

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

WRIT PETITION NO. 12043 OF 2022

Sudam Sambhaji Dhawale and others	... Petitioners
Versus	
The State of Maharashtra and others	... Respondents
....	
Mr. L. K. Pradhan, Advocate for petitioners	
Mr. S. B. Yawalkar, AGP for respondents - State	
....	

**CORAM : MANGESH S. PATIL AND
Y. G. KHOBRAGADE, JJ.**

DATE : 01.12.2022

PER COURT :-

Heard the learned advocate for the petitioners and the learned AGP.

2. The petitioners are seeking regularization of their possession over the Government gairan/forest land as per the various Government Resolutions dated 27.12.1978, 12.09.1979, 28.11.1991 and 29.06.2010 and as per their application dated 26.09.2022 filed with the respondent – Collector.

3. Learned advocate for the petitioners submits that the petitioners are not seeking to get themselves declared as encroachers and entitled to regularization of the encroachment. They are merely seeking a direction to the Collector to decide their application dated 26.09.2022 on its own merits and in view of the revenue record as also the judgment and decree passed in their favour in R.C.S. No.518 of 1997. He submits that even the appeal preferred by the State against the decree, has been dismissed confirming the decree for injunction in their favour.

4. The learned AGP expresses anxiousness to issue any direction to the Collector to decide the petitioners' application in view of the fact that this Court at the Principal Seat has been ceased of Suo Motu PIL No.2 of 2022, wherein, the directions have been issued to the State for removal of encroachments from the gairan land in view of the decision of the Supreme Court in the case of ***Jagpal Singh and others vs State of Punjab and others – (2011) 11 SCC 396***. He submits that even there is direction not to undertake any regularization without the leave of the Court.

5. Needless to state that, no order which would run counter to the order passed in *Suo Motu* PIL No.2 of 2022 dated 06.10.2022 can be passed. In that matter, the following order is passed.

“5. In view of the aforesaid satisfaction reached by us, we make the following order:-

(i) There shall be no further regularization of any encroachment by any authority/officer of the Government until further orders of this Court, except in the matter directed by the Supreme Court in Jagpal Singh (supra).

(ii) The Government of Maharashtra shall file a further affidavit indicating therein the basis for regularization of 12,652 encroachments till 12th July 2011 within 4 (four) weeks from date.

(iii) In such affidavit, the Government of Maharashtra shall refer to the policy taken by it for removal of 2,22,153 encroachments on Gairan together with the road-map which it proposes to draw so as to facilitate removal of all encroachments by the end of this year.

(iv) The Government of Maharashtra shall ensure that no further encroachments on Gairan lands take place, failing which this Court may be constrained to take appropriate steps against the persons responsible for checking that such encroachments do not take place.

(v) It would be desirable if a notice is issued by the Government of Maharashtra informing all its officers

posted in the appropriate departments to keep a check on further encroachments on Gairan lands.”

6. Obviously, we have not been called upon to direct the Collector to regularize petitioners' encroachment. The direction is being sought merely to direct the Collector to decide the petitioners' application on its own merits.

7. We, therefore, do not see any impediment in directing the Collector to consider and decide the petitioners' application dated 26.09.2022 on its own merits. We are not expressing anything about the merits of the petitioners' claim.

8. Needless to state that the Collector would also be bound by the directions of this Court in *Suo Motu PIL No.2 of 2022*. He may take any decision in accordance with law, Government Resolutions, the directions in the case of *Jagpal Singh (supra)* and the order in *Suo Motu PIL No.2 of 2022*.

9. The writ petition is disposed of.

[Y. G. KHOBRADE, J.]

[MANGESH S. PATIL, J.]