

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.86 OF 2008

Kamlakar Motiram Satve & Anr. Petitioners
Vs.
The State of Maharashtra & Others Respondents

WITH
CIVIL APPLICATION NO.93 OF 2018
IN
PUBLIC INTEREST LITIGATION NO.86 OF 2008

Kamlakar Motiram Satve & Anr. Applicants
In the matter between
Kamlakar Motiram Satve & Anr. Petitioners
Vs.
The State of Maharashtra & Others Respondents

Mr. S.G. Deshmukh for the Petitioners.
Mr. P.P. Kakade, GP, with Mr. B.V. Samant, AGP,
for Respondent Nos.1 to 8 & 10.
Ms Gauri Godse with Mr. Rohit Joshi for Respondent
Nos.11 & 12.
Mr. Anish Khandekar i/by Mr. L.M. Acharya for
Respondent No.14.

CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.

DATE : DECEMBER 16, 2019

P.C:

1. This petition was treated as a PIL.
2. It has been filed in this Court way back on 5-6-2008.

3. The relevant prayers in the PIL are thus:-

“(b) To issue a writ of mandamus or any other appropriate writ, order or direction in that nature directing an enquiry in respect of the village records of village Mouje Tirandaz, Taluka Kurla, Mumbai Suburban District with special reference to the duplicate and forged Mutation Entries made in the said records;

(c) To issue a writ of mandamus or any other appropriate writ, order or direction in that nature directing the Respondent No.1 to hold the necessary enquiry pursuant to the Petitioners’ representations dtd. 28/5/2008 (Exh. ‘Q’);

(d) To issue a writ of certiorari or any other appropriate writ, order or direction in that nature quashing and setting aside the so-called orders dtd. 4/10/1980 passed by the Talathi, village Tirandaz and the Taluka Order dtd. 26/5/1989;

(e) To issue a writ of certiorari or any other appropriate writ or order or direction in that nature and to quash and set aside the orders dtd. 25/2/2008 passed by the Deputy Collector (Appeals), Mumbai Suburban District in Appeal No.C/RTS/A-23/2007;

(f) To direct the necessary action, both civil as well as criminal, against the Respondent No.11 and the concerned involved officers of the Respondent No.1, which may include Respondents Nos.2 to 10;”

4. When this PIL was placed before a Bench of this Court on 13-1-2012, on hearing both sides, the following order came to be passed:-

“1. Heard the learned counsel for the Petitioner, the learned counsel for the Respondent No.12. The learned counsel for the Respondent No.12 raised a preliminary objection about the maintainability of the PIL. The learned counsel has submitted that the order impugned in the present Writ Petition is passed under Section 247 of the Maharashtra Land Revenue Code and therefore, there is an appellate remedy available to the Petitioner under Section 257 of the said Code. It is, therefore, submitted that when there is an alternate and

efficacious appellate statutory remedy available to the Petitioner, this Court may not show indulgence in exercise of jurisdiction under Article 226 of the Constitution of India, particularly, when the Petitioner is canvassing a larger public interest in that sense of the matter. The counsel for the Petitioner seeks three weeks' time to consider this aspect and make a statement on the next date of hearing.

2. Stand over to 3.2.2012.”

5. According to Ms Godse, appearing on behalf of respondent Nos.11 & 12, the issue of maintainability is still open and will have to be decided before this Court addresses the merits of the controversy. In other words, the objection to the maintainability of this PIL has not been given up.

6. For the purposes of this objection and even otherwise it will be necessary to see how the petitioners have approached this Court. The petitioners claim to be citizens of India and residents of Tirandaz Village, Powai, Mumbai - 400 076. They say that petitioner No.1 is the son of the soil from Village Tirandaz and other adjoining villages. The petitioner No.2 is his wife. The petitioners are Adivasis and are inhabitants of the area for three generations. There are charitable activities carried on by petitioner No.1 as Honorary Secretary of Saidham Sevashram, a Public Charitable Trust. The Trust, *inter alia*, makes arrangements for food, clothing and shelter for old people/senior citizens and to ventilate grievances of the Adivasis. The petitioners seek to improve the

standard of living of the Adivasis.

7. The petitioners claim that there is a colossal fraud and grabbing of public property/Government land by respondent Nos.11 to 14 and which is completely overlooked by the statutory authorities.

8. The statutory authorities, namely, the State and respondent Nos.2 to 10 are aware that the 11th respondent and respondent Nos.12 to 14 are responsible for grabbing the Government land. That has been held to be a Gaothan land of Village/Mouje Tirandaz. It is pertinent to note that the said land, including the land surrounding it, originally belonged to the Adivasis. This land belong to the Scheduled Tribes and in the process of grabbing the land, the original inhabitants/Tribals/Adivasis were driven out. Though it has been held that Survey Nos.40 and 41 from Village/Mouje Tirandaz pertain to land vesting in the Government of Maharashtra, it has been grabbed by respondent No.11 and the members of his family. In this act, the officers of the Government assisted the private parties. Now, the assertion of the petitioners in the petition is curious. They say that the lands involved in this petition and the subject-matter of the alleged fraud are from Mouje Tirandaz, Mouje Paspoli, Mouje Tungwa, Mouje Saki, Mouje Kopri and Mouje Powai. These lands were

occupied by Adivasis. One Premji Cawasji Bamji was the Khot in respect of these lands. One Sir Mohamed Yusuf succeeded him as the Khot. In view of The Salsette Estates (Land Revenue Exemption Abolition) Act, 1951, the Khotee rights vested in Sir Mohamed Yusuf were abolished. Sir Mohamed Yusuf and others challenged the said abolition by filing Suit No.316 of 1953 in this Court. The prayer in the Suit was for a declaration that Sir Mohamed Yusuf and others were the absolute owners of the suit property. That Suit was placed before a Single Judge of this Court, who took on record a Consent Decree. The Consent Decree having found to be valid, the Suit came to be disposed of. However, it says that the Consent Decree enlisted separately, by way of exhibits, lands belonging to and vesting in the Government. The lands in Exhibit "B" are appropriated prior to 14-8-1951 and therefore did not vest in the Government. The question that survived was, whether the lands specified in the list (Exhibit-C) were waste lands or appropriated? For that a formal inquiry under Section 37(2) of The Maharashtra Land Revenue Code, 1966 (**"the Revenue Code of 1966"**) r/w Section 4 The Salsette Estates (Land Revenue Exemption Abolition) Act, 1951 (**"the Act of 1951"**) was to be held. Whether these lands vest in the Government and therefore could not have been appropriated by anybody? That is how the Consent Decree proceeds.

9. The petitioners say that since all the lands originally belonging to the Tribals and Sir Mohamed Yusuf or prior to him the said Premji Cawasji Bamji having only Khotee rights, the Consent Decree could not have concluded the rights of the Tribals or the rights superior in nature vesting in the State. Therefore, the Gaothan lands of these villages remained as such and retained their character despite this Consent Decree.

10. The petitioners, therefore, relied upon the mutation entry made by the Revenue Officials, copy of which is Exhibit "C", to allege that land admeasuring 2 acres and 15 gunthas is Gaothan/Government land. These lands were not assigned any survey numbers. In fact they were not part of Survey Nos.1 to 43.

11. The father of petitioner No.1 made a complaint to the Revenue Official and requested him to hold an inquiry. That was by invoking Section 20(2) of the Code of 1966. The point for consideration in that inquiry was, whether the Gaothan land claimed as such by the Circle Inspector on behalf of the Government as located in two parts, vested in the Government? and whether the land as stated by Mohamed Yusuf Trust and other two villagers falling in Survey Nos.40 and 41 in one block was Gaothan? The Sub-Divisional Officer, on holding the inquiry and hearing both sides, came to the

conclusion that respondent No.11 to this petition has not established and proved that the Gaothan land claimed by the Circle Inspector does not belong to the Government.

12. He, therefore, held that one should go by the Consent Decree and refer to it for the purposes of deciding the issue. Once respondent No.11 could not prove his occupancy rights, then, the character of Gaothan land can be retained. In other words, the lands belong to the Government.

13. It is claimed that there was a map which was prepared in accordance with the order passed on 30-9-1970.

14. The mutation entry No.58 was made pursuant to this order on 4-1-1974. The petitioners then say that this entry was certified on 21-3-1974. Surprisingly and curiously enough, there is another mutation entry No.58 which is to the effect that respondent No.11 purchased the land from the owner Chandrabhan, namely, his father by Registered Sale Deeds of the year 1987. The name of the said Chittaranjan, respondent No.11, was entered on the basis of an order dated 26-5-1989. The petitioners say that how this order could have been passed in the teeth of the earlier proceedings, was never clarified.

15. Be that as it may, the father of respondent No.11 sought to challenge the order of 30-9-1970 and he moved an

Appeal before the Deputy Collector (Appeals). That Appeal was rejected on 8-2-1982.

16. The mutation thus carried out was confirmed. In fact, by mutation entry No.58 (another entry) the name of respondent No.11 was shown. The petitioners claim that land admeasuring 2 acres and 12 gunthas out of Survey No.40, and land admeasuring 63 gunthas out of survey No.41, were Gaothan. The remaining land can be entered in the name of the original owner Chandrabhan. Hence, no inferior officer including the Talathi of the concerned village could have modified the records or the mutation entries. In the circumstances, the order of 4-10-1980 and mutation entry No.69 are illegal. The petitioners called upon the respondents to produce the mutation entry and the related order.

17. The petitioners had been making complaints right up to the Chief Minister of the State and in response to one of the complaints dated 6-6-2005, the petitioners received a reply dated 20-6-2005 from the Sub-Divisional Officer. They were informed that the prior orders were sent to the City Survey Officer for necessary action and they ought to have been accepted and implemented but the said official was pleased to hold a reinquiry. The reinquiry was on the points which are framed in para 15, pages 14-15 of this petition. The respondent

No.10-Government official was required to implement the earlier orders but after the city survey of this village had started in 1968 and the Compromise Decree had been passed much prior thereto, there was no need to make any changes. Yet, Section 126 of the Code of 1966 was invoked so as to hold an inquiry. The inquiry was directed by an order dated 14-8-2006. The City Survey Officer, acting on this order, copy of which is Exhibit "K", issued notices to petitioner No.2 and respondent No.11. They were directed to remain present at the site. After completing the survey and inquiry, the Sub-Divisional Officer submitted his report on 8-5-2007. The report mentions that although a map and the inquiry documents had been called for from the office of the Tahsildar, Kurla, the Tahsildar informed petitioner No.1 by his letter dated 9-3-2007 that these papers are not available with him. The petitioners therefore say that it was not possible to show the boundaries of Gaothan with reference to Survey Nos.40 and 41. It is in these circumstances that on receipt of the report, the Sub-Divisional Officer passed an order on 31-8-2007. He has cancelled the mutation entry No.69, dated 26-12-1980, in respect of Survey Nos.40 and 41 from Mouje Tirandaz and restored the original mutation entry No.58. He directed the City Survey Officer, Mulund to make a note of the Gaothan in the City Survey Records as per the order dated 30-9-1970. The Sub-Divisional Officer specifically recorded that petitioner Nos.1 and 2 had locus in the matter

because Mr. Motiram Satve, the father of petitioner No.1, was the original occupant of the area. He had been called for an inquiry pursuant to which the order dated 30-9-1970 was passed.

18. This order was challenged by respondent No.11. On 25-2-2008, that Appeal was allowed and the order of 31-8-2007 has been set aside. Now, that restores mutation entry No.69, dated 26-12-1980.

19. It is really aggrieved by this order, that the present petition has been filed.

20. On a perusal of the petition, we are not satisfied that this petition could have been treated as a PIL. It is evident from the arguments of Mr. Deshmukh, learned Advocate appearing for the petitioners, that in the garb of a complaint about usurpation and wrongful claim to Government land and seeking to protect the Government land/public property, the petitioners are voicing and raising their private grievances. The petitioners are interpreting the Consent Decree which has been passed by this Court in a certain manner. That Consent Decree is in the Suit of Sir Mohamed Yusuf and others, plaintiffs v/s The State of Bombay, defendant. The plaintiffs to the Suit claim to be the absolute owners of the villages, including Villages Tirandaz and Powai. These lands were mentioned with details as annexures

to the plaint. For the purpose of claiming ownership, reliance was placed on a Deed of Conveyance of 15-2-1937. The plaintiffs to the Suit claimed to be the successors-in-title of Premji Cawasji Bamji. The plaintiffs claimed that they are entitled to sell all the rights, benefits, interests and privileges conferred by the Deed of Conveyance in respect of the said six villages and that The Bombay Act XLVII of 1952 referred to in the plaint has no application to these lands. The provisions of this Act of 1952 were sought to be applied by the State of Bombay and that was not permissible. According to this plaint, once the plaintiffs were the absolute owners thereof, then the State is not entitled to claim the land revenue in respect of these villages. The lands cannot be said to be waste lands and equally the Land Revenue Code of 1966 has no application. This claim of absolute ownership being contested, eventually what this Court ordered by the Consent Decree is, that the lands marked as Exhibit-A to the Consent Decree are waste lands and vested in the Government under Section 4 of the applicable law. Then as far as Exhibit-B to the Consent Decree is concerned, the lands stated therein were sought to be appropriated prior to 14-8-1951 and are accordingly not vesting in the Government. Thereafter, by consent it was ordered that, whether the lands specified in the list annexed and marked Exhibit-C are waste or appropriated, be decided in an independent formal inquiry to be held under Section 37(2) of

the Revenue Code of 1966 r/w Section 4 of the Act of 1951. The orders in relation to the lands prior to the Consent Decree were set aside, by consent. Now, what Mr. Deshmukh urged before us is that the lands belonging to the Government and vesting are shown at Exhibit-A to the Consent Decree, page 60 of the paper-book. One of the villages is Village "Tirandaj". Then Exhibit-B is a list of the appropriated lands. The Exhibit-C to the Consent Decree is a list of disputed lands and the area located in Village Tirandaz, stated to be Gaothan, was shown as 2 acres and 15 gunthas. It is evident from the Consent Decree, therefore, that the inquiry was directed in relation to the disputed land. In relation to the disputed land the issue was, whether the Gaothan land claimed by the Circle Inspector on behalf of the Government as located in two parts, namely, one between Survey Nos.1 and 2 and the other between Survey Nos.4 and 7 vests in the Government and whether the land, as stated by opponent No.1 and the other two villagers, falls in Survey Nos.40 and 41 in one block (shown in green colour by the Circle Inspector in the plan) is Gaothan? The opponent No.2 to this inquiry before the Sub-Divisional Officer was Chittaranjan Sharma, the predecessor-in-title of respondent No.12. He said that this land belongs to him and it is taken on 99 years' lease and he is collecting rents from the persons who have constructed huts on the land admeasuring 1 acre and 7 gunthas. He could not produce any documentary evidence in

support of this assertion. The residents of the land in Survey Nos.40 and 41 do not pay any rent or land revenue to anybody. It is a Gaothan land. The Sub-Divisional Officer, therefore, concluded that the opponents having failed to prove even by *prima facie* documentary evidence that the Gaothan land claimed by the Circle Inspector does not belong to the Government, naturally the answer would be, the land claimed by the Circle Inspector on behalf of the Government is a Gaothan land. That needs to be demarcated as such. The Gaothan land was not assigned any survey number whereas the other land shown by green colour on the plan seems to be out of Survey Nos.32, 33, 34 and 40. They cannot be declared to be Gaothan land. Once Mr. Sharma was not able to show that the land claimed by the Circle Inspector belongs to him, naturally his claim was rejected. The declaration of 30-9-1970, based on which the mutation entries were made, according to Mr. Deshmukh ought to have been taken to its logical end. His argument is, that there cannot be two mutation entries, one at page 71 (Exhibit-E1) and the other at page 74 (Exhibit-E4). The village record is wrong and therefore there is an inquiry required into the question as to how Government land could be shown as private property. Mr. Deshmukh would submit that in this PIL there is no affidavit in reply of respondent Nos.2 to 10. Inviting our attention to para 13 on page 12 of the petition, Mr. Deshmukh would submit that the Talathi cannot take a different

view. Mr. Deshmukh also complains that if one peruses mutation entry No.69 on page 77 of the paper-book, that is stated to be based on an order of 4-10-1980, copy of which was never produced. In such circumstances, the Sharmas have taken over the Government land and the Government officials are turning a blind eye to such an act of the Sharmas. The officers are thus colluding with the Sharmas and this fact calls for an inquiry.

21. Mr. Deshmukh submits that once the petitioners intervened and complained specifically about taking over of the Government land wrongfully, then the Revenue Officers ought to have corrected the revenue entries. However, they refused to take note of the binding orders made by them. There is total inaction on their part. This inaction has led, to officers, not authorised and empowered to pass binding orders, intervening at the instance of the private parties, causing enormous loss to the public and to the State Government.

22. It is in these circumstances, he would fault the order of 25-2-2008. He would also put in issue the legality and validity of the Deed of Indenture made in the year 1987 between Chittaranjan Sharma and Chandrabhan Sharma. He would also say that these are questionable and doubtful transactions between the father and son.

23. We are unable to accept Mr. Deshmukh's contention for more than one reason. As far as the property which was said to be disputed, the Consent Terms clarified properly and listed it as Exhibit "C" to the Consent Decree. The Consent Decree, as made and passed, has not been questioned by the State. In collateral proceedings, the petitioners sought to urge that the Gaothan land is not what is indicated as disputed land in the annexure to the Consent Decree but much more. On the basis of the petitioners' intervention, one finds that there was an inquiry directed way back in the year 2005. However, what the inquiry mandated by the Consent Decree was, whether there is a Gaothan land at Village Tirandaz in Kurla Taluka. Whether that was designated as such prior to coming into force of the Revenue Code of 1966 and the intervening Law of 1951 not affecting the status. In that inquiry what came on record was that one Mr. S.M. Kamble appeared on behalf of the State before the Sub-Divisional Officer, Bombay Suburban District on 27-3-1969. Mr. S.G. Mane appeared on behalf of Sir Mohamed Yusuf Trust. On 27-3-1969, two other villagers, Bhiva Janu Kharpade and Motiram B. Satve, the father of petitioner No.1, were present. They were examined. The 2nd respondent to the inquiry, Chittaranjan Sharma appeared before the Tahsildar on 24-4-1969. Mr. Kamble stated that as per the Consent Terms,

the Gaothan land admeasuring 2 acres and 15 gunthas had been declared as vesting in the Government. It comprises of two parts but it is not assessed as it was assigned for public purpose. Even survey numbers are not assigned to the land. There is a temple, well and church near about the land for the residents of the villages and the land is covered by Gaothan. This fact was supported by Mr. Mane, who appeared on behalf of Sir Mohamed Yusuf Trust. He admitted that Sir Mohamed Yusuf Trust has never collected land revenue or rent from the residents on the Gaothan land. However, he said that the Gaothan land now falls in Survey Nos.40 and 41 according to the survey carried out in the year 1958, and not near the Survey Nos.2 and 4, as shown by the Circle Inspector Mr. Kamble. Mr. Sharma, appearing on behalf of respondent No.2, claimed that the land shown as Gaothan by the Circle Inspector does not belong to the Government but was taken on lease by him from Sir Mohamed Yusuf Trust.

24. Naturally, when Sri Mohamed Yusuf Trust does not dispute the character and status of the land, this officer found that the only point for consideration is, whether the Gaothan land claimed by the Circle Inspector on behalf of the Government as located in two parts and whether the land claimed by opponent No.1 and the other two villagers falls in Survey Nos.40 and 41 in one block? Mr. Sharma, appearing for

respondent/opponent No.2, was not able to substantiate the claim. It is in these circumstances that the status of the land which was disputed was declared as Gaothan land.

25. Now, the present petitioners say that effect was not given to this order completely and the fact which is concluded by this order and the order of 1982 so also the revenue entries based thereon, is reopened. The reopening is in the garb of the petitioners' complaint but *bona fide*. The benefit of the reopening has been derived by respondent No.12.

26. To our mind, when the petitioners make a complaint and which results into an inquiry, the petitioners cannot be heard to say that no inquiry was called for. Be that as it may, after that inquiry resulted in an order which was passed, the legality and validity of that order could have been questioned by the private parties. It is pertinent to note that the order on which reliance is placed by the petitioners themselves has been passed on 14-8-2006. That order is passed on the basis of the application of the petitioners. One Kamlakar Motiram Satve, Smt. Usha Kamlakar Satve, Babu Dharma Bhure, Hanuman Bhau Raut and others were stated to be the applicants and Chittaranjan C. Sharma and the Tahsildar, Kurla were the opponents. This order resulted in the findings and which have been rendered by the Sub-Divisional Officer. He came to the

conclusion that as far as the mutation entry in relation to Survey Nos.40 and 41 (mutation entry No.69 dated 26-12-1980), that deserves to be set aside. The mutation entry No.58, effected prior thereto, deserves to be restored. The mutation entry No.58 is consistent with the order of 30-9-1970. Therefore, in terms of that order, the Gaothan land should be demarcated and a note be taken in respect thereof by the City Survey Officer. Maps should be drawn indicating and demarcating clearly the Gaothan and thereafter the other documents be prepared and drawn up. All this be done within a period of one month from the date of the order of this Sub-Divisional Officer dated 31-8-2007.

27. Naturally, Chittaranjan Sharma preferred an Appeal and without going into the merits and demerits of this order or the maintainability of the Appeal, the outcome thereof needs to be noted. The outcome is that Chittaranjan Sharma's Appeal is allowed, the order of the Sub-Divisional Officer dated 31-8-2007 is set aside. The mutation entry No.69, dated 26-12-1980 for Village Tirandaz, is restored. The consequence, therefore, is that the mutation entry No.58 is set aside.

28. Whether all this has been done on the basis of the documents produced by Chittaranjan Sharma, including the Conveyance or Deeds of Indenture between Chittaranjan

Sharma and Chandrabhan Sharma, cannot be decided in these proceedings. We are of the clear view that bearing in mind the participation of the petitioners in the inquiries before the Revenue Officials, in the event they are aggrieved and dissatisfied with the acts of omission and commission on the part of respondent Nos.2 to 10, their remedy is to institute a Civil Suit. On the basis of the documents in their possession, they could have challenged the legality and validity of the Indenture of Lease dated 11-2-1987 and the subsequent orders in favour of Chittaranjan Sharma. The petitioners should have approached the Competent Civil Court and sought appropriate declarations, including a relief that the interpretation of the Consent Decree by the Revenue Officials is not accurate, legal and valid and that the Consent Decree keeps open the issue as projected by the petitioners before us. Surely therefore, they could not have approached this Court challenging the orders of the revenue officials by way of a PIL.

29. We are of the view that there is substance in the preliminary objection raised to the maintainability of this PIL. The PIL is ultimately another name which is given to a writ petition under Article 226 of the Constitution of India. In PIL we do not issue any writs apart from the prerogative writs which could be issued by invoking Article 226 of the Constitution of India. What holds good as an objection to the maintainability of

the writ petition would therefore hold good even for the maintainability of the PIL. Upholding this preliminary objection, we dismiss this PIL. There shall be no order as to costs. However, we clarify that our order and directions do not conclude the issue or right, title and interest in the immoveable property. If the petitioners feel aggrieved by the acts of the revenue officials, it is open to them to question the same by a suit on title to be filed in the Competent Civil Court. With this clarification, all the more this PIL need not be entertained. It is disposed of.

30. In view of dismissal of the PIL, Civil Application No.93 of 2018 preferred therein does not survive and it accordingly stands disposed of.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)

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