

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**WRIT PETITION NO.4004 OF 2019
WITH
CIVIL APPLICATION NO.6315 OF 2019**

Chandrakalabai w/o. Shrimant Bansode
and 99 others **..PETITIONERS**

VERSUS

The State of Maharashtra
and 10 others **.. RESPONDENTS**

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**WRIT PETITION NO.4007 OF 2019
WITH
CIVIL APPLICATION NO.6316 OF 2019**

Vishnu s/o. Raghnuath Gore
and 146 others **..PETITIONERS**

VERSUS

The State of Maharashtra
and 10 others **.. RESPONDENTS**

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Shri Subhash K. Savangikar, Advocate for petitioners.

Shri S.N. Morampalle, AGP for respondent Nos.1 to 8.
Shri A.A. Mane, Advocate for respondent nos.9 & 10.

**CORAM: V.L. ACHLIYA &
R.G. AVACHAT, JJ.**

DATE: 05.09.2019

PER COURT :

1] The petitioners have filed these petitions seeking following reliefs:-

"C] By appropriate writ, order(s) or direction(s) in the like nature, the judgment and order passed by the Hon'ble Division Bench of High Court, Bench at Aurangabad in P.I.L. No.162/2016 dated 15.02.2019 may kindly be modified to the extent of Gut No.2, situated at Ranjangaon Shenpunji, Tq. Gangapur, Dist. Aurangabad.

D] By appropriate writ, order(s) or direction(s) in the like nature, the judgment and order passed by the Hon'ble Division Bench of High Court, Bench at Aurangabad in P.I.L. No.162/2016 dated 15.02.2019, the respondents authorities may kindly be restrained from implementing and executing the order dated 15.02.2019 to the extend of Gut No.2 in the light of procedure already initiated by the respondents authorities for regularization the encroachments made by the petitioners to the extent of Gut No.2 for the purpose of residential houses situated at Ranjangaon Shenpunji, Tq. Gangapur, Dist. Aurangabad.

E] Pending hearing and final disposal of the Writ Petition, the judgment and order passed by the Hon'ble Division Bench of High Court, Bench at Aurangabad in P.I.L. 162/2016 dated 15.02.2019, ad-interim-relief may kindly be

granted in terms of Prayer Clause "D".

F] By appropriate writ, order(s) or direction(s) in the like nature, the judgment and order passed by the Hon'ble Division Bench of High Court, Bench at Aurangabad in P.I.L.No.162/2016 dated 15.02.2019, respondents authorities may kindly be directed to proceed further with the pending procedure which they have already initiated for regularization of encroachments made by the present petitioners in Gut No.2 for the purpose of residential houses, situated at Ranjangaon Shenpunji, Tq. Gangapur, Dist. Aurangabad.

G] By appropriate writ, order(s) or direction(s) in the like nature, the respondents authorities may kindly be directed to delete the Gut No.2, situated at Ranjangaon Shenpunji from removing as per order dated 15.02.2019."

2] Heard learned counsel for the petitioners, learned AGP for respondent nos.1 to 8 and learned counsel for respondent nos.9 and 10. Perused the order dated 15.2.2019 passed by this Court (Coram: S.S. Shinde & R.G. Avachat, JJ.) in Public Interest Litigation No.162/2016.

3] In brief, it is the contention of learned counsel for the petitioners that the respondent no.12 had filed PIL No.162/2016 without making the petitioners as

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party respondents in said PIL. Pursuant to order dated 15.2.2019, respondent no.10 – Grampanchayat has issued notices to the petitioners to remove encroachments made over Gut No.2 i.e. the Gairan land situated at Ranjangaon Shenpunji Tq.Gangapur Dist.Aurangabad. It is submitted that as per the policy decision taken by the State Government, the petitioners are entitled for regularization of encroachments made over the Gairan land. Due to order dated 15.2.2019, their case may not be considered for regularization.

4] In our view, the petitions filed are devoid of merit and liable to be dismissed *in limine*. The reliefs claimed in the petitions itself reflect that by way of these petitions, the petitioners are challenging the legality and correctness of the order dated 15.2.2019 passed in PIL No.162/2016 by Division Bench of this Court (Coram: S.S. Shinde & R.G. Avachat, JJ.). Under the guise of modification of order dated 15.2.2019, the petitioners have assailed the correctness of the said order. On the face of reliefs claimed in the petitions, no reliefs can be granted for the sole reason that this Court cannot assess the merit and correctness of the

order passed by other coordinate Bench. The reliance placed upon the decision in the case of *Ramchandra Ganpat Shinde & another v. State of Maharashtra & others* reported in **AIR 1994 SC 1673** has absolutely no bearing upon the facts of the present case.

5] Apart from the maintainability of the petitions challenging the order of the coordinate Bench, there is no merit in the petitions filed by the petitioners. The order dated 15.2.2019 passed in PIL No.162/2016 is not passed against the individual. The order dated 15.2.2019 passed in PIL No.162/2016 reads as under:-

"1] Learned Additional Government Pleader has tendered across the bar affidavit in reply, and the same is taken on record.

2] Learned Additional Government Pleader submits that, if necessary, full co-operation and police force will be provided to the Grampanchayat to remove unauthorized and illegal encroachment on the land bearing Gat Nos.55, 75, 76, 77, 78, 79, 82, 83, 84 and land bearing Gat No.2, situate at village Ranjangaon Shenpunji, and the Grampanchayat can go ahead for removal of the unauthorized and illegal encroachments on the aforesaid land, however, subject to following the procedure as contemplated under the relevant Law.

3] The Grampanchayat shall take appropriate

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steps so as to remove unauthorized and illegal encroachment after following the relevant procedure, as expeditiously as possible, however, within 6 months from today, and submit report to that effect to respondent nos.3 to 6. Accordingly, the Petition stands disposed of.

4] The petitioner has deposited the amount of Rs.25,000/- in this Court. Learned counsel appearing for the petitioner graciously informs this Court and submits that, out of the aforesaid amount, the petitioner is ready to give Rs.15,000/- [Rs.Fifteen Thousand only] to the Government Cancer Hospital at Aurangabad. The Registry to divert an amount of Rs.15,000/- in the account of the Government Cancer Hospital at Aurangabad, bearing Account No.18880100017570 of Bank of Baroda, Branch at Samarthnagar, Aurangabad, and the remaining amount of Rs.10,000/- be returned to the petitioner."

6] Thus, perusal of the order dated 15.6.2019 clearly reflects that the order has been passed directing the respondent no.10 - village panchayat to remove unauthorized and illegal encroachments made over the land referred in the order situated within the vicinity of respondent no.10 - village panchayat by following the procedure prescribed under the law. The land referred in

the order appears to be Gairan land encroached by large number of persons. On account of failure on the part of village panchayat to discharge its statutory obligation to remove the encroachments as provided under the Maharashtra Village Panchayats Act, 2018, aforesaid direction appears to have been issued in the public interest litigation. The order passed is not as against individual encroacher. In that view, issuance of notice to the petitioners was not necessary, as claimed by the petitioners. The notices in question have been issued by the village panchayat in exercise of its powers u/s 53 of the Maharashtra Village Panchayats Act, 2018, to remove the encroachments made over public streets and open sites within the limits of the Gaathan area of the village. Section 53 of the Act casts obligation upon the village panchayat to remove such encroachments. Section 53 of the Maharashtra Village Panchayats Act, 2018 reads as under:-

"53. Obstructions and encroachments upon public streets and open sites.-

(1) Whoever, within the limits of the *gaathan* area of the village

(a) builds or sets up any wall, or any fence, rail, post, stall, verandah, platform, plinth,

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step or structure of thing or any other encroachment or obstruction, or

(b) deposits, or causes to be placed or deposited, any box, bale, package or merchandise or any other thing, or

(c) without written permission given to the owner or occupier of a building by a *Panchayat*, puts up, so as to protect from an upper storey thereof, any veranda, balcony, room or other structure or thing,

in or over any public street or place, or in or over or upon any open drains, gutter, sewer or aqueduct in such street or place, or contravenes any conditions subject to which any permission as aforesaid is given or the provisions of any byelaw made in relation to any such projections or cultivates or makes any unauthorised use of any grazing land, not being private property, shall on conviction, be punished with fine, which may extend to fifty rupees, and with further fine which may extend to five rupees for every day on which such obstruction, deposit, projection, cultivation or unauthorised use continues after the date of first conviction for such offence.

(2) The *Panchayat* shall have power to remove any such obstruction or encroachment and to remove any crop unauthorisedly cultivated on grazing land or any other land, not being private property, and shall have the like power to remove

any unauthorised obstruction or encroachment of the like nature in any open site not being private property, whether such site is vested in the *Panchayat* or not, provided that if the site be vested in Government the permission of the Collector or any officer authorised by him in this behalf shall have first been obtained. The expense of such removal shall be paid by the person who has caused the said obstruction or encroachment and shall be recovered in the same manner as an amount claimed on account of any tax recoverable under Chapter IX.

It shall be the duty of the *panchayat* to remove such obstruction or encroachment immediately after it is noticed or brought to its notice, by following the procedure mentioned above.

(2-A) If any *Panchayat* fails to take action under sub-section (2), the Collector *suo motu* or on an application made in this behalf, may take action as provided in that sub-section, and submit the report thereof to the Commissioner. The expense of such removal shall be paid by the person who has caused the said obstruction or encroachment of unauthorised cultivation of the crop and shall be recoverable from such person as an arrear of land revenue.

(3) The power under sub-section (2) or sub-section (2-A) may be exercised in respect of any obstruction, encroachment or unauthorised

cultivation of any crop referred to therein whether or not such obstruction, encroachment or unauthorised cultivation of any crop has been made before or after the village is declared as such under this Act, or before or after the property is vested in the *Panchayat*.

(3-A) Any person aggrieved by the exercise of the powers by the *Panchayat* under sub-section (2) or (3) may, within thirty days from the date of exercise of such powers, appeal to the Commissioner and the Commissioner, after making such enquiry as he thinks necessary, shall pass such orders as he deems necessary after giving such person a reasonable opportunity of being heard.

(3-B) Any order made by the Collector in exercise of powers conferred on him under sub-section (2-A) or (3) shall be subject to appeal and revision in accordance with the provisions of the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1960).

(4) Whoever, not being duly authorised in that behalf removes earth, sand and other material from, or makes any encroachment in or upon an open site which is not private property, shall, on conviction, be punished with fine which may extend to fifty rupees, and in the case of an encroachment, with further fine, which may extend to five rupees for every day in which the encroachment continues after the date of first

conviction.

(5) Nothing contained in this Section shall prevent the *Panchayat*, from allowing any temporary occupation of, or erection in, any public street on occasions of festivals and ceremonies or the piling of fuel in by lanes and sites for not more than seven days, and in such manner as not to inconvenience the public or any individual or from allowing any temporary erection on, or putting projection over, or temporary occupation of, any such public street or place for any other purpose in accordance with the bye laws made under this Act."

7] Section 53(1) to (3) of the Maharashtra Village Panchayats Act, 2018, provides procedure for removal of encroachments by the village panchayat. Sub-sections 3-A and 3-B of Section 53 of the Act provide for remedy of appeal as well as revision to an aggrieved person. In view of efficacious remedy provided under law to an aggrieved person to whom the notices are issued by the village panchayat, the challenge to notices issued by the village panchayat deserves no consideration by this Court.

8] Apart from the direction given in PIL No.162/2016, the village panchayat as well as other

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respondents are otherwise liable to remove the encroachments made over the gram panchayat land. The encroachments made over the Gairan / Gaothan or village panchayat land cannot be regularized in view of the decision of the Apex Court in the case of *Jagpal Singh & others v. State of Punjab & others* reported at **(2011) 11 SCC 396**. In paragraph no.13, the Apex Court has observed as under:-

"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. Regularising such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers of the village."

9] By virtue of the order dated 15.2.2019, the direction has been issued to the respondent no.10 -

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village panchayat to remove unauthorized and illegal encroachments after following procedure prescribed under law. The direction given by this Court in said PIL does not pertain to any individual person. By virtue of the order, the respondent nos.9 and 10, who failed to discharge their statutory obligations, have been directed to take action in accordance with law prescribed under the Maharashtra Village Panchayats Act, 2018. The facts pleaded in the petitions spell out that the petitioners are some of the persons who made encroachments over the Gairan land. Pursuant to the order passed in the matter, the notices have been issued by the concerned Grampanchayat to the persons found to have encroached over the Gairan land. Since the order dated 15.2.2019 clearly provides that action be taken as per the procedure prescribed under law, we see no merit in the petitions filed by the petitioners. We are, therefore, not inclined to entertain the petitions.

10] Accordingly, the petitions are dismissed with no order as to costs. In view of dismissal of petitions, Civil Application Nos.6315/2019 and 6316/2019 do not survive and are also disposed of. It is expressly made

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clear that dismissal of these petitions shall not come in the way of the petitioners to adopt appropriate remedy, if any, available under law to challenge the action on the part of respondent – village panchayat.

(R.G. AVACHAT, J.)

(V.L. ACHLIYA, J.)