

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

PUBLIC INTEREST LITIGATION NO.116 OF 2017

**DHANRAJ RAMRAO JADHAV AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. N.L.Jadhav, Advocate for petitioners
Mr. P.S.Patil, AGP for respondent nos.1 to 4
Mr. U.B.Bondar, Advocate for respondent no.5

**CORAM : PRASANNA B. VARALE
AND
R.G. AVACHAT, JJ.
DATE : JULY 05, 2019**

PER COURT :-

Heard Mr.Jadhav, learned Counsel for the petitioners, Mr.Patil, learned AGP for respondent nos.1 to 4 and Mr.Bondar, learned Counsel for respondent no.5.

2. Perusal of the record shows that on 19.12.2017, notices were issued to the respondents. In response to the notice, affidavit-in reply is filed on behalf of respondent nos.3 and 4 through Shri.Sachin s/o. Suresh Deshpande, In-charge Tahsildar, Kaij.

3. The grievance of the petitioner, in short, is of inaction on the part of the respondents/ authorities to remove the encroachments on Grampanchayat land, situate at Gat No.3, village Nandur Ghat, Tq. Kaij, Dist. Beed. In the prayer clause, the village is named as Ghat Nandur. However, Mr.Bondar, learned Counsel for respondent no.5 submits that there are two different villages namely, Ghat Nandur and Nandur Ghat and the grievance in the present matter is in respect of Nandur Ghat.

4. The petitioner has placed on record copies of various representations submitted to the district administration, including the Collector, Beed and the Tahsildar, Beed. A copy of panchanama dated 23.1.2016 is also annexed placed on record. There are certain photographs placed on record collectively at Exh.H. Affidavit-in-reply filed on behalf of respondent nos.3 and 4 refers to exchange of communications between the Tahsildar, Kaij and the Circle Inspector,

Nandur Ghat as well as between the Tahsildar, Kaij and the Block Education Officer, Panchayat Samiti, Kaij. It will be useful for our purposes to refer to the statements in the affidavit reflected in paragraphs 8, 9 and 10:-

"8. I say and submit that the concerned Talathi, Circle Officer nandurghat carried out spot inspection and prepared panchnama on 12/9/2016, 23/9/2016 and submitted the report to Tahsildar Kaij on 14/9/2016. It is submitted in the said report that the land survey no.3 is is allotted to Gram panchayat Nandurghat and 28 sheds are erected. Copies of above panchnama, report of Circle Officer dated 14/9/2016 are annexed herewith and marked as Exhibit "R-6" (colly).

9. I say and submit that the Grampanchayat, Nandurghat while making construction of tin sheds on Gat No.3, prior permission from the office of respondent no.3 has not been obtained. According to the Government Circulars

dated 7/9/2010 and 10/10/2013 issued by Revenue and Forest Department, any encroachment over Gairan land has to be removed by the Local Authority and in this particular case respondent no.5 Grampanchayat is the local authority to which land Gat No.3 is transferred. Copies of Government Circular dated 7/6/2010 and 10/10/2013 are annexed herewith and marked Exhibit "R7" (Colly).

10. I say and submit that the respondent no.4 on 6/9/2016 and 13/12/2017 directed the Block Education Officer, Kaij i.e. Controlling Authority of Grampanchayat to take appropriate action in view of the complaint of petitioner dated 9/12/2017 and to submit the report to respondent no.4. As per Government Resolution dated 12/7/2011 of Revenue and Forest Department, the duty of removal of encroacher is of concerned local authority, but the Block Education Officer has not removed he said encroachment. Copy of Govt. Resolution

dated 12/7/2011 is annexed herewith and marked as Exhibit "R-8".

5. On perusal of these submissions qua the Government Resolution dated 12.07.2011, we are of the opinion that the authorities namely, the Collector, Beed and Tahsildar, Kaij, cannot sit idle, only with the satisfaction that necessary directions are issued to the Grampanchayat for removal of the encroachments and the further job is of the Grampanchayat being local authority to remove these encroachments.

6. Perusal of the Government Resolution dated 12.07.2011 shows that it has been issued on the backdrop of the authoritative decision of the Hon'ble Apex Court in respect of the encroachment, in the case of **Jagpal Singh and ors. Vs. State of Punjab and ors. (Civil Appeal No.1132/2011 @ SLP(C) No.3109/2011.** A procedure has been set down in the Government Resolution to deal with the issue of encroachment. This procedure also refers to an

opportunity of hearing by issuance of notice to the alleged encroacher. The State Government states in the Government Resolution dated 12.07.2011 that the encroachments, save and except under Clause 7(4) of the Government Resolution, are to be removed even though they are standing for a long period and even if expenditure is incurred for construction thereof. It is stated in the Government Resolution that the action for such removal of encroachments be initiated at the earliest by setting out a special action plan with the assistance of the local authorities and the concerned Tahsildar and Public Works Department. The Police Department is expected to provide all necessary assistance to the local authorities. The Government Resolution specifically states that all these authorities such as local authority, Tahsildar, Public Works Department and Police Department shall act in coordination with each other and the action is to be initiated as if it is their collective responsibility. Thus, the Government Resolution is

more than clear in respect of the action to be initiated for removal of the encroachments. We see no impediment for respondent no.3 – Collector, Beed and respondent no.4 – Tahsildar, Kaij, to take appropriate action by following Government Resolution dated 12.07.2011.

7. Thus, we hope and trust that respondent no.3 – Collector, Beed, would take proper steps so as to conclude the action of removal of encroachments to its logical end, as expeditiously as possible and not later than six months from the date of this order. This exercise would serve the purpose of the petitioners in approaching this Court by way of present Public Interest Litigation.

8. As the Government Resolution speaks of providing an opportunity of hearing, the Collector, Beed, if finds it appropriate, may give an opportunity of hearing to the Grampanchayat.

9. With these observations, the Public Interest Litigation is disposed of.

10. Authenticated copy of this order be provided to learned AGP.

11. Learned AGP to communicate this order to the respondent no.3 – Collector, Beed.

[R.G. AVACHAT, J.]

[PRASANNA B. VARALE, J.]

kbp