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

WRIT PETITION NO.1814 OF 2019

Popat Laxman Khandagale,
Age: 62 years, Occ: Agri.,
R/o. Belgaon, Tq. Ashti,
District Beed.

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Maharashtra State, Mantralaya,
Mumbai- 400 032.
2. The Divisional Commissioner,
Revenue Department,
Aurangabad.
3. The District Collector, Beed,
Collector Office, Beed.
4. Sub Divisional Officer,
Sub Division Office, Patoda,
District Beed.
5. The Tahasildar,
Tahasil Office, Ashti,
Tq. Ashti, District Beed.

..RESPONDENTS

Mr Vinay B. Anjanwatikar, Advocate for petitioner;
Mr A.R. Kale, A.G.P. for respondent/State

**CORAM : PRASANNA B. VARALE
AND
S.M.GAVHANE, JJ.**

DATE : 13th FEBRUARY, 2019

ORAL ORDER :

Heard learned Counsel appearing for the petitioner.

2. The petitioner is one of the encroachers and copy of *panchnama* placed on record dated 31st August, 2018 at Exhibit-A show that Talathi, Saja Belgaon recorded the fact of encroachment of the encroachers and name of the petitioner finds place at Serial No.6 in the list of encroachers. The petitioner himself has placed on record the copy of the proceeding sheet, wherein Circle Officer refers to proposed initiation of action, namely, issuance of notice to the encroachers and to take steps for removal of the encroachment and then submission of report of action taken.

3. Learned Counsel for the petitioner then by inviting our attention to the applications/representations submitted to the Tahasildar, Ashti on 17th February, 2014, to the Divisional Commissioner, Aurangabad Division, on 25th October,

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2018 and to the Collector, Beed on 21st September, 2018 as well as to the Sub Divisional Officer, Sub Division, Patoda, and Tahasildar, Ashti on the same day. He further submitted before us that the applications are pending before the authority for decision. The only anxiety of the petitioner is, these applications are pending before the competent authority for considerable long period and no decision is taken on these applications.

4. This was limited grievance, the petition was taken up for disposal at admission stage.

5. Learned A.G.P. for the respondents - authorities submitted that in view of the judgment of the Hon'ble the Apex Court in the matter of **Jagpal Singh and others vs. State of Punjab and others**, reported in **2011 AIR (SC) 1123**, State Government has to act promptly in the matter of eviction of illegal occupants and the petitioners are encroachers, as such, they cannot safely be stated as illegal occupants. We have gone through

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the above referred judgment of the Hon'ble the Apex Court. It may not be out of place to refer the observations of the Hon'ble the Apex Court reflected in paragraph-22, which reads thus :

"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 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.

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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."

6. Learned Counsel for the petitioner has placed on record Government Resolution dated 12th July, 2011. This resolution refers to the decision of the Apex Court. This resolution also refers to the need of special action plan. In the resolution itself, it is stated in clause-6(2) that in the special action programme, notice be issued to the illegal occupants/encroachers and then by way of brief hearing, further action of removal of incompetent encroachments be initiated immediately. The resolution also refers to certain terms and conditions.

7. It was the submission of learned A.G.P that as the petitioner himself admitted that he is

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encroacher, it may not be necessary for the authorities to consider the applications / representations.

8. Though this was the submission of learned A.G.P., in view of the policy of the State Government framed post decision of the Hon'ble Apex Court and more particularly, carving out clause, wherein State Government refers to the need of special action plan and in that special action plan itself, the State Government decided to follow the principles of natural justice, whereby issuance of notice to the encroachers and brief hearing is stated.

9. We see no impediment in disposing the writ petition with directions to respondent Nos. 2,3 and 4 to decide the applications received by them respectively on 21st September, 2018, as expeditiously as possible and not later than twelve (12) weeks from the date of this order. We further state that while deciding the applications, the

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authority would consider the merit of the applications, State Government policy reflected in Government Resolution dated 12th July, 2011 on the backdrop of the judgment of the Hon'ble the Apex Court in ***Jaspal Singh and others*** (supra).

10. With these directions, the petition is disposed of.

(**S.M.GAVHANE**)
JUDGE

(**PRASANNA B. VARALE**)
JUDGE

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