

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

WRIT PETITION NO.3543 OF 2020

- 1) Shaikh Yusuf Shaikh Kasam Pinjari
Age:50 years, Occu.Labour
- 2) Afshanbi Shaikh Libbas
Age:50 years,Occu.Labour
- 3) Shaikh Moin Rafiyoddin
Age: 42 years, Occu.Labour
- 4) Kurshadbi Sheikh Shabbir
Age: 60 years, Occu.Labour
- 5) Firojabi Fattu Pinjari
Age: 42 years, Occu.Labour

All R/o Shahapur(Pura),
Tq.Jamner,Dist.Jalgaon

PETITIONERS

VERSUS

- 1) The State of Maharashtra
Through Secretary,
Rural Development Department,
Mantralaya, Mumbai-32
- 2) The District Collector,
Jalgaon, Tq.& Dist.Jalgaon
- 3) The Chief Executive Officer,
Zilla Parishad, Jalgaon
Dist.Jalgaon
- 4) The Tahsildar,
Shahaur, Tq.Jamner,

Dist.Jalgaon.

- 5) The Block Development Officer,
Panchayat Samittee, Jamner,
Tq.Jamner, Dist.Jalgaon
- 6) The Village Panchayat, Shahapur
Tq.Jamner, Dist.Jalgaon,
Through its Village Development Officer
(Gramsevak)
- 7) Bhagwan S/o Dagdu Patil
Age: 50 Years, Occu.Agril,
R/o Shahapur,Tq.Jamner,
Dist.Jalgaon.

RESPONDENTS

Mr R.O. Awasarmol, Advocate for the petitioners;
Mr S.S.Dande, A.G.P. for respondent/State;
Mr K.N.Shermale, Advocate h/f Mr Mangesh Patil, Advocate
for respondent No.6;

**CORAM : PRASANNA B. VARALE &
R.G. AVACHAT, JJ.**

DATED : 9th MARCH, 2020

ORAL ORDER:

Heard learned Counsel appearing for the
petitioners at length.

2. In our order dated 4th March, 2020, a reference

is made to the submission of learned Counsel, namely; firstly, certain material facts were not brought to the notice of this Court and secondly, the petitioners were beneficiaries and being beneficiaries, they constructed the houses. Learned Counsel for the petitioners also made a reference to a document i.e. communication dated 23rd May, 2011 and this document was referred to by the petitioners as 'work order'. In the order dated 4th March, 2020 itself we have record our reservation for accepting the submission of learned Counsel and also reservation on the aspect of the document referred to as 'work order'.

3. Today, learned Counsel for the petitioners invited our attention to the additional affidavit and submitted that the petitioners are ready to file an undertaking as referred to in paragraph-4 of the order dated 4th March, 2020. He placed heavy reliance on the communication which is placed on record at Exhibit-F at page 44-A of the affidavit under title 'प्रशासकीय मान्यता आदेश

इंदिरा आवास योजना सन २०११-१२'. He also submitted that the names of the petitioners find place in the list of persons at Serial No. 934 referring to village Shahapur. He also referred to a list placed on record at Exhibit-G to the affidavit with the names of the petitioners and amount of Rs.25,000/- shown against the petitioners under the signature of Block Development Officer, Jamner.

4. Learned Counsel for the petitioners further submitted that being beneficiaries, the petitioners received this amount and the amount was deposited in their bank accounts. He then submitted that Grampanchayat submitted proposal to the office of the Collector and the same is still pending for decision. His further submission is, though some act of the revenue officials or even for an act of mischief being played by village level officers, the petitioners may not be subjected to the sufferance.

5. Per contra, Mr. Shinde, learned Counsel for respondent No.7 i.e. original petitioner in Public Interest Litigation No. 93 of 2017 as well as Mr. K.N. Shermale, learned Counsel for respondent No. 6 – Village Panchayat, Shahapur opposed the petition and submitted that in the order dated 5th December, 2019, this Court dealt with all the aspects of the matter and the petitioners who had every opportunity to come before this Court and participate in the proceedings i.e. Public Interest Litigation No. 93 of 2017 for the reasons best known to them, failed to avail such an opportunity and now, as an afterthought attempt, this petition is being filed only to frustrate or nulify the order of this Court dated 5th December, 2019.

6. Mr. Shinde, learned Counsel for respondent No.7 vehemently submitted that even assuming that the petitioners were beneficiaries kept under waiting list, they were bound by the conditions specifically referred to in the document placed on record by the petitioners

themselves in the additional affidavit and the petitioners, by their act, committed breach of the conditions. It is also his submission that the petitioners are taking artificial shield of being beneficiaries and the issue is not whether the petitioners are beneficiaries or not, but, the issue for consideration before this Court in Public Interest Litigation was an encroachment carried on by the petitioners on the Government land without having any legal right accrued in favour of the petitioners.

7. On considering rival submissions, we are of the opinion that the petitioners have approached this Court by filing the petition with wholly unsustainable grounds. We also find considerable merit in the submission of Mr. Shinde, learned Counsel for respondent No.7.

8. Though our order dated 5th December, 2019 is a detailed order, at the cost of repetition, we state that there was sufficient material brought before this Court

to show that there was an encroachment over the land Gat No. 307 which was initially Survey No.86 and was reserved in the name of Government and subsequently, it was shown as a land kept reserved for grazing of cattle. There is also reference to spot panchnama carried on and specific statement in the affidavit in reply filed on behalf of the responsible Government official i.e. Sub Divisional Officer, Jalgaon.

9. It may not be out of place to state here that a statement is made on behalf of learned Counsel for respondent No.6 Village Panchayat that the proposal is submitted to the Sub Divisional Officer by the Grampanchayat for allotment of the land for construction of the houses under the scheme known as '*Indira Awas Yojna*', but the proposal was turned down.

10. Now, in view of this stand taken by the Grampanchayat as reflected in the submission of learned Counsel, who was instructed to appear on behalf of

respondent No.6 Village Panchayat, Shahapur, statement made on behalf of the petitioners that the proposal is still pending before the authority holds no water and as such, is inconsequential.

11. We are also unable to accept the submission of learned Counsel for the petitioners that the document dated 23rd April, 2011 under caption as, administrative approval in relation to '*Indira Awas Yojna*' is a document supporting the right of the petitioners. Bare perusal of this document would show that a waiting list was prepared and clauses and conditions, more particularly, clause-6 cast duty on the Junior Engineer who is submitting a plan for construction of the houses to see that such land suggested for construction of houses is free from an encroachment. Now, condition No. 7 is more relevant for our purposes and it clearly states that the beneficiaries are bound by a condition to construct houses in their own land. It again warns the beneficiaries that if the beneficiaries are erecting any construction on Government

land or Grampanchayat land, the sanction from the authority is a pre-condition. Then again it is stated that if the construction is erected by way of encroachment and any dispute is raised, the beneficiary will have to face consequences including recovery of any monetary benefit granted to him.

12. On the backdrop of these conditions, if we again refer to our order dated 5th December, 2019, it clearly shows that the Sub Divisional Officer, in clear and unambiguous words stated before this Court that the constructions raised were on the Government land. This land was kept reserved for Government purpose and the record to that effect is from the year 1952. It is also stated before this Court on affidavit that there was no permission granted from any of the revenue authorities either to extend the village limits so as to add disputed land in *Gaothan* or any permission granted to the proposal of the Grampanchayat, though allotment of the land for construction of the houses under the scheme known as

'Indira Awas Yojna'. On the contrary, a statement made before this Court that the proposal submitted to the Sub Divisional Officer was turned down.

13. In view of these facts, we are unable to accept the submission of learned Counsel for the petitioners that the proposal is still pending before the authorities.

14. Thus, by considering the matter from any angle, we are of the opinion that the petitioners have approached this Court on unsustainable grounds and there is merit in the submission of Mr. Shinde, learned Counsel for respondent No.7 that this is nothing but afterthought attempt to nulify the order of this Court dated 5th December, 2019. No legal right at any point of time was accrued in favour of the petitioners. Merely because some amount was transferred in the account of these so called beneficiaries by the officer of Grampanchayat would not a ground for this Court to entertain the

petition. A mistake or mischief by an officer cannot be treated as a legal right accrued in favour of these petitioners.

15. Resultantly, the petition, thus, being devoid of any merits, deserves to be dismissed and same is accordingly dismissed.

[R.G. AVACHAT, J.]

[PRASANNA B. VARALE, J.]