

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

PUBLIC INTEREST LITIGATION NO. 5 OF 2020

Subhash s/o Sahebrao Nakalgaonkar,
Age: 45 years, Occ: Journalist,
R/o. Samrat Ashok Nagar, Majalgaon,
Tq. Majalgaon, District Beed

PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Department of Revenue,
Mantralaya, Mumbai-400 032
2. The Collector,
Collector Office, Beed
3. Sub Divisional Officer (Revenue)
Majalgaon Division, Majalgaon,
Dist. Beed
4. The Tahsildar,
Majalgaon, Tq. Majalgaon,
Dist. Beed
5. Deputy Engineer,
Public Work Department,
Majalgaon, Dist. Beed
6. The Chief Executive Officer,
Majalgaon Nagar Parishad,
Majalgaon

RESPONDENTS

WITH

**CIVIL APPLICATION NO. 2509 OF 2020
IN
PUBLIC INTEREST LITIGATION NO.5 OF 2020**

Dr. Shankar s/o Trimbak Jujgar & anr **APPLICANTS**

VERSUS

Subhash s/o Sahebrao Nakalgaonkar & ors **RESPONDENTS**

WITH

**CIVIL APPLICATION NO. 2510 OF 2020
IN
PUBLIC INTEREST LITIGATION NO.5 OF 2020**

Mitthulal s/o Dagaduram Baheti (died)
Through his L.Rs.

Ramnivas s/o Mitthulal Baheti & ors **APPLICANTS**

VERSUS

Subhash s/o Sahebrao Nakalgaonkar & ors **RESPONDENTS**

Mr M.B. Sandanshiv, Advocate a/w Mr Subhash S. Nade,
Advocate for the petitioner;
Mr S.P. Sonpawale, A.G.P. for respondent Nos. 1 to 5;
Mr V.D. Salunke, Advocate for applicants in civil
applications

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

DATED : 26th FEBRUARY, 2020

ORAL ORDER:

On a grievance raised by the petitioner, who claims to be a journalist and social worker, in respect of encroachment carried on Government Gairan land and further grievance that in spite of authorities being apprised and then there was certain exchange of communications, no action is initiated, notice was issued to the respondents. The petitioner was directed to deposit an amount of Rs.10,000/- within two weeks in this Court to show his *bonafides*.

2. Learned Counsel appearing for the petitioner invited our attention to the documents, namely, representation dated 19th January, 2016 and communication dated 27th January, 2016 forwarded from the office of Sub Divisional Officer, Majalgaon to the Tahsildar, Majalgaon and also action plan for removal of encroachment. Our attention was also invited to the list prepared referring to the names of those alleged encroachers, area of

construction and nature of construction.

3. In response to the notice, an affidavit in reply is filed on behalf of respondent Nos. 2 and 3 through Smt. Shobha Thakur, Sub Divisional Officer, Majalgaon, District Beed. The deponent admits the factum of representation being submitted, exchange of communication between Sub Divisional Officer and the Tahsildar, Majalgaon and action plan prepared by the authorities. It is further stated in the affidavit in reply that there was also communication dated 4th December, 2018 between Sub Divisional Engineer, Public Works Sub Division, Majalgaon and the Tahsildar, Majalgaon. Perusal of this communication shows that a request was made to the Sub Divisional Engineer for preparation of approximate expenses/budget for exercise of removal of encroachment and in response to this query, a communication dated 27th December, 2018 was forwarded to the Tahsildar.

4. The copy of the order dated 29th January, 2016

passed by Tahsildar is placed on record. It seems that though action sought to be initiated in the year 2016, it got delayed by one or other reason and ultimately, serious note of the delay is taken by the office of the Tahsildar, Majalgaon.

5. Learned A.G.P. submits that considering the representations in past and representation submitted in latest period i.e. representation dated 18th November, 2019, whereby an apprehension is expressed about certain encroachment carried out in the city area of Majalgaon, notices are issued. Learned A.G.P. invited our attention to the copy of notice placed on record as Exhibit-18 at Page-135 of the petition. A bare perusal of this document shows that this is office copy of the notice, wherein name of noticees are enlisted in the document. Perusal of the notice shows that it is issued under Section 50 of the Maharashtra Land Revenue Code, 1966. By no stretch of imagination, this document can be treated as a notice issued to an individual calling upon

him before the authority.

6. It may be necessary for us to refer to the relevant provisions of the Maharashtra Land Revenue Code, 1966 (for short, 'M.L.R.Code, 1966') including Section 50. Section 50 of the M.L.R. Code, 1966 deals with the procedural formalities for the authority exercising the power in respect of removal of encroachment. Perusal of this provision makes it clear that the act itself provides remedial measure to the noticees. It is part of the provision that in case, an order is passed by the Collector exercising this power under Section 50 of the M.L.R. Code, 1966, this order shall be subject to appeal and revision and in accordance with the provisions of the Code. This is under sub section (5) of Section 50 of the M.L.R. Code, 1966.

7. Sub section (6) of Section of Section 50 of the M.L.R. Code, 1966 provides for another remedial measure of forum for a person who feels aggrieved by the

exercise of power by the authority under Section 50.

Sub-section (6) of Section 50 reads thus :

“Nothing contained in sub-sections (1) to (4) shall prevent any person from establishing his rights in a civil court, within a period of six months from the date of the final order under this Code.”

The Code also provides an opportunity of hearing to the noticees and this provision is Section 53 (1-A), which reads thus :

“ Before evicting such person, the Collector shall give him a reasonably opportunity of being heard and the Collector may make a summary enquiry, if necessary. The Collector shall record his reasons in brief, for arriving at the opinion required by sub section (1).”

8. As copy of notice placed on record shows that the Tahsildar, Majalgaon, who is exercising his powers as

Executive Magistrate under the Maharashtra Land Revenue Code and his issuance of notice under Section 50 of the M.L.R. Code, 1966, there is no rider for such authority to follow other procedural modalities which are referred to in detail by us.

9. Considering this fact situation, we are of the opinion that the public interest litigation itself can be disposed of by issuing directions to respondent Nos. 2 and 4. Respondent No.2 or respondent No. 4, in case of exercising powers under Section 50 of the M.L.R. Code, 1966 to issue notice individually to the persons enlisted in the record maintained by respondent No. 4 Tahsildar, Majalgaon, District Beed within two weeks from today. After issuing notice, an opportunity of hearing be afforded to the noticees as per provisions of Section 53 (1-A). The hearing be concluded within three weeks. On concluding of the hearing, the authority to pass appropriate orders by recording reasons in brief as expected under Sub-section (1-A) of Section 53 of the

M.L.R. Code, 1966. Needless to state that noticees are at liberty to avail remedy available under Section 50(6) of the M.L. R. Code, 1966, in case they are so advised.

10. With these directions, public interest litigation is disposed of.

11. In view of disposal of public interest litigation with directions, we see no reasons to pass any orders on the civil applications. As such, civil applications stand disposed of.

12. As the petitioner is a journalist, he is permitted to withdraw an amount of Rs.10,000/- (Rs. Ten thousand only) deposited in this Court to show his *bonafides*.

[R.G. AVACHAT, J.]

[PRASANNA B. VARALE, J.]