these petitioners has been ordered as there are complaints that these petitioners are encroachers.

2. Learned Sr.Advocate Mr.Hon submits on instructions that all these 16 petitioners have been granted protective orders by different Civil Courts in different proceedings and there is no declaration that they are encroachers, either by the Government or by the pronouncement of any order by any Civil Court. The property at issue has already been measured and a map based on the said measurement is placed on record at page No.185. Once such a measurement has been carried out, there is no requirement of

another measurement as is directed by the District Collector in the impugned order.

3. An order passed by this Court (Coram : V.K.Jadhav, J.) dated 06/12/2017 in identical set of facts in WP No.9535/2017 and 9301/2017 has also been passed and the petitioners were protected by directing the Collector to conduct an enquiry afresh pursuant to the directions given by the Hon'ble Lokayukta and after hearing all the parties who are mentioned in Clause 3 of the operative part, the Collector was permitted to pass appropriate orders.

4. Clause 3 and 4 of the order dated 06/12/2017 passed by this Court read as under :-

"III. It is hereby directed that the Collector, Osmanabad shall conduct an enquiry afresh pursuant to the directions given by the Hon'ble Lokayukta, after giving opportunity of being heard to the original complainant, Sudhir Baburao Potdar, the Executive Engineer, P.W.D. Osmanabad, Chief Executive Officer, Zilla Parishad, Osmanabad, Chief Officer, Municipal Council, Naldurga and the petitioners herein and also inviting objections, if any, by making paper publication, in time bound manner, as expeditiously as possible, preferably within a period of six months from today.

IV. The petitioners shall appear before the Collector, Osmanabad

on 20/12/2017 and thereafter the Collector, Osmanabad shall make paper publication inviting objections, if any, covering entire area of Naldurga town, within 15 days thereafter."

5. Mr.Hon submits that the said orders have been implemented and that drive has concluded. He further submits that most of the petitioners are protected by orders passed by the Civil Court in certain civil suits filed by them. The learned Division Bench of this Court, by order dated 03/10/2017, passed in WP No.9280/2016 has noted that civil disputes and prohibitory orders of the Civil Court will be considered by the State Authorities.

6. I find that, by the impugned order dated 27/01/2018, the Collector has only directed the measurement of the land by which these petitioners are aggrieved. Learned AGP submits that after the measurement is carried out, a report would be submitted to the District Collector and he would follow the procedure laid down in Law in so far as removal of encroachments are concerned.

7. Considering the above and keeping in view the reproduced directions of this Court from order dated 06/12/2017 and the directions in paragraph No.3 of the order dated 03/10/2017, this

petition is disposed of by permitting respondent No.2 / District Collector to proceed with the measurement and follow the procedure laid down in Law when it comes to removal of encroachments. Needless to state, if any of these petitioners are found to be encroachers, the District Collector would ensure that the Law applicable for removing encroachments is complied with and while doing so, he would keep in view any prohibitory or protective orders passed by any Court in respect of any of these petitioners. If required, he would also permit these petitioners to produce their documents indicating their title over the properties which are in their possession, while considering the removing of encroachments.

(RAVINDRA V. GHUGE, J.)