

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

WRIT PETITION NO.12861 OF 2016

1. Mukund s/o Bhimrao Mokal,
Age: 48 years, Occ: Agri.,
R/o. Nannajdumala, Tq.Sangamner,
Dist. Ahmednagar
2. Sanjay s/o Bapu Rokade,
Age: 41 years, Occ: Agri.,
R/o. Nannajdumala, Tq. Sangamner,
Dist.Ahmednagar.

PETITIONERS

VERSUS

1. The State of Maharashtra
Through its -
The Principal Secretary
of Rural Development Department,
Mumbai
2. The Collector,
Ahmednagar, Dist. Ahmednagar
3. The Sub Divisional Officer,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar
4. The Tahildar,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar
5. Zillah Parishad Ahmednagar,
Through its Deputy Chief
Executive Officer (Grampanchayat),
Tq. & Dist. Ahmednagar

6. Panchayat Samiti, Sangamner,
Through its Block Development Officer,
Tq. Sangamner, Dist. Sangamner
7. The Gram Panchayat,
Nannajdumala
Through its Village Development
Officer Najandhumala, Tq. Sangamner,
Dist. Ahmednagar
8. The Gram Panchayat
Nannajdumala,
Through its Sarpanch,
Officer Najandhumala, Tq. Sangamner,
Dist. Ahmednagar
9. Kailash s/o Uttam Mokal,
Age: Major, Occ: Agri.,
R/o. Nannajdumala, Tq. Sangmner,
Dist. Ahmednagar
10. Anil s/o Kacharu Mokal,
Age: Major, Occ: Agri.,
R/o. Nannajdumala, Tq. Sangmner,
Dist. Ahmednagar
11. Dnyandev s/o Vishanu Mokal,
Age: Major, Occ: Agri.,
R/o. Nannajdumala, Tq. Sangmner,
Dist. Ahmednagar

RESPONDENTS

Mr K.N. Shermale, Advocate for petitioners;
Mrs M.A. Deshpande, A.G.P. for respondent No. 1 to 4;
Mr V.P. Patil, Advocate for respondent Nos.5 to 7

**CORAM : PRASANNA B. VARALE &
AVINASH G. GHAROTE, JJ.**

DATED : 1st OCTOBER, 2019

ORAL ORDER:

In the present petition, the basic prayer is prayer clause (B), whereby the petitioners pray for removal of an encroachment by demolishing illegal/unauthorized construction over Gat No.915 which is situated at Nannajdumala, Taluka Sangamner, District Ahmednagar. By prayer clause (C), the petitioners pray for a strict action against respondent Nos. 9 to 11.

2. The petition is filed in the year 2016. On the very first date when the petition was posted before this Court, the Division Bench of this Court passed following order on 19th January, 2017, which reads thus :

"This petition is filed by the petitioners claiming that the land in question is reserved for cemetery by the Government. However, the

petitioner has not filed any document such as 7/12 extract or layout showing that the land belonging to Government.

2. The learned Counsel appearing for the petitioner seeks leave to produce documents on record and also seeks leave to amend.

3. Leave to produce documents on record and leave to amend granted.

4. Stand over to 16th February, 2017."

(emphasis supplied)

3. Notice was issued by this Court by order dated 16th February, 2017. On going through the petition, today we could find that the document placed at Exhibit-A i.e. copy of the 7/12 extract of land Gat No. 915, it only states that the State Government is owner of the land. There is nothing in this document to show that any part of the land was kept reserved for cemetery purposes. The petitioners have also placed on record other document

at page-16 wherein the nature of land is shown as barren land. There are certain representations. In these representations also, it is not stated that any part of the land was kept reserved for cemetery purposes but it is stated in the representation that since long, land is utilized for public cemetery purposes and that respondent Nos. 9, 10 and 11 have encroached upon the land.

4. It seems that the petitioners and some other persons submitted an application to group Grampanchayat Nannajdumala Kakadwadi. Grampanchayat conducted a meeting and kept the application/representation in abeyance on the ground that the document shows that owner of land is the State Government and then there is exchange of communications from Panchayat Samiti office and the revenue office. Except the statement that the land of Gat No. 915 is owned by the State Government and in the column, other right it is stated "गाव वहिवाटीकडे", nothing is stated about so called reservation of the land for use as

cemetery. It is then stated that it would be necessary to seek a legal guidance in view of the terminology "गाव वहिवाट".

5. Now, this is all the material placed before this Court to pray that an encroachment is carried on the area which was kept reserved for cemetery and a prayer is made to demolish this so called unauthorized construction with further prayer seeking action against respondent Nos. 9 to 11. Thus, in the entire petition, neither there is any material to show that the part of land was kept reserved for cemetery or an unauthorized and illegal construction is carried on some part of the land, which was claimed to be reserved for use as a cemetery. By order dated 19th January, 2017 the petitioners were permitted to place on record documents so as to support their case that the land or part thereof was kept reserved for cemetery purposes and accordingly, the petitioners were permitted to amend the petition. Till

date, neither any document is placed on record and as there is no document placed on record, there is no question of any amendment being carried out in the petition.

6. When we specifically confronted learned Counsel for the petitioners with this situation, he forcefully submitted that the petitioners have already approached Grampanchayat for seeking documents to show that the land or part thereof was kept reserved for cemetery purposes and the Grampanchayat refused to provide any such document. This is not the case reflected in the petition and the stand now thus being taken can certainly be said to be a 'U' turn by the petitioners qua their statement which is referred in the earlier order dated 19th January, 2017. Learned Counsel for the petitioners then made an attempt to submit before this Court that panchnama was drawn and the panchnama supports the case of the petitioners.

7. We have gone through the copy of the panchnama dated 17th March, 2017. The panchnama nowhere takes a position as tried to be submitted by learned Counsel for the petitioners. The panchnama nowhere states that the land or part of land was kept reserved for cemetery purposes. The panchnama only refers to certain encroachment and interestingly enough, the panchnama states that towards west of the land of Gat No.915, a stream is flowing and beyond that stream, there is a cemetery of reserved category persons. It is again stated in the panchnama that there is a dispute as to whether cemetery is in Gat No.915 or in the area of Gavthan. It is further stated in the panchnama that this fact can only be ascertained after undertaking exercise of carrying out measurement through Taluka Inspector of Land Records. If this position is reflected in the panchnama, we see hardly any reason to accept the submission of learned Counsel for the petitioners that this panchnama

supports the case of the petitioners.

8. In the petition, there was no statement that the petitioners have at any point of time approached Grampanchayat with representation calling necessary information from Grampanchayat about land or part of land being utilized/reserved for cemetery and a bald statement is made before this Court by learned Counsel that there were many representations submitted to the Grampanchayat. If that is so, nothing prevented the petitioners to place on record at least one of such representations within the span of the year 2016 to 2019 i.e. from filing of the petition till today and only ground submitted by learned Counsel that as the matter was in await notice category, the petitioners thought it fit not to place on record such a representation. This is no excuse for the petitioners who now claim to be willing to place on record the documents to support the contentions, that too only orally, as against the fact that the petitioners

have failed to place on record a single document in spite of grant of opportunity by order dated 19th January, 2017 for long two years.

9. Thus, in our opinion, the petition is thoroughly meritless and deserves to be dismissed and is accordingly dismissed at the threshold. Needless to state that the State Government has issued various circulars and notifications and if the State authorities are of the opinion that the encroachment is carried out on Government land, the State authorities are not prevented to take appropriate action and they are at liberty to do so, if the fact situation warrants so.

[AVINASH G. GHAROTE, J.]

[PRASANNA B. VARALE, J.]