

Diksha Rane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 56 OF 2022

Tanaji Ashok Patil and anr. ..Petitioners
vs.
The State of Maharashtra thr.
Its Rural Development Dept. & ors. ..Respondents

Ms. Madhavi Ayyappan a/w. Mr. Krishna Agrawal i/b. Talekar
& Associates for petitioners.
Mr. P. P. Kakade, GP a/w. Mr. M. M. Pabale, AGP for
respondent nos. 1 to 4 & 7.
Mr. Sandeep S. Koregave for respondent no.10.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

HEARD ON : JUNE 27, 2022.

JUDGMENT ON : JUNE 30, 2022.

JUDGMENT (PER M. S. KARNIK, J.) :

1. The petitioners have instituted this PIL petition seeking direction to the respondent nos. 1 to 9 to take immediate steps for removal of encroachments over the Government gairan lands bearing Gut Nos. 708, 623, 573/A and 292 situated at village Halaswade, Taluka Karveer, District Kolhapur as per statutory mandate and the government policy contained in Government circular dated September 7, 2010, Government Resolution (hereafter 'GR' for short) dated July 12, 2011 and GR dated October 10,

2013, all issued by the Revenue and Forest Department.

2. The petitioner has leveled specific allegations against the respondent no.10, an advocate and erstwhile member of the Grampanchayat. According to the petitioners, the respondent no. 10 has started construction of a three-storied RCC residential building on Gut No. 623 admeasuring 1500 sq.ft. without appropriate permission on gairan land. Encroachment on Government land is alleged.

3. When the matter had come for admission on April 4, 2022, we had requested Mr. Kakade, learned Government Pleader to obtain instructions as regards the action taken against the respondent no. 10, if any, for such alleged violation on his part. We had called upon learned Government Pleader to place the action taken report before us within two weeks. Notice was directed to be served on the respondent no.10 through regular mode.

4. In compliance of the directions, learned AGP has placed on record the communication dated April 14, 2022 addressed to the Chief Executive Officer, Zilla Parishad, Kolhapur by the Block Development Officer (Group-1) (hereafter 'BDO' for short), Panchayat Samiti, Karveer, as regards the action taken in respect of the alleged unauthorized construction made by the respondent no.10. It is pointed out that the respondent no.10 is carrying out unauthorized construction over the Government gairan land bearing Gut No. 623 at village Halaswade, for which he has

not obtained any building permission and NOC from Grampanchayat. Accordingly, the work of construction was stopped by issuing notices dated September 3, 2021, September 27, 2021, October 25, 2021 and January 5, 2022 on four occasions as the construction was being carried out without there being permission issued by the Grampanchayat. At the level of the Panchayat Samiti, the Sarpanch and Gramsevak issued notice on April 11, 2022 for stopping the construction. Accordingly, the Grampanchayat has stopped the work by issuing notices under Section 52 and 53 of the Maharashtra Gram Panchayat Act, 1958. The BDO, Panchayat Samiti, Karveer along with the Extension Officer (Panchayat), Sarpanch, Up-sarpanch, Gramsevak, Police Patil visited the site of construction and ensured that the construction was stopped. Similarly, an undertaking in writing that the respondent no.10 shall not construct any further is obtained. A notice under Section 52 (7) (5) of the Maharashtra Gram Panchayat Act, 1958 for removal of the unauthorized structure within a period of seven (7) days has been issued to the respondent no. 10 by the Grampanchayat. It is further stated that in case necessary action is not taken within the stipulated period, the Panchayat shall be taking appropriate steps for removal of the unauthorized construction with the help of its officers and servants whereas the cost incurred in that regard shall be recovered from the concerned.

5. Respondent no. 10 is duly represented. Learned counsel for the respondent no.10 at the outset submits that he has not received any such notice of removal. An affidavit-in-reply has been filed on behalf of respondent no.10. We shall advert to the stand of the respondent no.10 in a while. Suffice it to observe that in compliance with the order dated April 4, 2022 passed by this Court, we find that necessary action has been taken by the concerned authorities against the alleged unauthorized construction made by the respondent no.10. It is now for the respondent no. 10 to raise appropriate challenge, if he so desires, to the steps taken for removal of unauthorized construction before the appropriate forum. We may not be understood to have made any observations on the merits of the challenge as regards the action taken against the respondent no.10. Should the respondent no.10 approach the competent forum challenging the notices and the action taken by the concerned authorities against him for the alleged unauthorized construction, the challenge shall obviously be dealt with on its own merits and in accordance with law.

6. Let us now test whether the PIL petition is filed *bona fide* or is an outcome of settling a personal score as contended by learned counsel for the respondent no.10.

7. Before adverting to the averments made in the PIL petition, it is material to reproduce the reliefs prayed for by the petitioners:-

"A. To direct the respondent Nos. 1 to 9 to take immediate steps to remove the encroachments over the Government Gairan lands bearing Gut Nos. 708, 623,573/A and 292 situated at village Halaswade, Tal. Karveer, Dist. Kolhapur as per statutory mandate contained in Section 53 of the Maharashtra Village Panchayats Act of 1948 and the Government policy contained in Government circular dated 07.09.2010, Government Resolution dated 12.07.2011 and Government Resolution dated 10.10.2013, all issued by the Revenue and Forest Department, Mantralaya, Mumbai by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be;

B. To direct the respondent Nos. 4 and 9 to lodge a criminal complaint against all such persons who are found to encroach over the Government Gairan lands bearing Gut Nos. 708, 623,573/A and 292 situated at village Halaswade, Tal. Karveer, Dist. Kolhapur in accordance with Government circulars dated 07.09.2010 and 10.10.2013 issued by the Revenue and Forest Department, Mantralaya, Mumbai-32, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be;

C. To direct the respondent no.1 to take disciplinary action against the respondent Nos.4, 8 and 9 and all other erring officers who have failed to discharge their statutory duties, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be;

D. To restrain the encroachers including the respondent No.10 from carrying out further construction over Gut No.623, pending hearing and final disposal of the writ petition."

8. A cursory glance reveals that so far as prayer clauses 'A' to 'C' are concerned, an element of public interest is involved as Government gairan lands are encroached and the petitioners, seeking action against such unauthorized encroachment, which is in public interest is understandable. However, a scrutiny of the averments made in the PIL petition creates a doubt about the *bona fide* of the petitioners, as it appears that this PIL petition is directed mainly against respondent no.10 who is alleged to have made unauthorized constructions on Gut No. 623. Prayer clause (D) of the PIL petition seeks restraining orders against the encroachers including the respondent No.10 from carrying out further construction over Gut No.623, pending hearing and final disposal of the writ petition.

9. Learned counsel for the petitioners was at pains to point out that the petitioners along with the other villagers have been agitating against such unauthorized constructions for years together but no concrete steps by the concerned authorities were taken to remove these encroachments. In paragraph 13 of the PIL petition, the petitioners refer to a report submitted by the Tehsildar, Karveer to the BDO, Panchayat Samiti, Karveer, by a communication dated January 31, 2015 about there being 82 encroachments on Gut Nos. 708, 626, 573/A and 292 in the village. The BDO forwarded the report of the Tehsildar to the Sarpanch/Village Development Officer of the concerned Grampanchayat for carrying out necessary

enquiry and taking necessary steps. After much persuasion and protest by the villagers, the Tehsildar, Karveer, granted permission to Gramsevak, Halaswade to remove the illegal encroachments in the gairan and gaothan lands as per GRs dated July 12, 2011 and October 10, 2013 and submit a report to that effect vide communication dated August 3, 2017. It has then been averred in paragraph 19 that the BDO directed the Sarpanch and Village Development Officer, Grampanchayat Halaswade, to take appropriate steps for removal of the encroachments as per the aforesaid GRs. In paragraph 20 of the PIL petition, it is averred that the measurements of the lands were completed on December 14, 2018 which is evident from the measurement map drawn in respect of Gut no. 623. It is the petitioners' case that information was received by the petitioner no.2 under the Right to Information Act on August 22, 2017 that there are 169 encroachments on the Government gairan lands. Upto paragraph 24, the petitioners make out a case of failure on the part of the authorities to remove the encroachments and restore Government gairan lands to its original state. However, from paragraph 25 onwards upto paragraph 37, the petitioners allege that the respondent no.10 started constructing a 3 storied RCC residential building on Government gairan lands. It is averred that the respondent no.10 is the only advocate from the village and an erstwhile member of the Grampanchayat. Learned counsel for the petitioners submitted that though the

petitioners have been pursuing a genuine cause for years together, upon noticing that the respondent no.10 recently started raising an illegal construction, are left with no other alternative but to approach this Court seeking action for removal of the unauthorized constructions.

10. But for the affidavit-in-reply filed on behalf of the respondent no.10, we would have proceeded to entertain the PIL petition at the instance of the petitioners. We have already recorded that appropriate action has been initiated against the respondent no.10 which obviously will be taken to its logical end subject to following the due process of law and upon abidance with the judicial orders passed, if any.

11. Learned counsel for the respondent no.10 invited our attention to the averments made in the affidavit-in-reply filed on his behalf. He invited our attention to the various documents annexed thereto. It is submitted that this PIL petition is more in the nature of a personal interest litigation. Respondent no. 10 in his affidavit stated that there are as many as 33 civil, revenue and criminal proceedings amongst the family members of the petitioner no.1, who are litigating to get their lawful share in their ancestral property. Some of the heirs alleged that the lands in which they have a rightful share was grabbed by the petitioner no.1 and his branch. Respondent no.10 being an advocate is representing the side of the family members who are against the petitioner no.1 and his branch in these

33 cases. Our attention is invited to Exhibit 'RA-1' to demonstrate that the petitioner no.1's father is a defendant in cases which are listed at Serial nos. 1 and 2 whereas petitioner no.1 is himself a party in revenue and civil cases listed at Serial nos. 22, 23, 27, 31 and 33. Petitioner no.1's father – Ashok S. Patil is one of the appellant in Second Appeal filed before this Court listed at Serial no. 30. Various orders and documents are placed on record to demonstrate that the respondent no.10 is an advocate representing the heirs contesting against the petitioner no.1/his branch. It is pertinent to note that the petitioners have averred that the villagers have been agitating against these illegal encroachments on gairan lands for years together. From the PIL petition, it is seen that the villagers were taking up this cause with the concerned authorities for a long time. Even the information received by the petitioner no.2 under the Right to Information Act regarding the details of the encroachments was in the year 2017. Surprisingly, the petitioner no.1 along with the petitioner no.2 has filed this PIL petition only on January 27, 2022. According to the petitioners, the respondent no.10 started construction allegedly over gairan land. The PIL petition though generally proceeds on the footing that the petitioners seek action against encroachments over the gairan lands, however, we cannot help but notice how the respondent no.10 is singled out, as specific allegations and material particulars are provided mainly against the

respondent no.10. Though there is a report on record which lists out details of the encroachments made, it is only the respondent no.10 who is made party respondent in this PIL petition. An attempt was made by learned counsel for the petitioners, thereby submitting that petitioners are willing to implead all concerned as party respondents. We are not inclined to accept this request made in the present facts. We, therefore, have no hesitation in holding that this PIL petition is in the nature of a personal interest litigation and there undoubtedly is substance in the contention of the respondent no.10 that he is impleaded as a result of personal animosity the petitioner no.1 has towards him as he represents the parties contesting against the petitioner no.1 in the civil and revenue proceedings which we have referred to hereinbefore.

12. In the PIL petition, the petitioner no.1 has stated that he is an agriculturist and social worker by profession and that he has taken up several issues for the betterment of the village. There is not even a whisper about the pending litigations where the respondent no.10 is representing the branch of the family members litigating against petitioner no.1. Petitioner no.2 claims to be a social worker and the President of Bahujan Samaj Party of Kalhapur South and that he has been working for the masses and landless. Petitioner no.2 has averred that he is elected member of Grampanchayat and continues to officiate as such. In such view of the matter, though the petitioner no.2 was aware of

the encroachments since long and definitely from 2017, it is only in January 2022 that he approached this Court and that too with averments singling out the respondent no.10. We, therefore, have no hesitation in doubting the *bona fides* of the petitioners and that the petitioners are more interested in pursuing their cause against the respondent no.10 in the garb of the present PIL petition. We cannot permit this all important tool of Public Interest Litigation intended for larger public good being misused in such a brazen manner.

13. This PIL petition is accordingly dismissed with no order as to costs.

14. Though we are not inclined to entertain this PIL petition at the instance of the petitioners, now that we have noticed large scale encroachments on gairan lands belonging to Government, we cannot turn a blind eye to these illegalities which are so rampant. We, therefore, propose to take *suo motu* cognizance of the issue and accordingly direct the Registry to register a *suo motu* Public Interest Litigation and place these proceedings before us on **July 18, 2022, fairly high on board.**

(M. S. KARNIK, J.)

(CHIEF JUSTICE)