

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1422 OF 2015**

Samarat Mhasanaji Kamle & Anr.	...Petitioners
Vs.	
State of Maharashtra & Anr.	...Respondents

Mr.Ram Ugrah Singh for Petitioners.
Ms.Geeta Shastri, Addl.G.P. for State.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

DATE : 31st JULY 2018

P.C.:

By this petition, the petitioners pray for following reliefs:-

“a) That this Hon'ble Court be pleased to pass the Writ of Certiorari or any other Writ, Order, direction of the similar nature calling for bringing up the records of the matter being with respondent No.2 with regard to the removal of the Petitioner No.2 and putting lock and seal on the said premises on 12.11.2014 and after going through the legality and propriety thereof, this Hon'ble Court be pleased to declare that the said action of removal of the Petitioner No.2 from the said premises and putting lock and seal on the said premises on 12.11.2014 is illegal, malafide, high handed and arbitrary and bad in law.

b) That this Hon'ble Court be pleased to pass the Writ of Mandamus or a Writ, Order and direction in the nature of Mandamus against the respondent No.2 directing them to remove and/or raise the lock and seal put on the said premises on 12.11.2014 situated at Plot bearing Survey No.222, C.T.S. No.69 and more particularly lying and being at Veer Hanuman Chawl, Kranti Nagar, Akurli Road, Kandivali (E.), Mumbai-400 101 and put back the Petitioner No.2 in possession of the said premises having been locked and sealed high handedly by Respondent No.2 on 12.11.2014.

c) That pending the hearing and final disposal of the petition, this Hon'ble Court be pleased to pass temporary order and injunction against the Respondent No.2 to remove and/or raise the lock and seal put on the said premises on 12.11.2014 situated at Plot bearing Survey No.222, C.T.S. No.69 and more particularly lying and being at Veer Hanuman Chawl, Kranti Nagar, Akurli Road, Kandivali (E.), Mumbai – 400 101 and put back the Petitioner No.2 in possession of the said premises having been locked and sealed high handedly and illegally on 12.11.2014.”

2. The learned Counsel appearing for the petitioners submits that without following appropriate procedure, the premises which was being used for commercial purposes has been sealed by the respondents. The petitioners do not claim that they are the owners of the premises. The learned Counsel for petitioners submits that the petitioner No.2 is in occupation of the premises and in that capacity, petitioner No.2 claims certain reliefs. It is further submitted that appropriate measurements of the area need to be carried out. The learned Counsel for the petitioners submits that the premises of petitioner No.2 does not fall in forest area, whereas the other side seriously disputes this contention.

3. On behalf of the State two affidavits were filed by Mr.Kiran Dabhokar, Assistant Conservator of Forests. Both the affidavits are annexed to the petition. Paragraphs 5, 6 and 7 of the affidavit filed on behalf of the respondent on 8th December 2014 read as under:-

“5. From the contents of para (7) of the petition, it is obvious that the Petitioner has come onto the premises in question since last

25 years. Further, from contents of paras (7), (8) and (9) of the petition it is also obvious that the Petitioner is using the subject premises for commercial purposes. Consequently, as per the order of the Division Bench of this Hon'ble Court in B.E.A.G v A R Bharati [W.P. No. 305 of 1995, d/o 15th Sept 2003] specially in para 10(a), (h) (i), the Petitioner who was not on site as on 1/1/1995 and is admittedly using the structure for commercial use, is not entitled to retain the structure at all, as the same falls in S No.239/1 Malad, which was acquired under the Maharashtra Private Forests Acquisition Act 1975 and is also notified under the Wildlife Protection Act 1972 as 'National Park'. I crave leave to refer to and rely on the notification dated 16/1/1996 declaring S No.239/1 Malad to be “national park” within the meaning of the Wildlife Protection Act 1972.

6. I say that the structure in question is part of a combined series of 3 structures separated by two common walls. I say that boundaries of S No.239/1 Malad were confirmed on 8/8/2014 by Ranger Surveyor of SGNP who is authorized under the Forest Act 1927, by using Electronic Total Station machine and the same was superimposed on map at MR No.532/80 and the same shows that the structure of the Petitioner is squarely inside S No.239/1 Malad and is not on S No. 222 as is being falsely contended. The ETS map and the map at M R No.532/80 are hereto annexed at EXHIBITS A and B.

7. I further say and submit that in view of the observations of the Division Bench of this Hon'ble Court in para 198 of its judgment in BEAG v A R Bharati mentioned above, the contentions of want of notice are untenable, more so in respect of the Petitioner who has come on the scene since last 25 years by which time, it had become widely known that commercial structures in the SGNP Division were to be demolished as per Court's orders.”

4. In the additional affidavit, the respondents raised contention in support of the claim that the petitioner No.2 is occupying the area in

forest land. The learned AGP submits that action has been taken according to view taken by the Court in Writ Petition No.305 of 1995 (orders dated 7th May 1997 and 17th July 1999). Reliance is also placed on the observations made in judgment in case of **Bombay Environmental Action Group & Others versus A. R. Bharati, Deputy Conservator of Forest & Others** reported in 2004(3) Bom.C.R. 244.

5. We have perused the record placed before us and the orders passed by this Court. Having gone through the record, plans submitted by the petitioners in support of their claim, we find that it would not be appropriate to interfere with the issue viz. as to whether the petitioner No.2's premises falls in the private area or in the forest area. The petitioners are not claiming title to the subject premises.

6. The petitioners may adopt appropriate alternate remedies as permissible in law.

7. The respondents have raised serious question disputing claim of the petitioners. Prima facie we are not satisfied to entertain the petition. The petitioners raise disputed questions of fact. The petition has no merits. It is dismissed.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]