

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 2035 OF 2020**

Dirbamata Matshya Vyavsay Co-operative Society Ltd. ... Petitioner

Versus

The State of Maharashtra and others ... Respondents

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Mr. Rakesh Agrawal for the Petitioner.

Mrs. M.P. Thakur, AGP for Respondent Nos.1 to 3.

Mr. Rohit Sakhadeo for Respondent Nos.4 and 5.

Mr. Sagar Sambhajee Salunkhe, Chief Officer Wada Nagar Panchayat, present.

Mr. Sameer Vaidya, Law Officer, Palghar and Mr. Dayanand Gore, District Project Officer, Palghar, present.

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CORAM : S.J. KATHAWALLA AND

R.I. CHAGLA, JJ.

DATED : MARCH 4, 2020.

P.C. :-

1. By the above Writ Petition, the Petitioner seeks the following reliefs :-

"(a) That this Hon'ble Court may please to verify the contentions and allegations made by the Petitioner in the present petition and after verifying legality and propriety of the allegations so made, this Hon'ble Court may please to issue writ of Mandamus or Writ in the nature of Mandamus commanding the Respondents and especially the Respondent Nos.3 to 5 to forthwith demolish the illegal constructions and remove illegal encroachments on the bank of said pond and between said pond and the public road in accordance with law.

(b) That this Hon'ble Court may please to verify the contentions and allegations made by the Petitioner in the present petition and after verifying legality and propriety of the allegations so made, this Hon'ble Court may please to issue writ of Mandamus or Writ in the nature of Mandamus commanding the Respondents and especially the Respondent Nos.3 to 5 to restore said pond to its original area by demolishing illegal construction and removing encroachments and by carrying out digging work, if necessary.

(c) That this Hon'ble Court may please to verify the contentions and allegations made by the Petitioner in the present petition and after verifying legality and propriety of the allegations so made, this Hon'ble Court may please to issue writ of certiorari or Writ in the nature of certiorari quashing said tender No.2180/2019-20 dated 30.1.2020 issued by Respondent Nos.4 and 5 for constructing barricade / wall between illegal and unauthorized construction and encroachment and the existing boundary / bank of said pond."

2. The Learned Advocate appearing for Respondent Nos.1 to 3 states that she has instructions to inform the Court that there are more than 100 illegal constructions on the bank of the subject pond and the Collector shall write a letter to the Officer of Land Records to carry out demarcation which would assist them to assess the original size of the pond and to ascertain the extent to which the pond is reduced. The Collector shall thereafter direct the Planning Authorities i.e. Respondent Nos.4 and 5 to take necessary steps to remove the encroachments.

3. In view of the above, the following order is passed :-

- (i) The demarcation shall take place within a period of three weeks from today.
- (ii) The Planning Authorities i.e. Respondent Nos.4 and 5 shall be given necessary

directions by the Office of the Collector to take appropriate steps including removal of encroachments within a period of one week thereafter.

(iii) The Planning Authorities i.e. Respondent Nos.4 and 5 will forthwith take action for removal of encroachments upon receipt of the directions from the Office of the Collector to remove the encroachments.

(iv) Respondent Nos.4 and 5 shall until the directions given herein are complied with, not proceed with the tender dated 30th January, 2020 issued for construction of a barricade/wall.

4. It is clarified that by this order, directions sought as regards restoration of pond to its original area is not granted and the said issue can be pressed by the Petitioner by filing fresh proceedings after the encroachments are removed.

5. The above Petition is accordingly disposed off. Liberty to apply.

(R.I. CHAGLA, J.)

(S.J. KATHAWALLA, J.)