

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

WRIT PETITION NO. 5101 OF 2022

1. Ganesh Rajendra Chavan,
SRT 180, Labour Colony, Aurangabad.
2. Shakil Ahmed s/o Mohammad Ismail, SRT-59
Labour Colony, Aurangabad
3. Umakant Audambarao Ghadge,
SRT-159 Labour Colony, Aurangabad
4. Shamim Bano wd/o Mohammad Yusuf
SRT-78 Labour Colony, Aurangabad
5. Mohammad Shaker Hussain
SRT- 76 Labour Colony, Aurangabad
6. Manish Ramrao Pawar
SRT- 178 Labour Colony, Aurangabad
7. Anil Vitthalrao Chaudhari
SRT- 45 Labour Colony, Aurangabad
8. Mohammad Ikramuddin Tamijuddin
SRT- Labour Colony, Aurangabad
9. Madhukar Abaji Kathar (Moharkur)
SRT-14 Labour Colony, Aurangabad
10. Shaikh Yusufbee wd/o Shaikh Jilani
SRT-73 Labour Colony, Aurangabad
11. Zohara Khatun wd/o Mubin Khan
SRT-87 Labour Colony, Aurangabad

12. Narayan Kondiba Kamble ... **Petitioners**
SRT-72 Labour Colony, Aurangabad

VERSUS

1. The State of Maharashtra, ... **Respondents**
Through Its Principal Secretary,
Public Works Department,
Mantralaya, Mumbai

2. The Divisional Commissioner, Aurangabad

3. The Collector, Aurangabad

4. Aurangabad Municipal Corproation, Through
its Commissioner

5. The Executive Engineer,
Public Works Department, Aurangabad.

Mr. S. S. Kazi, Advocate for the petitioners

Mr. D. R. Kale, Government Pleader for the respondents/State

CORAM : R. D. DHANUKA, & S. G. MEHARE, JJ.

DATE : 6th May, 2022

ORDER:

1. By this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for quashing and setting aside the impugned order dated 2nd May, 2022 passed by Respondent No.3, the Collector, Aurangabad.

2. Learned counsel for the petitioners invited our attention to the grounds raised, particularly Ground No.(VIII) stating that the petitioners are

not challenging the authority of the respondents nor the petitioners are contending that the respondents authorities cannot evict the petitioners. The only request of the petitioners is that the respondents shall rehabilitate the petitioners by providing them shelter and alternate accommodation as it would be difficult for the petitioners to find accommodation on their own.

3. Mr. Kale, the learned Government Pleader vehemently opposes this prayer by relying upon the judgment of this Court delivered on 20th January, 2022 in Writ Petition No. 12527 of 2021 in case of Dinkar s/o Baburao Lokhande and others Vs. The State of Maharashtra and others. He submits that in the said judgment, this Court has considered the detail argument advanced by 147 similarly situated occupants impugning the notice issued by the authority. He submits that after recording reasons, this Court has dismissed the said writ petition. The learned Government Pleader also invited our attention to the order dated 16th March, 2022 passed by the Hon'ble Supreme Court in Petition(s) for Special Leave to Appeal (C) No. 4754 of 2022 refusing to interfere with the judgment delivered by this Court and dismissed the said Special Leave to Appeal. By the said order dated 16th March, 2022, the Hon'ble Supreme Court directed the petitioners to handover peaceful and vacant possession of the premises on or before 30.04.2022. Learned AGP submits that none of the petitioners have any rights whatsoever on any portion of the land on which the unauthorized structures

are constructed. He submits that public project would be affected, if this Court shows any indulgence to these petitioners. Learned AGP invited our attention to the crucial aspect which was also considered by the Division Bench of this Court in the detail judgment dated 20th January, 2022 that the conditions of these structures are dilapidated and if the occupants are allowed to continue to occupy these structures, it may cause other serious mishaps.

4. Learned counsel for the petitioners invited our attention to the order dated 2nd May, 2022 issued by the Collector, Aurangabad directing the authorities to take action to remove the petitioners from their respective structures from 8th May, 2022 onwards and to demolish these encroached structures.

5. Perusal of the judgment rendered by this Court on 20th January, 2022 clearly indicates that all contentions raised by the petitioners therein including notices not having been issued and their alleged right to alternate accommodation have been dealt with by this Court and rejected the writ petition. Special Leave to Appeal filed by those petitioners who are similarly situated is also dismissed by the Hon'ble Supreme Court on 16th March, 2022. In our view, the judgment delivered by this Court and the order passed by the Hon'ble Supreme Court in Special Leave to Appeal

would apply to these petitioners also. We are thus not inclined to interfere with the order dated 2nd May, 2022 passed by the learned Collector, Aurangabad.

6. We accordingly direct the petitioners and other occupants who are staying with them in the impugned structures to handover peaceful and vacant possession of their respective structures to the learned Collector, Aurangabad on or before 10th May, 2022 by 11.00 a.m. It is made clear that no further extension would be granted in any circumstance.

7. It is made clear that if the structures are not vacated by the petitioners or the occupants residing with them in the impugned structures, the respondents would be at liberty to take forcible possession and if necessary, with assistance of police.

8. It is also made clear that this order granting indulgence to vacate the premises till 10th May, 2022 shall not be used as precedent in any other matters.

9. It is made clear that the petitioners and the others who are claiming through them, who are staying in the impugned structures are allowed to occupy the premises till 10th May, 2022 and vacate the same by 11.00 a.m., are allowed to occupy the same at their own risk and cost. If

any untoward incident takes place in the impugned structures, they will not hold the respondents responsible for the same.

10. It is made clear that those parties who are not before this Court in this petition are not protected by this order.

11. Writ petition is dismissed in aforesaid terms.

12. No order as to costs.

(S. G. MEHARE, J.)

(R. D. DHANUKA, J.)

JPC