

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

**REVIEW APPLICATION NO. 57 OF 2018
IN
PUBLIC INTEREST LITIGATION NO. 126 OF 2014**

The Sarpanch,
Grampanchayat Takali Kolte,
Phulambri, Tal. Phulambri
Dist. Aurangabad.

...APPLICANT

Versus

1. The State of Maharashtra
Through District Collector
Aurangabad, Tal. & Dist. Aurangabad.
2. The Tahsildar, Phulambri
Tal. Phulambri, Dist. Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Aurangabad
Tal. & Dist. Aurangabad.
4. The Block Development Officer
Phulambri, Tal. Phulambri,
Dist. Aurangabad.
5. The Gramsevak, Takli Kolte
Phulambri, Tal. Phulambri
Dist. Aurangabad.
6. Ramdas Namdeo Kakade
Age:53 years, Occu.: Agri,
R/o: At/Post. Takli Kolte,
Tal. Phulambri, Dist. Aurangabad.

7. Dattu S/o Ganpat Kakade
Age:55 years, Occu.: Agri
8. Parmeshwar S/o Laxman Kakade
Age:40 years, Occu.: Agri
9. Shantaram S/o Hariba Kakade
Age:55 years, Occu.: Agri
10. Gangadhar S/o Renuba Kolte
Age:58 years, Occu.: Agri
11. Punjaba S/o Manikrao Kolte
Age:60 years, Occu.:Agri
12. Ganpat S/o Gahinaji Kolte
Age:75 years, Occu.: Agri

All R/o.: At/Post Takli Kolte
Phulambhari, Tal. Phulambari
Dist. Aurangabad

... RESPONDENTS

Mr. S.P. Brahme h/f. B.A. Dhengle, Advocate for the Applicant.
Mr. D.R. Kale, AGP for Respondent/State.
Mr. U.B. Bondar, Advocate for Respondent No. 3 & 4.
Mr. P.D. Jarare h/f. S.S. Thombre, Advocate for Respondent Nos. 7 to 12.

WITH

WRIT PETITION NO.13045 OF 2017

Grampanchayat Takali Kolte,
Tal. Phulambri, Dist. Aurangabad.
Through its Sarpanch
Vijay Baburao Aher,
Age: 33 Years, Occu.: Agriculturist
R/o: At/Post. Takali Kolte
Tal. Fulambri, Dist. Aurangabad.

...PETITIONER

Versus

1. The State of Maharashtra
Through Secretary,
Revenue & Forest Department,
Mantralaya Mumbai – 32.
2. District Collector,
Aurangabad, Tal & Dist. Aurangabad.
3. Zilla Parishad, Aurangabad
Tal. & Dist. Aurangabad
Through its Chief Officer
4. Block Development Officer
Zilla Parishad, Aurangabad
Tal. & Dist. Aurangabad.
5. The Tahasildar Fulambri
Tal. Fulambri, Dist. Aurangabad.

... RESPONDENTS

Mr. S.P. Brahme , Advocate for the Petitioner.
Mr. D.R. Kale, AGP for Respondent/State.

**CORAM : S.S. SHINDE &
MANGESH S. PATIL, JJ.**

**RESERVED ON: 13.07.2018
PRONOUNCED ON: 18.09.2018**

JUDGMENT: *(Per Mangesh S. Patil, J.)*

Rule. The Rule is made returnable forthwith. With the consent of
both the sides the matters are heard finally.

2. There is a chequered history which has led to the filing of this Review Application.

3. Public Interest Litigation No. 126 of 2014 was filed by the respondent no.6 herein alleging that there were encroachments over the land Gut No. 28 of village Takali Kolte which was earmarked as a Gairan land, seeking writ of mandamus directing the State, the Tashildar concerned, the Chief Executive Officer of the Zilla Parishad, the Block Development Officer and the Gram Sevak of that village who are the respondent nos. 1 to 5 herein to take appropriate steps under Section 53 of the Maharashtra Village Panchayat Act for removal of the encroachment made by the respondent nos. 7 to 12 therein. After hearing the parties the division bench (Coram: S.C. Dharmadhikari and Mangesh S. Patil, JJ.) by the judgment and order dated 14.06.2017 issued various directions for removing the encroachment over the Gairan land.

4. Other two Writ Petition bearing Nos.1426 of 2015 and 10614 of 2016 were also disposed of simultaneously by the common judgment and order. It is to be noted that the Writ Petition No. 1426 of 2015 was filed by the respondent no.7 and others seeking regularization of the encroachment made by them from land Gut no.28. Whereas, Writ Petition No. 10614 of

2016 was filed by one Sharad Bajirao Kolte and others again for regularizing the encroachment made by them over the Gairan land.

5. The Writ Petition No. 13045 of 2017 is filed by the Gram Panchayat of village Takali Kolte through its Sarpanch contending that in fact the Gairan land at village Takali Kolte comprises of lands Gut nos. 1, 28, 135 and 395 totally ad-measuring 15 hectares. Except a portion ad-measuring 5 Acres out of that total area of 15 hectares the rest of the portion is occupied by number of structures. Some of these encroachments are in the form of the constructions carried out by the local bodies, Government authorities and are public utilities. Whereas, the rest of the encroachment is by private individuals in the form of commercial and residential structures. It was contended that the existence of such constructions by local bodies, Government authorities and other public utilities which are standing on these Gairan lands were not brought to the notice of the Court when P.I.L. No. 126 of 2014 was being decided. It was impossible to remove such encroachments which are carried out by the public authorities and which structures are being used as public utilities.

6. It is further contended that in P.I.L. No. 126 of 2014 interim order was passed for taking steps for removal of encroachments in the land Gut no.

28 and in fact by virtue of such interim order the encroachment was already removed on 05.01.2016 and it was specifically brought to the notice of the Court by filing a praecipe.

7. It was contended that though the Gram Panchayat of the village was party to P.I.L. No. 126 of 2014 it could not point out that some of the encroachments which were in existence in the form of buildings, erected for public utility from the Government funds and by local bodies were standing thereon and the directions in the judgment would cover even such structures. The encroachments were directed to be removed by 30.11.2017 but since these important facts were not brought to the notice of the Court, it is prayed that these encroachments made by the public bodies and local authorities may be regularized and also the houses constructed thereon from the Government funds for housing schemes for poor / backward classes.

8. By the order dated 15.11.2017 the Division Bench held that the relief being claimed were in the nature of review of the order passed earlier (in P.I.L. No. 126 of 2014) and directed the Writ Petition to be placed before the same Division Bench.

9. Since one of us (Mangesh S. Patil, J.) is available at this bench the matters are placed before this Division Bench.

10. The learned advocate for the petitioner in the Writ Petition and Review Application vehemently submitted that the directions given in the judgment of P.I.L. No.126 of 2014 and connected proceedings and particularly in paragraph no. 8 and 9 are impossible to be implemented. He would submit that the encroachments on the Gairan land consist of not only the encroachments made by the individuals for residential as well as commercial purposes but many other structures thereon have been erected by the local bodies or by the public functionaries from and out of the public exchequer. The fact was not brought to the notice of the Division Bench and as a result, the order passed therein takes in its sweep even such public structures standing thereon. It is an error apparent on the face of the record which ought to have been but was not brought to the notice of the Court which has resulted in miscarriage of justice and is likely to result in loss to the public exchequer. The whole purpose of earmarking the gairan land is to make it available for public utilities. When it is already being used for such public utilities by spending from the government funds and the funds allocated to the local bodies, it may be clarified that those structures of public utilities could be regularized within the framework of the law.

11. The learned Additional Government Pleader by referring to the

affidavit in reply of the respondent no.2 submitted that the alleged inexecutability of the order passed in P.I.L. No. 126 of 2014 cannot be a ground to review it. Merely because the public structures are standing on the gairan land those cannot be exempted from the operation of the order. The judgment and order passed by the Court is not inconsistent with the direction of the Supreme Court in the case of **Jagpal Singh & Ors. Vs. State of Punjab & Ors; AIR 2011 SC 1123**. The Government has taken a policy decision pursuant to the directions in the case of **Jagpal Singh and Ors. Vs. State of Punjab and Ors.** by issuing a Government Resolution on 12.07.2011. A scheme has been prepared for removal of encroachments on the government lands and the action is being taken strictly in accordance with such government resolution. There is no error apparent on the face of the record and the review application and the writ petition are not tenable.

12. Without repeating the facts, it is necessary to refer to the prayer being made in the review application. The applicant / petitioner is seeking clarification of the observations in the judgment and order passed in the P.I.L. No. 126 of 2014 in paragraph nos. 8 and 9 which read as under:

“8. In these circumstances we direct that by 30th November, 2017 the process of identifying and allotting alternate sites to such of those occupants who are eligible, shall be completed together with their shifting and removal of structures. If despite

the sites being offered, documents in that regard are duly handed over and permission to occupy alternate sites being granted, these structures are not vacated, then, the Authorities can use such force as is necessary to pull down the structures and cause their removal. All the authorities including Revenue and Police shall render their requisite assistance so as to carry out the directions and orders of this Court.

9. *Needless to clarify that any occupation of the land after the time stipulated by this order, would in addition to initiation of contempt proceedings against officials and public bodies, would also invite such other legal measures including launching of criminal prosecution. We will not tolerate any direction of duties or negligence by public officials and public bodies. It is not for this Court to go on issuing directions for removal of encroachments on public sites and properties. The duty to safeguard and protect public properties has to be performed and discharged by public officials, namely, revenue officials as also police machinery. Once their inaction results in such litigation, then, we do not countenance any multiplicity of applications or litigations on this issue and as far as the subject village is concerned.”*

A careful reading of these observations and directions would clearly demonstrate that the encroachments have not been directed to be removed without taking care to see that alternate sites are identified and allotted to the occupants who are eligible and it is only thereafter the sites are offered and

documents are handed over and permission to occupy is granted and still if the structures in the form of encroachments are not vacated that the authorities are supposed to use force as is necessary to pull down the structures.

13. We are of the considered view that it would be appropriate to read the entire order as a whole and if so read it is apparent that it has nowhere been directed that in the process of removing the encroachment, the Government resolution particularly the Government resolution dated 12.07.2011 should be overlooked or ignored. Rather, the order cannot be interpreted to mean that the encroachments were excepted to be removed overlooking such Government resolution or may be the Government resolutions to be promulgated thereafter. All that the Court had expected was that the government machinery and the concerned authorities must follow the due process of law while removing the encroachments. It was expected that the public authorities would discharge the function as was excepted of them within the powers vested in them by law.

14. It is equally important to note that, though the Court has not said it in so many words, the directions in the order under Review in paragraph nos. 8 and 9 (supra) are apparently in consonance with the observations and

the directions in paragraph nos. 13 and 22 of **Jagpal Singh's** case which read thus:

“13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter dated 26.09.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years.”

“22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha / Gram Panchayat / Poramboke / Shamlat land and these must be restored to the Gram Sabha / Gram Panchayat for the

common use of villagers of the village. For this purpose the Chief Secretaries of all the State Governments / Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes / Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”

The judgment and order under review in our considered view cannot be interpreted in a manner inconsistent with the observations of the Supreme Court in paragraph no.22 (supra). The order nowhere prohibits a recourse being taken by the persons eligible to seek regularization of their structures as per these directions of the Supreme Court or the Government resolution dated 12.07.2011 or the resolution to be promulgated thereafter. What was in contemplation of the Court was clearly inaction on the part of the public authorities to take recourse to law to remove encroachments on the Gairan lands. The order never intended to and cannot be interpreted to mean that all

the encroachments were to be removed in breach of the policy decisions of the government.

15. It is pertinent that the applicant/petitioner is a Gram Panchayat who was a party to the PIL No. 126 of 2014 and in our considered view, it does not lie in its mouth now to say that it had committed error in not bringing to the notice of the Court the fact that many of the encroachments on the Gairan lands are in fact the structures which are in the nature of public utilities erected from government funds / public money. It is not a fact which has occurred subsequently and even cannot be regarded as an error apparent on the face of the record or formal defect so as to enable this Court to review the judgment and order.

16. Still, in the peculiar facts and circumstances, the review application and the writ petition are disposed of with a clarification that the order passed in PIL No. 126 of 2014 shall not be interpreted in a manner which would run counter to the judgment of the Supreme Court in the case of **Jagpal Singh (supra)** or the Government resolution dated 12.07.2011.

17. The Rule is made absolute in above terms.