

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

949 WRIT PETITION NO.12474 OF 2022

MADANSING VIJAYSING PARDESHI
VERSUS
THE STATE OF MAHARASHTRA THROUGH
ITS PRINCIPAL SECRETARY AND OTHERS

...
Advocate for Petitioners : Mr. Bhushan I. Mahajan
AGP for the respondent – State : Mrs. M.A. Deshpande
...

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

DATE : 8 DECEMBER 2022

PC :

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

2. The petitioner is seeking directions to the respondent No.2 – Collector to take appropriate decision on his application for regularization of their right over the property in which he is being alleged to be encroacher and the general eviction order as has been issued for his eviction.

3. The learned advocate for the petitioner submits that the petitioner would be satisfied if only a direction is given to the Collector to decide his application for regularization of his right over the property on its own merits in accordance with law.

4. The learned AGP submits that, this Court, at the Principal Seat in Public Interest Litigation No.56 of 2022 and Suo Motu Public Interest Litigation (PIL) No.2 of 2022 has been ceased with the matters regarding encroachments over the gairan lands and implementation of the directions of the Supreme Court in the matter of **Jagpal Singh and others vs State of Punjab and others; (2011) 11 SCC 396**. He submits that, when a specific direction has been given to the State in those PILs for removal of encroachment, this Court should not pass any order which would tantamount to an exception to the directions given in that PILs.

5. Indeed, the State is under obligation to remove encroachments from the Government gairan lands as per the directions of the Supreme Court in the matter of **Jagpal Singh** (supra).

6. In Suo Motu PIL No. 2 of 2022, by order dated 06.10.2022, the Court at the Principal Seat in para 5, has issued following directions:

“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 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."

7. It is apparent that as far as the regularization is concerned, the order puts fetters on the powers of the authority/officer of the Government to undertake any regularization until further orders of the Court and except in the matter directed in the case of **Jagpal Singh** (supra). Whether the petitioner's claim is covered by the case of

Jagpal Singh (supra), is the matter to be pondered upon and decided by the respondent authorities.

8. We indeed cannot pass any order or issue direction which would run counter to the decision/order passed in Suo Motu PIL No.2 of 2022.

9. We, therefore, dispose of the writ petition by directing the respondent – Collector to take appropriate decision on the application of the petitioner in accordance with law and the decisions in the matter of **Jagpal Singh** (supra) and Suo Motu PIL No.2/2022.

[Y. G. KHOBRADE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/