

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

**PUBLIC INTEREST LITIGATION NO. 66 OF 2014
WITH
CIVIL APPLICATION NO. 527 OF 2016
WITH
CIVIL APPLICATION NO. 10742 OF 2018
IN
PUBLIC INTEREST LITIGATION NO. 66 OF 2014**

Kisan Patilba Kavad

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....

Ms. P.S. Talekar, Advocate i/b Talekar and Associates for petitioner.

Mr. S.P. Salgar, Advocate h/f Mr. N.V. Gaware, Advocate for applicant in CA/10742/18.

Mrs. M.A. Deshpande, Addl. G.P. for respondent – State.

Mr. S.T. Shelke, Advocate for respondent nos.6, 7, 9 and 10 in PIL/66/14.

....

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.**

DATED : 12th DECEMBER, 2018

ORDER :

The petitioner has filed present Public Interest Litigation with following prayers :-

“A. By issue of the writ of mandamus of any other writ or direction in nature of mandamus the respondents may kindly be directed to remove encroachment over public property situated at village Nighoj, Tq. Parner, Dist. Ahmednagar as detailed in representation dated 1-04-2014 and list annexed to the same.

B. Respondents may kindly be directed to take necessary steps to remove the encroachment over the S.T. stand, Nighoj road to Bhiravnath Milk Dairy, Nighor Road and S.T. Stand Nighoj road to Zilla Parishad School Kund Road in pursuance to the representations of petitioner dated 01.04.2014 and 03.04.2014.

C. Respondents may kindly be directed to conduct the enquiry in the matter of encroachment in pursuance to the representations of petitioner dated 1.4.2014 and 3.4.2014.”

2. During pendency of the present Public Interest Litigation, from time to time orders are passed by this Court. On 19th July, 2017 this Court had passed following order :-

1] *The learned AGP hands over a copy of the letter which has been addressed to him by the Sub Divisional Officer, Shrigonda-Parner Sub Division Ahmednagar. It is signed on 19/7/2017. A solemn statement is made that this S.D.O. who is present in Court has handed over this letter to the AGP so that it can be placed on record of this Petition as a compliance report.*

2] *We have perused this report carefully. Far from any compliance with regards to removal of encroachments, this indicates some preparatory steps but not a final removal of the encroachments. In some cases it is said that encroachment has been removed by passing an order and in terms of Section 50 of the Maharashtra Land Revenue Code, 1966. With regard to some encroachments, it is stated that this Court could not be apprised of the correct position. It is indeed unfortunate that on 12/7/2017,*

after hearing both sides we have passed an order. That was to enable firstly to take instructions as to whether encroachment over public properties in District Ahmednagar has been removed or not. A compliance report was to be filed pursuant to their own findings and conclusion by the public officials. On 28/6/2017, an oral direction was issued directing the AGP to take instructions. The AGP informed the Court that none of the public officials whom he tried to contact on their mobile, have responded nor have remained present on 28/6/2017 and till 12/7/2017.

3] The AGP mentioned that the Tahsildar, Parner, District Ahmednagar was contacted but he did not respond. It is only when the Collector, District Ahmednagar was directed by us to depute the Sub Divisional Officer to remain present in this Court with all original records, that they are present before us.

4] The report presented and taken on record cannot be termed as an action taken report or a compliance report in any manner. This S.D.O. who is present in Court has clearly misled the Court by filing such a report. Mr. G.P.Danej, S.D.O. Shrigonda-Parner Sub Division, Ahmednagar should therefore be proceeded against by the Collector or the departmental superior forthwith. We direct that this gentleman should not file any compliance report nor any affidavit in this Court and in this proceeding. We insist an affidavit being filed by the Collector himself which shall be filed within two weeks from today. S.O. to 2nd August 2017.”

3. On 02nd August, 2017 this Court recorded the affidavit filed by the Collector and observed that remaining encroachment is also on the

public property. This Court expected the Collector to proceed and ignore any intervention by the Zilla Parishad and Gram Panchayat so as to remove the encroachment and directed the Collector to file the compliance affidavit. On 23rd August, 2017 this Court perused the compliance report submitted by the Collector dated 21st August, 2017 and observed that some steps have been taken, still directions contained in order dated 02nd August, 2017 have not been complied with in its correct perspective and directed the Collector to comply with the directions contained in order dated 02nd August, 2017. From time to time affidavits are filed by the Collector detailing the position and steps taken.

4. According to Ms. Talekar, the learned Counsel for the petitioner, three issues still remain unresolved by the respondents, though the orders are passed by this Court. The measurement maps of Gut No. 841 submitted, are improper. Measurement map each time is different. The position and existence of the land differs in each measurement map submitted by the authorities. Thrice the measurement maps are submitted on the basis of the measurement carried out by the Superintendent of Land Records and the last measurement map submitted shows smaller area of Gut No. 841. According to the learned Counsel, same has been done to protect the illegal encroachers. Gut No. 843 is of the road side. The said location has not been

properly shown in the map submitted. Gut No. 841 has been carved out from Survey No. 358. Survey No. 358 was admeasured 30 R and Gut No. 841 was admeasured only 24 R. Same has been done to favour the encroachers. There could not be an area without gut number after the consolidation scheme is implemented.

5. The learned Counsel further submits that it is not disputed that there are encroachments on Survey No.143. However, the respondents are not taking any action only on the ground that appeals are filed for regularization and they are pending. No stay has been granted in the appeal. The respondents by their communication are trying to assist and help the encroachers. They do not have any seriousness to take action against the illegal encroachers. According to the learned Counsel, it is imperative for the public authorities to demolish the illegal construction and impose adequate penalty on the wrong doer. The learned Counsel relies on the judgment in the case of ***Deepak Kumar Mukherjee Vs. Kolkata Municipal Corporation and Another*** reported in ***(2013) 5 SCC 336***. The learned Counsel submits that the road from Nighoj village has to be maintained. The respondents have not inspected the said road and without inspecting it has made a statement that no such road exists as per the documents on record. The road has been prepared from time to time. The

rules are laid down for maintaining building line and control line so that the construction does not take place within the control line and there is no inconvenience to the traffic. The learned Counsel relies on the judgment in the matter of *Sayyed Ratanbhai Sayyed and Others Vs. Shirdi Nagar Panchayat* reported in (2016) 4 SCC 631. According to the learned Counsel, encroachments removed, are of poor persons. The respondents have not touched the huge buildings. While considering regularization, there are guidelines laid down. The regularization can only be in respect of lower income group persons. Persons, who have constructed huge buildings are not entitled for regularization. According to the learned Counsel, the respondents be directed to remove all these encroachments.

6. Mrs. Deshpande, the learned Additional Government Pleader submits that all possible steps are taken by the authorities with due diligence. The measurement map of Gut No. 841 has been rightly submitted. In consolidation scheme, Gut No. 841 is carved out from Survey No. 358. Survey No. 358 admeasuring 6 R land was left out. There was some mistake in consolidation and 6 R land is given in Survey No. 1150. Survey No. 1150 at the time of consolidation has not been given any gut number. According to the learned Additional Government Pleader, at present no encroachment exists in Gut No. 841. It is further submitted by the learned Additional Government Pleader that there are appeals pending

in respect of the encroachments of Survey No. 143. The Tahsildar is ceased with those appeals and the same will have to be decided as per the policy of the Government and steps are being taken to decide the same. According to the learned Addl. Government Pleader, there is no record of road as contended by the petitioner i.e. Nighoj to Nighoj Kund. The communication is received from the Sarpanch of Group Grampanchayat, Nighoj and the Zilla Parishad that no such record exists. However, the work of road was done. No acquisition has taken place and for carving out the building line and control line, marking will have to be made in the private property, which would not be permitted. If any construction is there, same can not be said to be an encroachment. The alleged road is an open space of Grampanchayat.

7. Mr. Shelke, the learned Counsel for Respondent Nos. 6, 7, 9 and 10 supports the arguments of the learned Additional Government Pleader. He submits that the petitioner's construction is in Survey No. 143 of village Shirsole. His proposal is pending. The authority has to decide the same.

8. It appears that after the orders are passed by this Court during pendency of the present Public Interest Litigation, some steps were taken by the authority in removing the encroachment. It needs to be considered that it is only after filing of the present Public Interest Litigation the authorities have woken up and took some steps. In fact, the authorities have to be

vigilant and ought to remove encroachment at the initial stage itself. The fact that after the orders are passed, the compliance reports are submitted shows that a number of encroachments were existing and the authorities were not taking any action before filing the present Public Interest Litigation.

9. As far as Gut No. 841 is concerned, it has been stated that the area of Gut No. 841 is 24 R. It is also not disputed by the respondents that Gut No. 841 is a government land. It is carved out of Survey No. 358 admeasuring 30 R. Irrespective of area incorporated in Gut No. 841 i.e. Survey No. 358 being government land and though only 24R is recorded in Gut No. 841, remaining 6R land recorded as Survey No. 1150 also would be owned by the government and would be adjacent to said Gut No. 841. It is for the government to protect the said land and ensure that no encroachment takes place on the land Gut No. 841 and Survey No. 1150 and if still any encroachment exists, the authority is bound to take action in respect of it.

10. The major grievance still remains about encroachment on Survey No. 143 of village Shirsale. The submission is made that proposals are pending. It appears that the proposals are pending since long. In fact show cause notices were issued by the government way back in the year 2011 to

remove the encroachments. Even hearing was given. But no further steps are taken by the government authorities. It is laxity on the part of the government authorities concerned in not taking any steps, pursuant to the show cause notices issued by them. The government authorities are duty bound to take action and ensure that action pursuant to show cause notice is taken to its logical end. However, no such steps are taken. Now it is submitted that according to Government Resolution dated 16th February, 2018, the proposals are given by the encroacher for relaxation. The authorities are not expected to deal with the proposals belatedly. The authorities are, in fact, expected to consider the said Government Resolution in its entirety. The encroachers may file their proposals, if they so desire. Such proposals should be decided by the authority in its right earnest and in terms of the policy framed by the government without deviating from the terms and conditions therein. The proposals shall not be kept pending by the authorities. Certainly, relief cannot be given to the persons indulging in illegal acts for a longer period. The authority shall decide the proposals which have been received by it within a period of six months positively. No extension of time would be granted for deciding the said proposals. Upon decision of such proposals, the authority shall take immediate action with regard to encroachment in tune with the decision taken without any delay and with diligence.

11. As far as road from village Nighoj is concerned, the authorities shall inspect the said site and after inspection of the site, shall consider the viability of the road. In the affidavit it has been stated that the road is through the open space of Grampanchayat. The authorities shall, in consultation with Grampanchayat, take steps with regard to the said road. If same is being used regularly as road, then further steps be taken as per Government Resolution dated 09th March, 2001, of course after satisfying themselves about existence of the said road. The said exercise shall be done within three months from today. Public Interest Litigation is accordingly disposed of. No costs. Civil applications are also disposed of accordingly.

(R.G. AVACHAT, J.)

(S.V. GANGAPURWALA, J.)

SSD