

AGK

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

WRIT PETITION NO. 7683 OF 2017

Rajendra Yashwantrao Ghadge ...Petitioner

V/s.

The State of Maharashtra & Ors. ...Respondents

Dr. Uday Warunjikar with Mr. Saurabh Butala for
the petitioner.

Mr. B. V. Samant, AGP for respondent nos. 1 to
3/State.

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

DATE: JUNE 8, 2022

P.C.:

1. This writ petition dated 28th April 2017 was presented before this Court by the petitioner seeking *inter alia* the following relief: -

“(a) This Hon’ble Court may be pleased to issue a Writ of Mandamus and/or writ in the nature of Mandamus or any other Writ, order or direction;

(b) This Hon’ble Court may be pleased to direct the Respondents to carry out survey of illegal and unauthorised construction across riverbed of Dev River;

(c) This Hon’ble Court may be pleased to take action against illegal and unauthorised construction carried out in and across river bed of Dev River;

(d) This Hon’ble Court may be pleased to direct the Respondents to remove debris and other wastes dumped in and around Dev River and to ensure natural flow of water;

(e) This Hon'ble Court may be pleased to direct the Respondents to survey, measure and fix boundaries and width of the Dev River and restore Dev River to its original condition by removing all encroachments and debris;"

2. A reply-affidavit dated 22nd February 2019 has been filed on behalf of the respondent no. 4, Pune Municipal Corporation. Paragraphs 3 to 5 of the reply-affidavit are relevant for the purpose of a decision on this writ petition and are accordingly set out hereunder: -

"3. I say that in view of the order dated 04/01/2019 passed by this Hon'ble Court, the executive engineer, zone 3 of PMC along with the deputy engineer and branch engineer were deputed to inspect the said site along with the officers from the District Collector Pune. Accordingly, the survey was conducted by aforesaid officers of PMC along with the Tahasildar Pune on 30/01/2019. Perusal of said report would show that the nallah bed has been protected by construction of retaining wall as well as reserving the portion on both sides of said nallah for garden. Building permissions are sanctioned beyond the said reserve portion of nallah garden.

4. I say that there are around six road crossings on the said nallah where PMC has constructed culvert. The corporation has carried an overall survey of natural drain water channels of the city in the year 2006-07 through an institution namely Primove. The subject nallah has been considered at node G-101 to G-144 and the required design (length, width and depth) of subject nallah at different sections as also been considered. The report also shows that there is no encroachment in the said nallah bed. Similarly no debris or waste discharge has been found in the said nallah bed, however the drainage line which is passing through the subject nallah bed was found broken at certain places and few garbage accumulations were also found at the time of said visit. Annexed here to marked and **Exhibit 'R-1'** is the copy of visit report prepared by PMC along with the photographs referred with there in.

5. I say that since there is no unauthorised construction or discharge of waste is found, the cause of present Writ Petition does not survive. However, during the survey a small tin shed beyond the nallah bed was found near survey No. 81 wherein few cattle's were also found. Since no drainage line was connected to the said unauthorised structure, the discharge

from said cattle house was found directly open in the nallah bed. PMC has already given a notice to the unauthorised structure of shed tin shed being Outward No. BP 3/5023 dated 31/1/2019. Annexed here to marked and **Exhibit 'F-2'** is the copy of notice dated 31/1/2019."

3. The petitioner has not filed any rejoinder-affidavit. In view thereof, there is no rebuttal of the contents of the reply-affidavit and the same are regarded as correct. Since the respondent no. 4 has categorically averred that there is no unauthorized construction or encroachment, question of granting relief in terms of prayer clauses (b) and (c) as well as part of prayer clause (e) does not arise. Such prayers are rejected.

4. However, since it is admitted by the respondent no. 4 that "few garbage accumulations" were also found at the time of site visit, the respondent no. 4 is directed to keep the natural flow of river water free from any obstruction. The respondent no. 4 is also directed to ensure that neither garbage or debris is dumped in the river bed nor any encroachment of the river banks takes place. Also, it would be appropriate to direct the respondent no. 4 to repair the broken drainage line as early as possible, if not already repaired. Ordered accordingly.

5. The writ petition stands disposed of. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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