

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO.127 OF 2016

Deepak s/o Venkatrao Dadajwar,
Age-36 years, Occu:Agriculture
and social work,
R/o- At Post-Dabhad, Tq-Ardhapur,
Dist-Nanded.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Secretary in the
Department of Forest and Revenue,
Mantralaya, Fort, Mumbai-32,
- 2) The District Collector,
Nanded,
- 3) The Sub-Divisional Officer,
Nanded,
- 4) The Tahsildar at Ardhapur,
Tq-Ardhapur, Dist-Nanded,
- 5) Laxman s/o Nagnath Suryawanshi,
Age-65 years, Occu:Agri,
- 6) Vishwanath s/o Tulshiram Suryawanshi,
Age-60 years, Occu:Agri,

- 7) Subhash s/o Bhiwaji Suryawanshi,
Age-40 years, Occu:Agri,
- 8) Mohan s/o Kashinath Suryawanshi,
Age-80 years, Occu:Agri,
- 9) Narhari s/o Deoba Suryawanshi,
Died through L.Rs:
- 9-A) Arvind s/o Narhari Suryawanshi,
Age-35 years, Occu:Agri.,
- 10) Rama s/o Narhari Suryawanshi,
Died through L.Rs:
- 10-A) Parvatibai w/o Rama Suryawanshi,
Age-65 years, Occu:Agri & household,
- 11) Mukund s/o Punjaji Paikrao,
Age-62 years, Occu:Agri & Household,
- 12) Raju s/o Nivratti Suryawanshi,
Age-40 years, Occu:Agri,
- All R/o-Dabhad, Tq-Ardhapur,
Dist-Nanded.

...RESPONDENTS

...

Mr.A.M. Mukhedkar Advocate for Petitioner.
Mr.S.B. Yawalkar, Additional Government
Pleader for Respondent Nos. 1 to 4.
Mr.G.G. Suryawanshi Advocate for Respondent
Nos.5 to 12.

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WITH

**CIVIL APPLICATION NO.2800 OF 2018
IN
PUBLIC INTEREST LITIGATION NO.127 OF 2016**

- 1) Baban s/o Namdeo Suryawanshi,
Age-55 years, Occu:Agri.,
- 2) Madhukar s/o Shankar Suryawanshi,
Age-50 years, Occu:Agri.,
- 3) Khanoji s/o Shankar Suryawanshi,
Age-32 years, Occu:Labourer,
- 4) Narayan s/o Sadhuji Suryawanshi,
Age-60 years, Occu:Agri.,
- 5) Balaji s/o Narhari Suryawanshi,
Age-52 years, Occu:Agri.,
- 6) Ashok s/o Bhivaji Suryawanshi,
Age-55 years, Occu:Agri.,
- 7) Chandoji s/o Gomaji Narwade,
Age-70 years, Occu:Agri.,
- 8) Saheb s/o Bhivaji Suryawanshi,
Age-52 years, Occu:Agri.,
- 9) Tukaram s/o Kerba Suryawanshi,
Age-55 years, Occu:Agri.,

All R/o- Dabhad, Tq-Ardhapur,
Dist-Nanded.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through: Secretary in the
Department of Forest and Revenue,
Mantralaya, Fort, Mumbai-32,
- 2) The District Collector,
Nanded,
- 3) The Sub-Divisional Officer,
Nanded,
- 4) The Tahsildar at Ardhapur,
Tq-Ardhapur, Dist-Nanded,
- 5) Deepak s/o Venkatrao Dadajwar,
Age-37 years, Occu:Agri. &
Social Work, R/o- At Post-Dabhad,
Tq-Ardhapur, Dist-Nanded.

...RESPONDENTS

...

Mr. R.M. Jade Advocate for Applicants.
Mr.S.B. Yawalkar, Additional Government
Pleader for Respondent Nos. 1 to 4.
Mr.A.M. Mukhedkar Advocate for Respondent
No.5.

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**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE : 9TH APRIL, 2018

ORDER :

1. This Public Interest Litigation is filed
with following substantive prayers:

" B] By issuing a Writ of Mandamus or any other appropriate Writ or order of a like nature, the Respondent Nos.2 to 4 may please be directed to remove encroachments over the lands bearing Gut Nos.116 and 180 situated at Dabhad, Tq-Dabhad, Dist-Nanded, as prayed for in representations dtd.30-05-2016 and 09-06-2016, submitted by the Petitioner to Respondent Nos.2 to 4 (annexed at Exhibit-H Collectively);

C] The Respondent Nos.2 to 4 may please be directed to take decision on representations dt.30-05-2016 and 09-06-2016, submitted by the Petitioner to them (annexed at Exhibit-H Collectively), regarding removal of encroachments over lands bearing Gut Nos.116 and 180 situated at Dabhad, Tq-Dabhad, Dist-Nanded, by issuing a Writ of Mandamus or any other appropriate Writ or Order of a like nature."

2. Learned counsel appearing for the

Petitioner, referring to the pleadings in the Petition, submits that at Village Dabhad, Tq-Ardhapur, Dist-Nanded, there is a Government land bearing Gut Nos.116 and 180, totally admeasuring 35 Hectors and 01 R. Out of said land, an area of land admeasuring 2 Acre and 33 R is acquired by MSEDCL for setting up its 33 KV Sub-station and area of land admeasuring 15 Hectors and 43 R is allotted by the State Government to a society namely Dabhad Sahakari Aaudyogik Vasahat, (hereinafter referred to as "the said society") which is a society registered under the provisions of Maharashtra Cooperative Societies Act, 1960, having purpose of setting up industrial township for its members. However upon the part of said land admeasuring 15 Hectors 43 R, some encroachers have made encroachment. It is submitted that on 13th April, 2007 the said society has also deposited an amount of Rs.9,76,880/- with State Government towards purchase price of said land and accordingly the name of said society is mutated as

owner and possessor of the said land over the Revenue record. Learned counsel further submitted that although the process of allotment of land to said society for setting up Industrial township at Dabhad is approved by the State Government, however due to encroachment over said land, the township could not be set up till now.

3. Learned counsel appearing for the Petitioner further referred to the proceedings filed by the encroachers before the learned Civil Judge, Senior Division at Nanded bearing Regular Civil Suit No.588 of 2001. The learned counsel further referred to Writ Petition Nos.2801 of 2009 and 2802 of 2009 filed by the encroachers before this Court, which came to be dismissed as withdrawn with liberty to the Petitioners therein to approach the competent authority to claim the Patta rights. Learned counsel further submitted that yet another proceeding was initiated by the Encroachers before the Tahsildar at Ardhapur

bearing Case No.2000/A/Jamabandi/Jamin/CR-3 seeking grant of Patta rights. The Tahsildar after considering all the aspects of the matter, held that the said encroachers are not entitled for Patta rights for want of sufficient evidence.

4. Learned counsel submitted that the Petitioner made representations dated 30th May, 2016 and 9th June, 2016 to Respondent Nos. 2 to 4 praying for removal of encroachment over the said land, however, neither the said representations are replied, nor any action is yet taken. It is lastly submitted by the learned counsel that Public Interest Litigation deserves to be allowed.

5. Learned Additional Government Pleader appearing for Respondent Nos.1 to 4, referring to the reply filed on behalf of Respondent Nos.2 to 4, submits that a Civil Suit bearing No.RCS 588 of 2001 was filed by the encroachers before the Court of learned Civil Judge, Senior Division,

Nanded and the same was partly decreed vide Judgment and order dated 5th January, 2006, declaring that ten out of eighteen encroachers are entitled to claim patta rights in respect of their possession. Learned Additional Government Pleader further submits that though appeal filed by the District Collector, Nanded bearing No.RCA 13 of 2006 is dismissed for non prosecution, however the State has filed a Misc. Civil Application bearing No.179 of 2008 for restoration of the same and further steps are being taken in that regard. Learned Additional Government Pleader further submits that so far as the encroachers whose claims have been dismissed by the learned Civil Court, on 3rd July, 2017 the Tahsildar, Ardhapur has issued notice to the said encroachers as contemplated under Section 50(3) of the M.L.R. Code, 1966. Time of seven days is given to the said encroachers for removal of the encroachment made by them. It is submitted that further steps would be taken as permissible in law for removal

of encroachments.

6. Learned Additional Government Pleader, referring to the additional affidavit in reply filed on behalf of Respondent Nos.2 to 4, further submits that, the encroachments on the said land situate at village Dabhad, Tq-Ardhapur made by eight persons has been removed. The possession of the vacant land has been handed over by the Circle Inspector, Dabhad to the village Grampanchayat Dabhad. He therefore, submits that as the grievance raised by the Petitioner stands satisfied, the Public Interest Litigation may be disposed of.

7. Learned counsel appearing on behalf of Respondent Nos.5 to 12, referring to the affidavit on reply filed on behalf of the concerned Respondents, submits that, the Petitioner has not come before this Court with clean hands and he has no locus standi to file this Public Interest

Litigation for the reason that, I) Petitioner is close relative of Chairman of Dabhad Audyogik Sahakari Vasahat Dabhad, II) He is police patil of village Dabhad, III) He has not mentioned whether he is member of the said Audyogik Sanstha or not, IV) He has not prevented to mention his name in the panchnama made by the Circle Officer dated 20th January, 2011, in respect of removal of encroachment of concerned Respondents. V) The Petitioner is projected to file this PIL on behalf of said Audyogik Society Dabhad, which is interested in the subject matter. VI) The village panchayat is not made party Respondent in this PIL, which can give the status of the land in dispute. VII) The Dabhad Audyogik Vasahat Society is not a party to this PIL, whereas the Regular Civil Suit No.467 of 2008 is pending before learned Civil Judge, Senior Division, Nanded filed by the society in which Audyogik Society claimed for declaration of decree passed in R.C.S. No.588 of 2001 and the present Respondents are original

defendants in that suit, and the same is posted on 9th April, 2018 for evidence. VIII) All these facts have to be answered by the Chairman of society namely, Ramchandra Kishanrao Dabhadkar @ Dadajwar, who is not party Respondent in this PIL. All these facts have been suppressed by the Petitioner. IX) The Petitioner has not given the real information about his particulars. X) The Petitioner is not a social worker.

8. Learned counsel appearing for Respondent Nos.5 to 12 further submits that the Desk Officer of Revenue and Forest Department, Mantralaya, Mumbai by its letter No.4288/576/letter No.354/J-7 dated 20th May, 2000 contended that 15 Hectors 43 R land is sanctioned to the society from Gut No.116 and 180 situate at Dabhad, while granting the said land no public proclamation was published. Even these Respondents have not been informed though they are cultivating the said land since 1980. The Mutation Entry No.906 was recorded

in favour of Dabhad Audyogik Society in respect of 7 Hectar 17 R. The said mutation entry has been challenged by 17 persons including Respondent Nos.2 to 12, who are having the possession over the disputed land before revenue authorities. The Additional Divisional Commissioner (Revenue) Aurangabad has confirmed the order of the Collector in respect of Mutation Entry No.906.

9. Learned counsel further submits that the Revenue and Forest Department, Mantralaya, Mumbai laid down the guidelines by its Government Resolution dated 12th July, 2011 in respect of regularization of the encroachment of the gayran land. It is submitted that the said Resolution reveals that the old encroachments on the gayran land have been made by the landless agricultural labour and the members of the Scheduled Caste and Scheduled Tribe, such encroachments shall be regularized and those have to be excluded from the removal of encroachment process. Learned counsel

lastly submitted that there is no merit in the Public Interest Litigation and therefore the same deserves to be dismissed.

10. Learned counsel appearing for the Applicants in Civil Application, submits that the Applicants are belonging from the Scheduled Caste category and they have been cultivating the land in question since the year 1980, bearing Gut Nos. 116 and 180, admeasuring 5 Hector 20 R situate at village Dabhad, Tq-Ardhapur, Dist-Nanded. It is submitted that both the lands are Government Gayran land and are under the control of Respondent Nos.1 to 4. It is submitted that the Applicants and other eight persons had filed R.C.S. No.588/2001 before the learned Civil Judge, Senior Division, Nanded for declaration of Patta rights on their respective portion and also for issuance of perpetual injunction. The said suit was decreed on 5th January, 2006 in favour of the encroacher applicants. The Tahsildar, Ardhapur

itself submitted the inspection report to Sub Divisional Officer, Nanded on 2nd August, 2008 by stating that there are 20 peoples having possession on land Gut Nos. 116 and 180 like Applicants. The Tahsildar further submitted that the land sanctioned to Cooperative Industrial Society is not consistent with the area shown in its order, and while allotting the land to the society the area in possession of these Applicants encroachers had not been deducted.

11. Learned counsel appearing for the Applicants further submitted that the original Petitioner who is Police Patil of village Dabhad and having well knowledge of the Revenue Department, had created the revenue record behind back of the Applicants and had filed the present Public Interest Litigation. Though the Applicants are having possession of the land in question, the Petitioner has not made them as party Respondents in the Public Interest Litigation. It is submitted

that Dabhad Co-operative Society and even village panchayat of Dabhad are also not made party respondents in the Public Interest Litigation. It is submitted that different crops are existed in the land which is in possession of the Applicants. Without prior show cause notice, the Tahsildar directly started dispossessing the Applicants from the said land.

12. Learned counsel appearing for the Applicants further submitted that the Applicants are the original plaintiffs in R.C.S. No.588 of 2001 and against the Judgment and decree, the Appeal bearing R.C.A. No.13 of 2006 was dismissed in default on 7th April, 2008. Thereafter the State through District Collector, preferred M.A.R.J.E. No.179 of 2008 which is pending. It is submitted that appeal filed by the Applicants is pending before the learned District Judge, Nanded and in view of this position, the Applicants are having the possession of the land. Therefore,

learned counsel submits that the Applicants may be arrayed as party Respondents in the Public Interest Litigation and they may be allowed to put forth their claim.

13. We have heard learned counsel appearing for the Petitioner, learned Additional Government Pleader appearing for State and its officials, learned counsel appearing for Respondent Nos.5 to 12 and learned counsel appearing for the Applicants in the Civil Application. With their able assistance, we have perused the averments in the Petition, replies filed by the respective Respondents and the averments in the Civil Application.

14. Upon careful perusal of the reply filed on behalf of the Respondent-State, it reveals that Civil Suit bearing RCS No.588 of 2001 filed by the encroachers before the Court of Civil Judge, Senior Division, Nanded is partly decreed thereby

declaring that ten out of eighteen encroachers are entitled to claim Patta right in respect of their possession. Though appeal filed by the District Collector, Nanded bearing RCA No.13 of 2006 is dismissed for non prosecution, the State authorities have filed a Misc. Civil Application bearing No.179 of 2008 for restoration of the same and further steps are being taken in that regard. It is stated on behalf of the Respondent-State that encroachment made by eight persons on the said land has been removed and possession of the vacant land has been handed over by the Circle Inspector to the Village Gram Panchayat of Dabhad. Learned Additional Government Pleader appearing for the State has submitted that further appropriate steps for removal of remaining encroachment are being taken up, in accordance with law.

15. So far as the grievance raised by the Applicants in the Civil Application is concerned,

it will be open for the Applicants to avail of an appropriate remedy as available in law for redressal of their grievances. Further, depending upon the outcome of the appeal, it will be open for the Petitioner to avail of an appropriate remedy as available in law.

16. Thus, in view of the reply filed by the State and its officials, in our opinion, no further orders are necessary in this Public Interest Litigation. Hence the Public Interest Litigation stands disposed of.

17. It is made clear that this Court has not expressed any opinion on the merits of the contentions raised in this Petition.

18. In view of the disposal of the Public Interest Litigation, the Civil Application also stands disposed of.

19. As per the order passed by this Court on 6th December, 2016, the Petitioner has already deposited an amount of Rs.25,000/- with the Registry of this Court. We direct the registry to pay / give an amount of Rs.10,000/- (Rupees Ten Thousand) in favour of the Government Child Care / Shelter Home, Government of Maharashtra, Paithan, Tahsil Paithan, District Aurangabad from the total amount Rs.25,000/- deposited by the petitioner, and remaining amount of Rs.15,000/- (Rupees Fifteen Thousand) be refunded to the petitioner.

20. The Public Interest Litigation and Civil Application stand disposed of, accordingly.

[S.M. GAVHANE, J.]

asb/APR18

[S.S. SHINDE, J.]