

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

CONTEMPT PETITION NO. 500 OF 2018
IN
WRIT PETITION NO. 15213 OF 2017

Atmaram s/o Bhaurao Mali and Ors. ...Petitioners

Versus

The State of Maharashtra and Ors. ...Respondents

Mr. N.M. Chandanshive, Advocate h/f Mr. A.L. Kanade,
Advocate for Petitioners
Mr. S.S. Dande, AGP for Respondent/State

**CORAM : PRASANNA B. VARALE AND
MANISH PITALE, JJ.**

DATE: 09th OCTOBER, 2018

ORAL ORDER :

1. The Petition is circulated claiming urgency in the matter. The petitioners are before this Court submitting that the respondents, and more particularly, respondent Nos. 5 and 6 have committed contempt of the Court by not obeying the order dated 08.03.2018 passed by the Writ Petition No. 15213/2017 and then petitioners prayed for initiation of action for this alleged non-compliance of the order. Second interesting fact reveal on perusal of the

record. The petitioners were before this Court by way of Writ Petition No. 15213/2017 and prayer in the Writ Petition was seeking direction to regularize the encroachment of the petitioners made over the forest land i.e. Survey No. 96 situated at Zapewadi (Bhillvasti), Tal. shirur Dist. Beed. Thus, the petitioners admitted that they have encroached upon the forest land and recourse was taken to certain Government Resolutions. The Division Bench of this Court considering the grievance of the petitioners raised in the petition and the stand of the respondent-authorities reflected in the affidavit-in-reply observed that it is for the State Government to constitute Sub-Divisional Level Committee to examine the resolution passed by the Gram Sabha and prepare record of forest rights and forward to the District Level Committee for final decision. It was submitted before this Court by the petitioners that resolution is passed by the Gram Sabha in their favour. On the backdrop of this submission, the Division Bench further observed that it would be for the Gram Sabha to forward the said resolution to Sub Divisional Level Committee and upon receipt of the resolution, the said Divisional Level Committee shall proceed further in accordance with the provision of the

Forest Rights Act, 2006. With these observations, the petition was disposed of. The petitioners were also granted liberty to take appropriate steps in case exigency arises and the respondent-authorities were also at liberty to take the further course of action as per the decision of the Committee. An affidavit-in-reply is filed on behalf of respondent No. 5 i.e. Shri. Amol Rambhau Satpute, the Divisional Forest Officer. It seems that copy of the petition was served on the office of the Assistant Government Pleader. As such, the reply is filed on record even though the notices were not issued by this Court. As the reply is filed before this Court by responsible officer i.e. respondent No. 5, we see no reason not to accept the statement made in affidavit in reply. It would be useful for our purposes to refer to certain factual position brought to our notice by way of affidavit-in-reply. In para No. 4, it is clearly stated that the petitioners have constructed the houses on the said land and their houses are not removed by the Forest Department. A statement is made that the petitioners and other persons are restraining and threatening the workers of the forest authorities. As such, the forest authorities were prompted to lodge a report in the Police Station, Shirur.

2. Then, it is stated that the State Government has decided to implement a scheme of re-plantation programme in the year 2018-2019 all over the State and on the said land, planting under the programme is carried out. It is stated that this scheme involves an amount of Rs. 13 crores. Then, it is stated in the affidavit-in-reply that the State Level Committee is already formed and certain steps are being taken for restraining the encroachment on forest land by construction of fencing wall. It is reiterated in the affidavit-in-reply that the petitioners were already the encroachers over the forest land and on humanitarian grounds, the office of the deponent has not taken any action against the dwelling residential houses of the petitioners. Then, it is stated in paragraph 14 of the same, which reads as follows :

I say and submit that, apart from that the office of deponent had given letter dated 18/08/2018, 23/08/2018 and 01/09/2018 to the office of Sub Divisional Officer, Beed and Tahsildar, Shirur (Kasar) regard to look into the matter and as per the order of Hon'ble High Court do the needful if the Sub-Divisional Level

Committee and District Level Committee are not established then please established the said committees and accordingly the procedure mentioned in said "The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest rights) Rules, 2007 (as amended upto 2012)" may kindly be followed. The copies of notices of letter dated 18/08/2018, 23/08/2018 and 01/09/2018 to the office of Sub Divisional Officer, Beed is annexed at EXHIBIT R-1 Colly. Therefore, it is humbly submitted that the petitioner should have to approach to the Gramsabha and Forest Right Committee and made their grievances and get appropriate resolution from the Gramsabha and Forest Right Committee, the said resolution of Gramsabha should be forwarded to the Sub Division Committee and thereafter the Sub Divisional Committee will take appropriate action on the said resolution and same will be forwarded to the District Level Committee, in accordance with law.

3. The para 15 of the affidavit-in-reply is also useful because it states about the course open for the petitioners to raise their grievance through proper channel and para 15 reads as follows :

15. I say and submit that, the power of adjudication is vest with the District Level Committee and the District Level Committee will decide the grievance of the petitioner if it comes through proper channel to the said Committee as prescribed by "The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest rights) Rules, 2007 (as amended upto 2012)". Therefore, no any contempt made by the office of the deponent. Therefore in view of above made submission present contempt petition may kindly be disposed of.

4. It is interesting to note that in spite of a liberty granted to these petitioners to go before the Gram Sabha by way of representation and also liberty to the petitioners to go before the Forest Right Committee for raising their grievances, the petitioners are not adopting that course and without approaching to the authorities by way of proper channel, are only insisting on issuing directions, and they are coming before this Court with the grievance that the directions of this Court are not complied with by the respondent-authorities. Firstly, there was no time bound schedule fixed by this Court directing authorities to do a

particular act or to take particular course within a stipulated time frame and secondly, the petitioners having remedy available to them in the order of this Court itself to approach the appropriate authorities including the Gram Sabha by way of representation and to the Committee for raising their grievance, the petitioners without adopting this course are only interested in making the allegations against the authorities and then, are before this Court with a grievance that the authorities are not complying the orders of this Court. The course adopted by these petitioners is certainly not acceptable. The petition is thus, only on assumption and presumption of the petitioners, the petition thus being thoroughly meritless, deserves to be dismissed at the threshold, and accordingly, the Petition is dismissed.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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