

JPP

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

PUBLIC INTEREST LITIGATION NO. 85 OF 2016

Vijay Mahadev Kaparekar and Anr. ... Petitioners.

V/s.

State of Maharashtra through Secretary & Ors. ... Respondents.

Mr. S.S. Gadre for the Petitioners.

Ms. Nisha Mehra, AGP for Respondents 1 to 3.

Mr. Y.S. Jahagirdar, Senior Advocate, Mr. S. Kanetkar a/w. Sachin Mahagavkar, Jimish Shah and G.S. Sethi I/b. Divya Shah Associates for Respondent No.2.

Mr. C.G. Gavnekar a/w. Ashutosh Gavnekar for Respondent 4.

***CORAM : PRADEEP NANDRAJOG, C.J. &
N.M. JAMDAR, J.***

DATE : 10 JUNE 2019.

P.C. :-

Heard learned Counsel for the parties. Case pleaded by the Writ Petitioners is that a dam constructed in District Raigad named Nadhal Dam has been encroached upon by the second Respondent who has illegally brought soil on his land and dumped

the same along the banks of the dam, thereby reducing the storage capacity of the dam.

2. Prayer made is to direct Respondent No.2 to remove the soil and Respondent No.4 to ensure that the encroached area of the dam is made free from encroachment by removing the soil.

3. In the counter affidavit filed by the fourth Respondent it is pleaded that Respondent No.2 owns land comprise in Survey No.81/2 in Village Nadhal and made an application for demarcation to be carried out. As a result of the demarcation of the land owned by Respondent No.2, it was found that Respondent No.2 had not encroached on any part of the reservoir.

4. Further pleadings of the parties show that the second Respondent who owns 1.35 hectors land in the afore-noted survey sought permission to level his land on the plea that part of the land was higher. Further pleadings of the parties show that it is the case of the second Respondent that he was granted permission to level his

land. We hasten to add that no permission granted, as pleaded by the second Respondent, has been annexed. Be that as it may, the pleadings of the second Respondent brings out that Respondent No.3 issued a penalty notice and pursuant to which it passed an order levying fine sum of ₹ 87,97,800/-. The fine has been imposed on the ground that leveling has been done by bringing excess soil to the land and royalty has not been paid. Said order has been challenged by the second Respondent. The appeal awaits a decision.

5. What appears to have happened is this. As a result of leveling of his land by the second Respondent, the gradient which existed hitherto has vanished. Thus rain water does not flow into the dam.

6. The State of Maharashtra and the fourth Respondent are directed to consider whether the leveling of the land by the second Respondent was permissible and if it is found that the leveling was not permissible, to ensure that the gradient is restored. If it is found

that the leveling was permissible, the issue of royalty which has been levied upon the second Respondent would be taken to its logical conclusion i.e. the Appeal filed by the second Respondent against the penalty levied would be decided expeditiously.

7. The Petition is disposed of.

N.M. JAMDAR, J.

CHIEF JUSTICE