

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO.163 OF 2016

Shri Rafikkha s/o Babakha Pathan,
Age-32 years, Occu:Labourer,
R/o-Near Govt. Hospital, Chandnagar,
Sirsala, Tq-Parli-Vaijnath,
Dist-Beed.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Secretary Rural Development
And Water Conservation Department,
Mantralaya, Mumbai,
- 2) Chief Executive Officer,
Zilla Parishad, Beed,
Tq. and Dist-Beed,
- 3) Block Development Officer,
Panchayat Samiti,
Parli Vaijnath, Dist-Beed,
- 4) Grampanchayat Sirsala,
Through its Village Development
Officer, Grampanchayat Office,
Sirsala, Tq-Parli Vaijnath,
Dist-Beed,
- 5) Kadaji S/o Shrirang Kadbhane,
Age-55 years, Occu:Labour,
R/o-Sirsala, Tq-Parli Vaijnath,
Dist-Beed,

- 6) Sarjerao @ Rajabhau s/o Sadaram
Ujagare, Age-38 years, Occu:Agri.,
R/o-Sirsala, Tq-Parli Vaijnath,
Dist-Beed.

...RESPONDENTS

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Mr.A.S. Londhe Advocate with Mr. B.R. Sable
Advocate for Petitioner.

Mr.S.B. Yawalkar, A.G.P. for Respondent No.1.

Mr.U.S. Mote Advocate for Respondent
Nos. 2 to 4.

Mr.S.S. Gangakhedkar Advocate for Respondent
Nos.5 and 6 / Intervenors.

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WITH

WRIT PETITION NO.10558 OF 2017

- 1) Someshwar Kondiba Kirwale,
Age-45 years, Occu:Agri. & Business,
- 2) Krishna s/o Pandharinath Kale,
Age-30 years, Occu:Agri. & Business,
- 3) Somnath s/o Suresh Shahane,
Age-29 years, Occu:Agri. & Business,

All R/o-Sirsala, Tq-Parali,
Dist-Beed.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through Secretary,
Rural Development And Water
Conservation Department,
Mantralaya, Mumbai,

- 2) Divisional Commissioner,
Aurangabad Division,
Aurangabad,
- 3) The Collector,
Beed, Dist-Beed,
- 4) The Tahesildar,
Parali Vaijinath,
Tq-Parali, Dist-Beed,
- 5) Chief Executive Officer,
Zilla Parishad, Beed,
Dist-Beed,
- 6) Block Development Officer,
Panchayat Samiti, Parli (V),
Dist-Beed,
- 7) Grampanchayat Sirsala,
Through it's
Village Development Officer,
Grampanchayat Office,
Sirsala, Tq-Parli Vaijnath,
Dist-Beed.

...RESPONDENTS

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Mr.G.K. Thigle Advocate for Petitioners.
Mr.S.B. Yawalkar, A.G.P. for Respondent
Nos. 1 to 4.
Mr.U.S. Mote Advocate for Respondent
Nos. 5 to 7.

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**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

DATE OF RESERVING JUDGMENT : 4TH FEBRUARY, 2019

DATE OF PRONOUNCING JUDGMENT: 13TH FEBRUARY, 2019

JUDGMENT [PER S.S. SHINDE, J.] :

1. Public Interest Litigation No.163 of 2016 has been filed by the Petitioner with following substantive prayers:

"B) By issuing appropriate writ or order direct respondents to take necessary effective steps in illegal construction and allotment of shops in Shopping Complex by the Grampanchayat which are constructed on the land which is used for the social and cultural purpose of the Village Sirsala.

C) Respondent No.4 may kindly be directed to seal the shops and conduct inquiry as per the direction of Respondent Nos. 1 and 3 within the period of two weeks."

2. Writ Petition No.10558 of 2017 has been

filed by the Petitioners, with following substantive prayer:

"B. Rule may kindly be made absolute and writ petition may kindly be allowed thereby quashing and setting aside communication dated 10.01.2017 issued by Respondent No.5 and directing Respondent s to permit the Petitioners to occupy the shop premises in terms of registered Leave and License Agreement dated 02.01.2017."

3. As the issues raised in the Public Interest Litigation and Writ Petition are inter-linked, both these Petitions i.e. Public Interest Litigation and Writ Petition were taken up for hearing together and are being decided by this Common Judgment and Order.

4. In Public Interest Litigation No.163 of 2016, learned counsel appearing for the Petitioner submits that, land Gut No.343 at village Sirsala,

Tq-Parali-Vaijnath, Dist-Beed, is the only open land available to the villagers for the cultural programs, marriage ceremony and other social activities. But Gram Panchayat, Sirsala has started illegal construction of the shopping complex over the said land, without obtaining permission and without following due procedure of law. Learned counsel further submits that the Petitioner filed representation to the Respondents regarding illegal construction started over the Government land by Gram Panchayat, Sirsala. On 1st June, 2016, villagers of village Sirsala filed representation to the Chief Executive Officer, Zilla Parishad, Beed complaining the illegal construction of Shopping Complex by the Gram Panchayat and requested to stop the same. Learned counsel submits that, by letter dated 17th August, 2016, Desk Officer, Rural Development and Water Conservation Department communicated to the Chief Executive Officer, Zilla Parishad, Beed for

conducting inquiry regarding illegal construction of shopping complex started by Gram Panchayat. On 16th May, 2016, Block Development Officer, Panchayat Samiti, Parli Vaijnath, Dist-Beed, directed Respondent No.4 - Village Development Officer of Gram Panchayat to seal the shops from newly constructed Shopping Complex at Sirsala and conduct inquiry. Referring to the letters dated 19th July, 2016, and 4th November, 2016, issued by Tahsildar, Parli Vaijnath, learned counsel submits that by the said letters the Tahsildar directed Respondent No.4 - Village Development Officer of Gram Panchayat for conducting inquiry about the illegal construction over the Government land.

5. Learned counsel appearing for the Petitioner further submits that though all the superior authorities of Respondent No.4 - Village Development Officer of Gram Panchayat, directed to conduct inquiry and submit report regarding

illegal construction of the Shopping Complex at the land Gut No.343, at village Sirsala and further directed to seal the said shops during such inquiry, no efforts in that directions were made by Respondent No.4- Village Development Officer of Gram Panchayat Sirsala. Hence, it is submitted that the Petition deserves to be allowed.

6. On the other hand, learned counsel appearing for Respondent Nos.2 and 3, referring to the reply filed on behalf of Respondent Nos.2 and 3, submits that the Petitioner informed to Tahsildar at Parli Vaijnath by letter dated 9th May, 2016, intimating that no action had been taken against unauthorized construction of shopping complex at village Sirsala, constructed by the village Gram Panchayat, Sirsala. Learned counsel submits that, in pursuance to the said letter dated 9th May, 2016, Respondent No.3- Block

Development Officer has immediately took the action by informing the Village Development Officer, Sirsala, by letter dated 16th May 2016, to stop the unauthorized construction of the shopping complex at Gut No.343 and submit the report. Learned counsel further submits that by letter dated 28th October, 2016, Respondent No.3 informed the Village Development Officer, Sirsala to seal the entire shopping complex constructed by Village Gram Panchayat at Gut No.343 until inquiry is completed. Learned counsel further submits that the Tahsildar, Parli Vaijnath by letter dated 4th November, 2016, issued the show cause notice to the Village Development Officer, Sirsala to seal the entire shopping complex until further inquiry is completed.

7. Learned counsel appearing for Respondent Nos.2 and 3 further submits that Respondent No.3 again issued letter on 13th December, 2016

informing the Village Development Officer, Sirsala to seal the entire shopping complex at Gut No.343. Learned counsel further submits that Respondent No.3 again intimated by letters dated 2nd January, 2017, and 5th January, 2017, to Village Development Officer, Gram Panchayat, Sirsala to submit the record in respect of acquisition of the plot for development of the said village. However, the said report was not submitted by Village Development Officer.

8. Learned counsel appearing for Respondent Nos.2 and 3 further submits that Respondent No.3 again issued letter dated 21st January, 2017, informing the Village Development Officer, Sirsala not to allot the shops constructed by the village Gram Panchayat. It is further stated in the said letter that action of giving allotment letters in favour of 14 beneficiaries is against the provisions of Section 51(1) of the Maharashtra

Village Panchayat Act and further directed that no permission would be granted to alienate, transfer or any other mode in respect of the said shopping complex and further directed to cancel the allotment immediately.

9. Learned counsel further submits that Respondent No.3 issued several letters and communications to the Village Development Officer, Gram Panchayat, Sirsala in respect of illegal construction of shopping complex in Gut No.343 by Gram Panchayat, Sirsala. Learned counsel further submits that Village Development Officer, Gram Panchayat, Sirsala is personally held responsible for the illegal construction of shopping complex and therefore, by order dated 24th January, 2017, passed by the Chief Executive Officer, Zilla Parishad, Beed, the concerned Village Development Officer came to be suspended.

10. Learned counsel further submits that in pursuance of the Government letter dated 17th August, 2016, and letter dated 21st February, 2017, issued by Zilla Parishad, Beed, Respondent No.3 – Block Development Officer has conducted and completed the enquiry and submitted the report. It is submitted that considering the entire aspect of the matter, the concerned Village Development Officer, Gram Panchayat, Sirsala, Sarpanch and members of the Gram Panchayat are held responsible for illegal construction of the shopping complex and accordingly appropriate action has already been taken against the Village Development Officer. Hence it is prayed that the Petition may be rejected.

11. In Writ Petition No.10558 of 2017, learned counsel appearing for the Petitioners submits that pursuant to general body resolution, the shops are allotted to the Petitioners on leave

and license basis for a period of eleven months, and thus the Petitioners are the allottees of the shops constructed by Gram Panchayat, on leave and license basis. Learned counsel submits that accordingly, leave and license agreement is executed between the Petitioners and Gram Panchayat. Learned counsel submits that despite there being duly registered executed contract of leave and license, the Respondent Authorities are not permitting the Gram Panchayat or the Petitioners to open the shops, which are subject matter of this Petition. Learned counsel further submits that the impugned order dated 10th January, 2017, passed by the Chief Executive Officer, Zilla Parishad, Beed is contrary to the record available with the concerned Authorities. Learned counsel further submits that the impugned order is issued on the incorrect presumption that the land in Gut No.343 does not belong to the local body i.e. Gram Panchayat. Learned counsel further submits that

when the legal right is created in favour of the Petitioners by executing agreement for leave and license, the same cannot be denied on presumptions and assumptions.

12. Learned counsel further submits that the Petitioners filed application bearing Civil Application No.9219 of 2017 seeking intervention in Public Interest Litigation No.163 of 2016 and this Court was pleased to dispose of the Civil Application by granting liberty to the Petitioners to file appropriate substantive proceeding. In view of the liberty granted, present Petition is filed praying therein to quash the impugned communication dated 10th January, 2017, and further seeking appropriate directions for permission to occupy the shop premises on the basis of leave and license agreement duly executed between the parties. Hence it is prayed that Petition deserves to be allowed.

13. On the other hand, learned A.G.P. appearing for the Respondent/State, referring to the reply filed on behalf of Respondent Nos.1 to 4 in Writ Petition as well as in Public Interest Litigation, submits that the Petitioners have challenged the order dated 10th January, 2017 passed by the Chief Executive Officer, Zilla Parishad, Beed, whereby the Chief Executive Officer has categorically restrained the Gram Panchayat, Sirsala, Panchayat Samiti, Parali from executing any kind of agreement and restrained from further allocation of shops constructed on Government Gayran land bearing Gut No.343. Referring to the order passed by the then Commissioner, Aurangabad on 6th May, 1964, learned A.G.P. submits that the land has been allocated to Gram Panchayat, Sirsala for the purposes of extension of existing Gavthan of village Sirsala. Learned A.G.P. further submits that by order dated

10th January, 2017, the Chief Executive Officer, Zilla Parishad, Beed has directed Gram Panchayat, Sirsala to stop construction, commercial complex and further allotment of shops to the public at large. The land occupied by Gram Panchayat has been allotted by the Revenue Authority i.e. Divisional Commissioner, Aurangabad Division, Aurangabad for specific purpose of Gavthan/Wasti under the relevant provisions prevailing then. It is further submitted that the Government of Maharashtra on 12th July, 2011, has issued Resolution for giving occupancy of Gavthan land adjacent to the village vicinities, and the Government was of the view that Gavthan/Gayran lands are kept open since long and same were being used for the purposes of open land for grazing the cattle, for celebrations of local festivals and other relevant public purposes. Learned A.G.P. further submits that the said Government Resolution further restricts the transfer of

Gayran land allotted to such village panchayat except as provided in Government Resolution with prior permission from the Competent Authority. Learned A.G.P. further submits that as per the said Government Resolution, Gram Panchayat has no power either to transfer, change of occupancy or disposal of any part of Gayran land, without there being proper pre-approval from the Competent Authority.

14. Learned A.G.P. further submits that it appears from the record that before constructing the said shopping complex, the Gram Panchayat has not taken prior approval from the competent authority for conversion, transfer or change of use of the land. Learned A.G.P. further submits that Respondent No.3 by various communications has informed that the said shops in the shopping complex are sealed and action against concerned Village Development Officer has been taken and he

was suspended. It is further submitted that enquiry was conducted by Respondent No.3 and he has submitted report dated 1st March, 2017, to Deputy Chief Executive Officer, Zilla Parishad, Beed. Learned A.G.P. further submits that before constructing shopping complex, the Gram Panchayat has not obtained permission as required under the law and therefore, the said construction is illegal. Hence it is prayed that the Petition may be dismissed.

15. Learned counsel appearing for Respondent Nos.5 to 7, referring to the reply filed on behalf of Respondent No.7 submits that, by order dated 6th May, 1964, the Divisional Commissioner allotted land to the extent of 3 H. situated at village Gram Panchayat Sirsala, to village Gram Panchayat for the purpose of extension of Gavthan. In pursuance of the said order, the Authority issued directions not to tax the land under the

Maharashtra Land Revenue Code, and entry was taken in Namuna No.8. It is submitted that considering the orders passed by the Divisional Commissioner allotting land to village panchayat, the village panchayat has decided to construct the shopping complex and for the said purpose, raised its own funds and constructed a shopping complex having fourteen shops. Revenue entry in 7/12 extract is already taken. Learned counsel further submits that considering the nature of land i.e. allotment of land is for the extension of Gavthan by the Divisional Commissioner, the decision taken by the Village Panchayat to construct shopping complex is bona fide and for the benefits of the villagers. Learned counsel submits that the action taken by the village Panchayat is in accordance with law.

16. We have given careful consideration to the submissions of the learned counsel appearing for the Petitioner in Public Interest Litigation,

learned A.G.P. appearing for the State, learned counsel appearing for the Respondents, and also learned counsel appearing for the Petitioners and learned counsel appearing for the respective Respondents in the Writ Petition.

17. The land in question, which is subject matter of the Public Interest Litigation had been allocated to the Gram Panchayat Sirsala, by the Divisional Commissioner, Aurangabad Division, Aurangabad vide order dated 6th May, 1964, bearing Gut No.343 (Survey No.243 then) to the extent of 324.15 Acres situated at Village Sirsala, Tq-Majalgaon, Dist-Beed. It further appears that the said land was allotted under the provisions of Section 25 of the Hyderabad Land Revenue Act, 1317 Fasli. It is seen from the perusal of the said order, which is placed on record with the affidavit in reply by Respondent Nos.1 to 4, that, the land has been allotted for the purpose of

extension of existing Gavthan of village Sirsala. It has been stated in the affidavit that revenue entry to that effect has been carried out in the revenue records in the name of Gram Panchayat Sirsala, and the purposes mentioned in the entry is "for Vasti-Wadi" in other column. The affidavit categorically mentions that the said land was allotted for specific purpose of Gavthan/Wasti, under the relevant provisions prevailing then. There is also reference to the Resolution issued by the Government of Maharashtra on 12th July, 2011, for giving occupancy of Gavthan land adjacent to village vicinities. The purpose of giving such land has been mentioned in the introduction part of the said Resolution that, the Government was of the view that Gavthan/Gayran lands are kept open since British era and same were used for the purposes of open land for grazing the cattle, for celebrations of local Jatra and other relevant public purposes. The said

Government Resolution further restricts the transfer of Gayran land allocated to such Village Panchayat except as provided in Government Resolution with prior permission from the competent authority as stated in the Government Resolution. It is specifically stated in the reply that Gram Panchayat has no power either to transfer, change of occupancy or disposal of any part of Gayran land as contemplated in the Government Resolution without there being proper pre-approval from the competent authority. There is also reference to the letter written by the Chief Executive Officer, Zilla Parishad, Beed, dated 10th January, 2017, addressed to the Gram Panchayat that, at no point of time prior approval has been accorded to the Gram Panchayat for conversion, transfer or change of use of land from the competent authority i.e. Chief Executive Officer, Zilla Parishad, Beed and the District Collector, Beed.

18. It is also seen from various documents placed on record that, multiple communications were issued to concerned Gram Panchayat, not to carry out the illegal construction. The Petitioner in the Public Interest Litigation has also given number of representations and applications to the Gram Panchayat, not to go ahead with the said construction since that land has been ear-marked for the aforesaid purposes stated in the affidavit in reply and also original order passed by the Divisional Commissioner, Aurangabad Division, Aurangabad. Such representations and applications given by the Petitioner are dated 6th May, 2015, 4th March, 2016, 9th May, 2016, 23rd May, 2016, 1st June, 2016, the copies of said representations are placed on record by the Petitioner in the Public Interest Litigation. However, in total disregard to the directions issued by the Tahsildar, Parali Vajinath, Chief Executive Officer, Zilla Parishad,

Beed, the Gram Panchayat, Sirsala, illegally proceeded to construct the shopping complex, thereby depriving the villagers from utilizing the said land for the purposes for which it was allotted by the Divisional Commissioner, Aurangabad Division, Aurangabad.

19. It is also relevant to mention that the Gram Panchayat, Sirsala had no authority for erection, construction of such shopping complex. There is over-whelming material placed on record by the Respondents that though the Gram Panchayat was fully aware that there is no any prior permission to construct shopping complex which exercise was undertaken by the Gram Panchayat contrary to the purposes for which said land was allotted, still the Gram Panchayat has proceeded further to construct the said shopping complex. It is not necessary for us to make reference to each and every documents placed on record, since every

thing is made clear in the affidavit in reply filed by Respondent Nos.1 to 4 in the Public Interest Litigation and also Writ Petition.

20. The contention of the counsel appearing for the private Respondents and Gram Panchayat that, since the shopping complex has now been constructed, the same may be allowed to be used, from which the villagers at Sirsala may be benefited, deserves no consideration. It is abundantly clear that construction of such shopping complex was illegal, contrary to the purposes for which such land was allotted and that too without prior permission from the competent authority i.e. Divisional Commissioner, Aurangabad Division, Aurangabad, who has allotted the said land. Therefore, merely because the shopping complex is constructed and which is now in sealed condition, if allowed to be used by the Gram Panchayat, it would be allowing to further

perpetuate the illegalities already committed by the Gram Panchayat, which, by any standard, cannot be countenanced and permitted.

21. Writ Petition No.10558 of 2017 is filed by the Petitioners agitating that leave and license agreement is executed in their favour by the Gram Panchayat and therefore right is created with them, is devoid of any merits. When the entire construction itself was illegal and contrary to the purposes for which the said land was allotted in favour of Gram Panchayat, the Gram Panchayat had no authority of whatsoever nature to further continue and perpetuate the illegalities thereby executing such leave and license agreement.

22. Learned counsel appearing for the Petitioners in Writ Petition No.10558 of 2017, in support of his submissions, has placed reliance

upon the ratio laid down in the case of Narayan Wamanrao Charade and others vs. State of Maharashtra and others¹, wherein, after considering the facts of the said case, it is held that, no notice was issued by the Divisional Commissioner to the appellants therein before passing orders of their eviction, hence action for eviction of the appellants and notice issued for that purpose is in breach of principles of natural justice and therefore, notice of eviction is liable to be quashed. We have carefully perused the ratio laid down in the reported case, cited supra, and we are of the considered opinion that the ratio laid down in the said case is not applicable to the facts of the present case.

22. Upon perusal of the documents placed on record by the State and its authorities, and also the Petitioner in Public Interest Litigation, it

¹ 2007(4) Mh.L.J. 91

is abundantly clear that during the course of such illegal construction, time to time the Gram Panchayat was informed to stop such illegal construction and thereafter by the order passed by the competent authority, the said shopping complex was sealed. Therefore, in our considered opinion, the Petitioners in the Writ Petition No.10558 of 2017 have no right to assert and therefore, their contention deserves no consideration. If any amount is taken by the Gram Panchayat from the said Petitioners against alleged leave and license agreement, the Petitioners in the Writ Petition would be entitled to recover the said amount by resorting to the remedies as available in law.

23. In the light of discussion in foregoing paragraphs and keeping in view the stand taken by the State and its authorities that, the said land was allotted for the specific purpose and the Gram Panchayat illegally used the said land for the

purpose of construction of shopping complex contrary to the written instructions issued to the Gram Panchayat, in our considered opinion, the Public Interest Litigation deserves to be allowed and the Writ Petition deserves to be dismissed.

24. Accordingly, we hold and declare that the construction of shopping complex by Gram Panchayat, Sirsala at village Sirsala, Tq-Parali Vaijnath, Dist-Beed, in land Gut No.343, was totally illegal and contrary to the purpose for which aforesaid land was allotted to the Gram Panchayat. The activities undertaken by the Gram Panchayat, Sirsala to go ahead with the said construction of the shopping complex, contrary to the instructions issued by the competent authorities was illegal exercise.

25. Since the Divisional Commissioner, Aurangabad Division, Aurangabad is the ultimate

authority, who has allotted the aforesaid land, which has been illegally utilized and used by Gram Panchayat, Sirsala for construction of shopping complex, in our opinion, the concerned authorities to send the file for approval to the Divisional Commissioner, Aurangabad Division, Aurangabad, for further action to be taken in respect of said shopping complex, for taking decision either for demolition of said shopping complex or to explore the possibility of using the said shopping complex purely for the benefit of the villagers at Sirsala, such as community hall for marriage, for some sports activities for the use of villagers, Weekly Bazar, or any other purposes which would satisfy and cater the need of entire villagers of village Sirsala, but certainly not the shopping complex.

26. The Divisional Commissioner, Aurangabad Division, Aurangabad, will have complete liberty

either to pass an appropriate orders to demolish the said shopping complex, or to put it for the public purposes, in view of the discussion in foregoing paragraphs.

27. The said decision to be taken by the Divisional Commissioner, Aurangabad Division, Aurangabad, as expeditiously as possible, however, in any case, within TWO MONTHS from the date of receiving the copy of this order.

28. Rule is made absolute in above terms in the Public Interest Litigation. Public Interest Litigation No.163 of 2016 is allowed and the same stands disposed of, accordingly.

29. Writ Petition No.10558 of 2017 is dismissed.

[R.G. AVACHAT, J.]

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[S.S. SHINDE, J.]