

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2167 OF 2018

Ashok L. Umardande
(Deceased Sachin A. Umardande) ... Petitioner.
V/s.
State of Maharashtra and ors. ... Respondents.

WITH
WRIT PETITION NO. 9964 OF 2017

Smt. Parvatabai T. Sawant
(Tukaram Sawant deceased through
her wife) ... Petitioner.
V/s.
Lonawala Municipal Council and ors. ... Respondents.

WITH
WRIT PETITION NO. 10395 OF 2018

Mr. Suresh B. Helande ... Petitioner.
V/s.
State of Maharashtra and ors. ... Respondents.

WITH
WRIT PETITION NO. 10396 OF 2018

Mrs. Johara A. Khan ... Petitioner.
V/s.
State of Maharashtra and ors. ... Respondents.

WITH
WRIT PETITION NO. 10464 OF 2018

Smt. Anusaya S. Bodake ... Petitioner.
V/s.
State of Maharashtra and ors. ... Respondents.

WITH
WRIT PETITION NO. 10483 OF 2018

Mr. Subhash B. Helande ... Petitioner.
V/s.
State of Maharashtra and ors. ... Respondents.

WITH
WRIT PETITION NO. 10504 OF 2018

Smt Kalavati @ Kalabai
Gangaram Pawar ... Petitioner.
V/s.

State of Maharashtra and ors. ... Respondents.

WITH

WRIT PETITION NO. 10505 OF 2018

Mr. Rafiq H. Bagwan ... Petitioner.

V/s.

State of Maharashtra and ors. ... Respondents.

WITH

WRIT PETITION (ST) NO. 35821 OF 2017

Anata K. Varankar ... Petitioner.

V/s.

State of Maharashtra and ors. ... Respondents.

WITH

WRIT PETITION (ST) NO. 35828 OF 2017

Shakil Abdul Raheman Bagwan ... Petitioner.

V/s.

State of Maharashtra and ors. ... Respondents.

WITH

WRIT PETITION (ST) NO. 35830 OF 2017

Smt. Meena Fakir Gawali ... Petitioner.

V/s.

State of Maharashtra and ors. ... Respondents.

Mr. Manoj A. Patil for the Petitioners in all the matters.

Mr. N.C. Walimbe, AGP for Respondent Nos.1 to 4 in all petitions except WP/9964/17 and for the Respondent Nos.2 to 5 in WP/9964/2017.

Mr. Aniruddha A. Garge for the Respondent No.5 in all petitions except WP/9964/2017 and for the Respondent No.1 in WP/9964/2017.

CORAM : A.S. OKA AND M.S. SONAK, JJ.

DATE : 8th OCTOBER 2018.

ORAL JUDGMENT (PER A.S OKA, J.):

1] Considering the narrow controversy involved in these petitions, the same are forthwith taken up for final disposal.

2] Rule issue in each of the petition. The respondents, in each of the petition, waive service.

3] The challenge in these petitions under Article 226 of the Constitution of India is to the identical notices issued to the petitioners. The notices were issued in May 2017 to the petitioners by the Assistant Director of Gardens of the State Government. The notices alleged that the petitioners have carried out an illegal work of construction on the lands mentioned in the notices on which there is a Government Garden. The petitioners were called upon to remove the encroachments made on the Government lands, failing which an action will be initiated against them in accordance with law.

4] There are various challenges in these petitions including the challenge to the authority of the said Officer who issued the impugned notices. Another challenge is on the basis of the contention that the lands are declared “*slum*”.

5] In Writ Petition No. 9964 of 2017, a specific order was passed on 31st August 2018 directing the 2nd respondent who has issued the impugned notice to file an affidavit specifying whether the notice has been issued in exercise of powers under the Maharashtra Land Revenue Code, 1966 (for short “the said Code”) . By the said order, the 2nd respondent was also directed to disclose whether the land subject matter of the notice is a declared slum.

6] In other writ petitions, there was a common order passed on 14th September 2018 issuing similar directions to the same Officer, as all notices pertain to the lands which are described as the Government Garden. An affidavit has been filed in Writ Petition No. 9964 of 2017 by Shri. Sandeep Jadhav, Assistant Director of the Parks and Gardens, Pune, which will have to be treated as a common affidavit in all the matters. In paragraph 2 of the said affidavit, it is stated thus:

*“2. I state that the impugned notice at Exh.B is issued on the basis of Govt. Resolution dt.7.9.2010 issued by Revenue and Forests Department, Mantralaya, Mumbai bearing No. Jamin-03/2009/Pra.Kra. 13/J-1. In the said Govt. Resolution, it is stated that it is the duty of the department/division in whose possession Govt. land is lying, they have to prevent the encroachment on the said land and in whose possession said land lies, they have to file complaint in the Police Station. Accordingly, we have given copy of impugned notice to the concerned police station. On 10th October, 2013, another Govt. Resolution issued by Revenue and Forests Department, in Clause (3) the same clause has been stated. Accordingly, we have also informed the Collector, Pune on 2.8.2013, stating that directions being given to the concerned authority regarding encroachment and removal of illegal structures on 2.8.2013. It can be said that I/We have issued the impugned notice according to the Govt. Resolution, it is our responsibility to follow the Govt. Resolution issued by the Government. It can be said that the said power can be said to be implied power under the MLRC. But it is to be noted that in the last line of the notice, we have stated that from the receipt of this notice within 15 days you have to remove your encroachment and vacate the Govt. land, otherwise against you according to Govt. Rules, lawful action will be taken against you. Hereto annexed and marked as **EXHIBIT – R-1 (Colly)** are the copies of Govt. Resolution dt.7.9.2010, 10.10.2013 and letter dt.2.8.2013.”*

(underline supplied)

7] In paragraph 3, it is stated that as per the Government Resolution dated 19th September 2003, it is the responsibility of the concerned office which is in possession of a Government land to take action of removal of illegal construction or encroachment thereon. A copy of the letter dated 11th September 2018 issued by the Lonawala Municipal Council to him is annexed to the affidavit as Exhibit-R-3 (Colly.), which records that there is no record available with the said Municipal Council to throw light on the question whether the subject lands are declared as a slum.

8] The learned AGP relied upon the Government Resolutions dated 7th September 2010 and 10th October 23013. He urged that in view of the said Government Resolutions, there is an implied power vesting in the Officers of the Garden Department to exercise the powers under the said Code. He also pointed out that in the notices, it is specifically stated that on the failure to remove the encroachment, necessary action in accordance with law will be initiated.

9] We have perused the Government Resolutions dated 7th September 2010 and 10th October 2013. All that the Government Resolutions mean is that the concerned Department which is possession of a Government lands has to take all steps to safeguard the Government land and to take action in case of encroachments. However, such action has to be taken in accordance with law. As per the stand taken in the said affidavit, the impugned notices have been issued in exercise of implied powers under the said Code. Under section 50 of the said Code, there are powers vesting in the Collector to summarily remove encroachments on the Government

land. Nothing is placed on record to show that the powers of the Collector under section 50 of the said Code have been delegated to the said Assistant Director. It is, therefore, obvious that on the basis of the impugned notices, no action of actual removal of alleged encroachment committed by the petitioners or of demolition of the illegal structures can be taken. If the State Government wants to exercise the power under section 50 of the said Code, the Collector or an Officer of the Revenue Department to whom the powers of the Collector has been delegated will have to initiate action under section 50 of the said Code. If there are illegal constructions carried out within the limits of the Lonawala Municipal Council, even the said Municipal Council can take action of removal of the illegal structures in accordance with law.

10] As we are holding that the actual action of removal of encroachment cannot be taken on the basis of the impugned notices, it is not necessary for this Court to adjudicate on the question whether the structures subject matter of these petitions are situated in a declared slum area.

11] Accordingly, we dispose of all these petitions by passing the following order:

a] We hold that the respondents are not entitled to take action of removal of alleged encroachments made by the petitioners or for demolition of alleged illegal structures made by the petitioners on the basis of the impugned notices;

b] However, we make it clear that it will be always open for the concerned authorities under the Maharashtra Land Revenue Code, 1966 to initiate appropriate action in accordance with law against the petitioners for removal of encroachments on the Government lands. Similarly, it will also be open for the Planning Authority to take action of demolition of the alleged illegal structures in accordance with law;

c] We have made no adjudication on the issue of illegality of the subject structures or the status or the title of the lands on which the subject structures are situated;

d] All the petitions are disposed of on above terms. Rule is made partly absolute to the aforesaid extent.

(M. S. SONAK, J.)

(A.S.OKA, J.)