

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7625 OF 2015

Akhil U. Adhikari, POA of Narendra V.
Advani

...Petitioner

Versus

Secretary to the Govt of Maharashtra & ors. ...Respondents

Mr. H. P. Vyas, for the Petitioner.

Mr. r. P. Kadam, AGP for Respondent nos.1 to 3/State.

Ms. Gauri Raghuwanshi, I/b Priyanka Thakur, for
Respondent nos.5 to 7.

Mr. B. B. Sharma, for Respondent no.8.

**CORAM: R. M. BORDE &
N. J. JAMADAR, JJ**

DATED: 4th JUNE, 2019

PC:-

1. The Petitioner is praying for issuance of directions to the Respondents to take action against Respondent nos.5 and 6 for removal of encroachment, and demolition of the structures illegally put on Survey no.487 at Panvel, District Raigad, by exercising power under Municipal law or under Maharashtra Land Revenue Code or any other law. The Petitioner claims that Land Survey Nos.480, 481, 744/1, 744/2, 788 and 487 totally admeasuring 16 Acres 4 Guntha have been allotted in favour of the predecessor in title of the petition Mr. Harkisandas Gumanlal in view of the allotment letter dated 8th August, 1956. The Petitioner contends that

the Government lands, which have been allotted to the predecessor in title of the petition, have been encroached upon. The Petitioner contends that since the Government has allotted lands in favour of the predecessor in title of the petition, it would be the responsibility of CIDCO as well as the State Government to remove the encroachment.

2. An Affidavit-in-Reply has been presented by the Tahsildar, Panvel, District Raigad, on 16th November, 2015, recording therein that in pursuance of order dated 7th September, 2015, passed by this Court, the District Collector, Raigad, by order dated 24th September, 2015, directed the Tahsildar, to visit and inspect the site in question and to find out whether any illegal construction is made by encroaching upon the Government land bearing Survey No.487 at Panvel, and to take necessary legal action for removal of the encroachment. It is further stated by the Tahsildar in his Affidavit that he paid visit to the site on 16th October, 2015, and noted that part plinth was constructed at the site in Survey no.487, which survey number belongs to the State Government, and major portion of the un-authorised construction was found to have been raised in Survey no.854. He took photographs of the alleged illegal

construction on 20th October, 2015. He further states that he took necessary action of demolition of illegal construction and took out photographs of the site prior to removal of illegal construction and after removal of illegal construction. Those photographs have been placed on record. The Tahsildar accordingly submitted a report to the Collector on 10th November, 2015. It is stated by Tahsildar in his report that whatever illegal structure raised on the land Survey no.487, has been removed. In paragraph 8 of the Affidavit it is reiterated that the unauthorised construction raised on the land belonging to CIDCO bearing Survey no.854 exists and appropriate steps shall have to be taken by the CIDCO authorities.

3. The Petitioner opposes the factual contention raised in the Affidavit presented by the Tahsildar and contends that, in fact, there exists illegal structure on the land Survey no.487 allotted to the predecessor in title of the petitioner. It is submitted that, though the Tahsildar found illegal construction on Survey no.854, yet, the same is, in fact, located on the land allotted to the Petitioner.

4. We are not inclined to exercise the extraordinary jurisdiction under Article 226 of Constitution of India

considering that disputed questions of fact have been raised. As has been recorded above, the factual dispute raised by the Petitioner in the instant petition needs to be investigated by a fact finding forum and it would not be appropriate for this Court to deal with the disputed questions of facts. If at all the Petitioner raises an appropriate dispute and seeks redressal of his grievance before an alternate forum, it would be open for such alternate fact finding forum to deal with the contentions, which would be raised by the Petitioner, and the order passed in this petition shall not be construed as an impediment for scrutinising such contentions. It would be open for the Petitioner to take steps as permissible in law.

5. The writ petition stands disposed of accordingly.

[N. J. JAMADAR, J.]

[R. M. BORDE, J.]