

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION STAMP NO.34053 OF 2018

Dilip Mangilal Bajaj & Anr.

..Petitioners

Versus

The State of Maharashtra & Ors.

..Respondents

Mr. Drupad S. Patil, Advocate for the Petitioners.

Mr. Y. S. Khochare, AGP for Respondent Nos.1 to 4.

CORAM : PRADEEP NANDRAJOG, C.J. &

SMT. BHARATI DANGRE, J.

DATE : 7th JANUARY, 2020

P.C.

1] The Writ Petition listed at Sr. No.7 in the admission board had been called out for hearing at around 12 noon. At request of proxy counsel who appeared for counsel for the Petitioners the matter was held back to be taken up at the second call. It is 12.55 p.m. the matter has been called out at the second round. None appears for the Petitioners.

2] The Writ Petitioners have challenged a show-cause notice dated 24th April 2018 issued to them alleging unauthorized excavation resorted to by the Petitioners in land comprised in Gat Nos.318/2 and 318/3 in village Dharangutti, Taluka Shirol, District Kolhapur. The show-cause notice also alleges illegal excavation on the adjoining land comprised in Gat No.318/1.

3] The case of the Petitioners is that they owned land comprised in Gat Nos.318/2 and 318/3. They allege that land comprised in Gat No.318/4 is government land. They allege that a mafia has been unauthorizedly carrying on excavation activity on government land. They alleged that the mafia took advantage of their absence in the village and resorted to illegal excavation from their lands as well. It is pleaded in the Petition that villagers filed Writ Petition Stamp No.6249 of 2017 seeking a direction against the State to prevent further illegal excavation and action against the offenders. It is pleaded that the stand of the Respondents in said Writ Petition is that no illegal excavation is being further undertaken.

4] Suffice it to state the case of the Petitioners is that it is not they but somebody else who took advantage of their absence from the village and after trespassing on their land committed the offence of illegal excavation.

5] This is a question of fact. The Petitioners have to respond to the show-cause notice issued and establish that they were not present in the village when illegal excavation was resorted to by third parties.

6] At this stage counsel for the Petitioners appears. Learned counsel for the Petitioners addresses this Court on the lines as pleaded in the Petition and as noted by us herein-above.

7] Thus the position remains the same i.e. whether Petitioners were represented or not.

8] The Petitioners ought to respond to the show-cause notice and put their defence.

9] Declining to quash the show-cause notice or issuing any mandamus as prayed for, we grant Petitioners four weeks time to respond to the show-cause notice dated 24th April 2018 and produce such material upon which the Petitioners rely to show their absence from the village.

10] Keeping in view the nature of the dispute the Petitioners would be granted personal hearing by the Tahsildar who has issued notice before passing any orders disposing of the show-cause notice.

11] The Petition is disposed of.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE