

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

[MODIFIED AS PER SPEAKING TO THE MINUTES OF ORDER DATED 20TH SEPTEMBER, 2019]

PUBLIC INTEREST LITIGATION NO.74 OF 2014

Himmat Rajaram Mundhe .. Petitioner

Vs

State of Maharashtra & Ors. .. Respondents

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Mr. S.D. Thokade for the Petitioner.

Mr. P.P. Kakade, Government Pleader with Mr. M. M. Pabale,
A.G.P. for Respondent Nos.1 to 4.

Mr. Anand Kulkarni for Respondent No.5.

Mr. B.D. Joshi for Respondent No.8

Mr. Umesh Kurund with G.N. Salunke, Mr. Amol Dhumal for
Respondent Nos.9, 10 and 11.

**CORAM: PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATED : 09TH SEPTEMBER, 2019.

P.C:-

1. Heard learned counsel for the parties.
2. It is regretted to be noted that as we move down the ladder of

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the political structure in this country and reach at the level of Gram Panchayat, there is utter confusion, mismanagement and possible violation of law. Petty politics also peeps in. Pleadings in the instant Writ Petition and the Reply bring out the petty politics and violation of law.

3. Filed in public interest, the Petition states that the land in Gat No.188 admeasuring 4 Hectares 89 Ares in Village Kalambwadi, Taluka Barshi, District Solapur is a Gairan land out of which only 0.2 Ares is reserved as cremation ground. As per the Petitioner, Respondent No.8, a member of Panchayat Samiti has along with Respondent Nos.9 to 11 encroached upon a part of the Gairan land and made permanent constructions thereon. Grievance is that in spite of representations made to the Block Development Officer and the Tahsildar no action is being taken to remove the unauthorised constructions made by Respondent Nos.8 to 11.

4. The response filed by the Members of the Panchayat is that a meeting was convened of the Villagers to take a decision and the voters were divided.

5. The response filed by Respondent No.8 brings out that a primary school, a community centre and a hall have been constructed on a part of the land in question and that as per letter

dated 31st October, 2013 issued by the Block Development Officer 129 unauthorised structures existed on the land, meaning thereby, stand of Respondent No.8 is that the Petitioner is resorting to pick and choose.

6. In Rejoinder, the Petitioner points out that the letter dated 31st October, 2013 referred to by Respondent No.8 in the counter Affidavit addressed by the Block Development Officer itself records that the list of 129 encroachees is as provided by Respondent No.8.

7. Contention of the Petitioner is that the Block Development Officer in connivance with Respondent No.8, is trying to create a cloud by bringing on record as if 129 unauthorised structures exist. The Petitioner states in the Rejoinder that it is incorrect that 129 unauthorised structures exist.

8. The petty politics which we have referred to hereinabove emerges from the stand taken by the Gram Panchayat of there being a division in the assembly of the members of the Gram Sabha i.e. villagers. The involvement of the lower level functionaries in the mess is evinced by the letter dated 31st October, 2013 written by the Block Development Officer wherein he has referred to a list of 129 encroachees handed over to him by Respondent No.8.

9. It was the duty of the Block Development Officer to verify the ground situation by making a personal visit.

10. Law regarding common village land is clear. The law is that no person can appropriate any part of the common village land to personal use. Of course, if as a result of increase in population of village, by a properly constituted Resolution of the Gram Panchayat the residential area of the village can be increased and pattas issued. That would be a different matter.

11. It is not that case of Respondent Nos.8 to 11 that any patta has been issued in their favour.

12. Under the circumstances, we dispose of the Public Interest Litigation directing the Collector, District Solapur to call for the revenue record of Gat No.188 of Village Kalambwadi(A), Taluka Barshi, District Solapur. The Collector would thereafter ensure that all encroachments on the said land are removed for which before passing the necessary orders, the Collector shall issue show cause notice to the persons found to be in possession for the reason the possibility of some or any of them may be having title documents in their favour, cannot be ruled out. Besides, since civil rights of the persons in possession are involved principles of natural justice have to be complied with.

13. The Collector shall do the needful within a period of six months from today.

(SMT. BHARATI DANGRE, J.)

(CHIEF JUSTICE)