

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO.93 OF 2017

BHAGWAN DAGADU PATIL AND OTHERS ...PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS ...RESPONDENTS

Mr A.D. Shinde, Advocate for Petitioners
Mr S.G. Sangle, AGP for Respondents Nos. 1 to 6
Mr S.P. Brahme, Advocate holding for
Mr B.K. Patil, Advocate for Respondent Nos. 8
Mrs Chaitali Kutti-Choudhary, Advocate for Respondent Nos. 5 and 7

**CORAM : PRASANNA B. VARALE
AND
ANIL S. KILOR, JJ.**

DATE : 5th DECEMBER, 2019

PER COURT :

1. Heard Mr Shinde, learned Counsel appearing for the petitioners, Mr Sangle, learned Assistant Government Pleader for Respondent Nos. 1 to 6, Mr S.P. Brahme, learned Counsel for Respondent No. 8 and Mrs. Chaitali Kutti-Choudhary, learned Counsel for Respondent Nos. 5 and 7.
2. The present Public interest Litigation was espousing the cause of encroachment over the Government land. On issuance of notice as well in response to the order dated

25th September, 2019, affidavit in reply is filed on behalf of respondent Nos. 3 and 4 through Smt. D.J. Chaure, Sub Divisional Officer, Jalgaon.

3. It was grievance of the petitioners that the land Gut No. 307 admeasuring five hectares 83-R situated at village Shahapur, Tal. Jamner, Dist. Jalgaon was an open land and was kept reserved as grazing land (gairan land) with an additional purpose of construction of water reservoir/ Shet Tale. The second part of the land is utilized as cremation ground. It was also submitted before this Court that the office bearers of the Gram Panchayat, Shahapur, Tal. Jamner, Dist. Jalgaon is permitted the part of land to be utilized by some of their relatives for an illegal construction of the houses. It is also submitted before this Court that an impression was created as if these houses are being constructed under the scheme of State Government known as "Gharkul Yojna". The photographs of the said land, copies of the representations submitted to the authorities are placed on record, annexed to the petition.

4. In response to the notice and directions of this Court, the affidavit in reply filed through Smt. D.J. Chaure,

makes reference to certain important statements and we quote and it may be useful for our purposes to refer these statements in Para Nos. 3, 4, 5, 6 and 7 which are as under :-

3. I say and submit that the actual spot inspection of land Gut No. 307 situated at Mauje Shahapur Tah. Jamner Dist. Jalgaon. I have also gone through the various land record available at the various offices.

4. I say and submit that, in the spot inspection it has been found that, there are 5 fully constructed houses and 2 incomplete houses on the disputed land. There is no residential use of 5 houses and other two non residential uses. It has been submitted by the Gramsevak of Village - Shahapur that, the house and construction of it is illegal. The disputed land adjacent to the cremation land and the land is being used as cattle feeding (Gurcharan land). The land is also having an illegal tin shed but it was not traced out as who own or who has built it. There is a Khadakai river and tin shed at the eastern side of the land and towards the west of the land there is a old tannery. There are two water well of village Panchayat on the bank of river and from the west-south corner of the land High tension

electricity lines are passing through.

5. I say and submits that, on going through the revenue record from 1952 to till today, of the land Gut No. 307, it is been found that the previously the land was known as Survey No. 86 and it was reserved in the name “सरकारी पडीत सार्वजनिककामाकडे” and later on wide mutation entry no. 1447 it was shown to be reserved for “गुरचरणीसाठी”.

6. I say and submit that, upon going though the village Panchayat record, I found that, there was no entry of the Gharkul constructed on at the disputed land. No such entry is found in register no. 8A. During the enquiry, it has been submitted by officer bearers of the village Panchayat that, on 31/05/2015, they have submitted a proposal to the Hon’ble District Collector for extension of village limits and permission to add the disputed land in Gavthan. The village Panchayat shown the copy of resolution as well as the order of grant of Gharkul granted by the Chief Executive Officer of the Zillha Parishad.

7. I say and submit that, the village Panchayat fail to show that they have followed the terms and condition fixed by the Sub Divisional Officer during the allotment of the disputed land to the village Panchayat. Further

the village Panchayat also failed to submit any documents about the permission or authorization from the Hon'ble Collector for using the Land Gut No. 307 for the Gharkul or other purpose than specified in revenue records. Copies of spot inspection report, rough map prepared at spot, checklist of spot inspection, village Panchayat resolution, 7/12 extract of the disputed land since 1952-53 to till date and list of the persons who encroached the land Gut No. 307 are annexed herewith and marked as **Exhibit"R-1"** collectively.

5. The copy of the spot inspection report is also annexed to the affidavit in reply. The copy of spot inspection report conducted in presence of the Talathi, Gram Sevak, Circle Officer, Wakdi, Block Development Officer, Jamner Panchayat Samittee, Tahsildar, Jamner, Sub Divisional Officer, Jalgaon duly signed by them is annexed to the affidavit in reply as Annexure 'R-1'. Then the copy of 7/12 extract is also placed on record. In the panchanama conducted in presence of the above referred officers dated 11.11.2019, the reference was made to five fully constructed houses and two partially constructed houses with the name of the persons who claim to be the beneficiaries. In the concluding part of this list of persons

signed by the Gram Sevak, Shahapur, it is stated that five houses are complete, one house is partially complete and one house is an encroachment. The affidavit-in-reply also refers to panchnama drawn on that very date i.e. 13.11.2019 showing that there were as many as 46 tin sheds erected and this list refers to the names of those persons under the signature of Gram Sevak, Shahapur.

6. Mr Brahme, learned Counsel appearing for respondent No. 8 – The Village Gram Panchayat, Shahapur made a categorical statement before this Court that though the proposal was submitted by the Gram Panchayat to the Sub Divisional Officer for allotment of the land for construction of the houses under the scheme known as “Indira Awas Yojna”, but the proposal was turned down. Thus, the only inescapable conclusion which can be drawn from perusal of this material along with the submission of Mr. Brahme, learned Counsel appearing for the Gram Panchayat, is whatever construction raised in the land Gut No. 307 is an illegal construction. The tin sheds erected on the land are also illegal. There was no authorization or permission from any of the Government authorities either to construct house or to erect the tin sheds. On a specific

query made to Mr Brahme, learned Counsel as to whether any public money was utilized for construction of these houses, Mr. Brahme categorically replied to this Court that these were constructions carried on by those persons out of their own expenses and no public money was involved in construction. as the Gram Panchayat has not granted any permission either for construction of houses or for erection of tin sheds.

7. Once we arrived at a conclusion that this construction and the erection of tin sheds is an illegal act, the natural corollary would be in the result of permitting the authority to take appropriate steps so as to demolish this construction. Accordingly, we direct the Collector to seek a report from the Gram Panchayat, who would be the competent authority to take the exercise of demolition of this construction by following the provisions of Gram Panchayat Act.

8. The Collector may fix the stipulation of period while seeking the action taken report from the Gram Panchayat. On receipt of such report submitted to the Collector, the Collector, District Jalgaon is at liberty to take appropriate

decision in case an opinion is formed by the Collector that for the act of encroachment either the officers of Gram Panchayat were responsible or the act of encroachment was carried out in connivance with some local officers, then the Collector is at liberty to take appropriate action against such erring officers including recovery of the amount in case, any amount of public exchequer was utilized for this illegal construction.

9. Though we dispose of the petition, we direct the Collector, Jalgaon to submit his action taken report to this Court after eight weeks from the date of order of this Court through the office of the Assistant Government Pleader.

10. The Public Interest Litigation is accordingly disposed of.

11. The authenticated copy be issued to Mr Sangle, the learned Assistant Government Pleader.

12. Mr Shinde, learned Counsel appearing for the petitioners was fair enough to submit before this Court that to show *bona fide* the petitioner has deposited an amount of Rs. 10,000/- in this Court and the amount be diverted to

any social cause. Accordingly, we direct the Registry of this Court to divert the amount in the accounts of Child Care Centre initiated in the premises of this Court along with the interest accrued thereon.

[ANIL S. KILOR]
JUDGE

[PRASANNA B. VARALE]
JUDGE

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