

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO.12189 OF 2017 IN
PUBLIC INTEREST LITIGATION NO.12 OF 2015

Shaikh Sameer Rashid & another

Applicants

Versus

The State of Maharashtra & others

Respondents

Mr.S.P.Joshi, advocate holding for Mr.N.K.Tungar, advocate for the applicants.

Mr.P.K.Lakhotiya, A.G.P. for Respondents No.1 to 5 & 7 & 8.

Mr.A.D.Aghav, advocate for Respondents No.6.

Mr.S.P.Brahme, advocate for Respondent No.10.

Mr.S.D.Hiwrekar, advocate for Respondent No.11.

Mr.A.S.Kukade, advocate for Respondents No.12 & 15.

Mr.A.T.Jadhavar, advocate for Respondents No.13 & 16.

Mr.V.M.Chate, advocate for Respondent No.17.

Mr.P.K.Ippar, advocate holding for Mr.Akash Gade, advocate for Respondent No.26.

CORAM : R.M.BORDE AND

P.R.BORA, JJ.

DATE : 23rd March, 2018.

P.C. :

1 This is an application presented by petitioners in PIL No.12/2015 complaining about failure of the Chief Officer, Nagar Panchayat, Ashti to comply with the directions issued by this Court while disposing of the PIL. This Court, while disposing of the PIL, has observed in para 2 of the order, as quoted below:

“2 It would be open for the petitioners to tender an application to the Chief Officer of the Nagar Panchayat for taking steps in respect of removal of encroachment Respondent No.26 in concurrence with the holder of the property and after observing the procedure prescribed under law, may take appropriate steps as permissible. It would

be open for the petitioners to tender an application to respondent No.26 within a period of four weeks from today. On tendering of such application, respondent No.26 may take appropriate steps as specified above as expeditiously as possible.

3 The applicants contend that the directions have not been complied with and as such, concerned official shall be instructed to act within stipulated time frame.

4 An affidavit-in-reply has been presented by the Chief Officer and in paragraphs no 8, 9 and 10, it is recorded thus:

8 Out of 23, 8 persons submitted their reply. The replies submitted by those 8 persons were not satisfactory. Those 23 persons failed to prove their lawful and legal possession over the landed property situated in Survey No.918 and 921.

9 The deponent took the action to remove the encroachments on 18/11/2017 and the encroachments made by 21 people were removed by demolishing the construction made over the landed property and now that land is open to sky. Approximately the encroachment made over 5000 square meter land was removed by demolishing the construction over it.

10 Out of 23, 2 people namely Ratnadeep Nikalje and Anant Hambarde filed the civil suits in the Court of Learned Civil Judge (J.D.), Ashti, District Beed. The Nagar Panchayat through Chief Officer Ashti is the defendant in those suits. The suits are filed for perpetual injunction and declaration that the notices issued dated 3/6/2017 and 15/7/2017 are illegal and hollow. In the suits, the applications for temporary injunctions below Order 39 Rule 1 & 2 of C.P.C. are filed. The learned Trial Court granted interim protection in favour of plaintiffs namely Anant Hambarde and Ratnadeep Nikalje till the decision of this Hon'ble Court in Civil Application No.12189/2017.

5 In view of the action taken by the Chief Officer, nothing survives for consideration in the Civil Application. Contesting Respondents in the Civil Application contend that they have presented suits before the Civil Court and those are pending. It would be open for the concerned respondents to prosecute the suits and it shall also be open to the Civil Court to pass appropriate orders in accordance with provisions of law.

6 In view of above, Civil Application is disposed of.

P.R.BORA
JUDGE

R.M.BORDE
JUDGE

adb