

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

918 WRIT PETITION NO.6776 OF 2023

**KEVALRAM GHANSHAMDAS WADHVANI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

WITH

REVIEW PETITION NO.202 OF 2023

IN

WRIT PETITION NO.3828 OF 2020

(Not on the Board. Mentioned. Taken on the Production Board)

**KEVALRAM GHANSHAMDAS WADHVANI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Shri Shailendra S. Gangakhedkar, Advocate for the Petitioners.

Shri S.B. Yawalkar, AGP for the Respondents/State.

Shri R.S. Deshmukh, Senior Advocate a/w Shri Amol Joshi,
Advocate i/by Shri Devang R. Deshmukh, Advocate, for the
Caveator in Writ Petition and for Respondent 5 in Review
Petition.

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**CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.**

DATE :- 23rd June, 2023

Per Court :-

1. The Review Petition is filed by Petitioner No.1 in

Writ Petition No.6776/2023. The grievance is that our order dated 09.06.2023 passed in Writ Petition No.3828/2020, should be reviewed.

2. We have heard the extensive submissions of the learned Advocate Shri Gangakhedkar on behalf of the Petitioners, the learned Senior Advocate Shri Deshmukh, who appears on behalf of the Petitioner in Writ Petition No.3828/2020/ Respondent No.5 in the Review Petition on behalf of the learned Advocate Shri Devang Deshmukh, who has filed the caveat in the petition.

3. Vide our order dated 09.06.2023, we have recorded in paragraphs 3 and 4 as under:-

“3. *The learned Advocate for the Petitioner has taken instructions and submits that this petition stands worked out. However, he prays that the Revenue Authorities may be directed to complete the process of removal of encroachment within a time frame since such a drive was resorted to even in 2016 and there has been no development thereafter inspite of the directions of this Court vide order dated 18.08.2016 passed in WP No.4764/2016 filed by the present Petitioner.*

4. *In view of the above, this petition is disposed off. Needless to state, the Revenue Authorities shall refrain from passing on the buck from one office to the other and shall follow the due procedure laid down in Law for the removal of encroachment. We caution the Revenue*

Authorities that if subsequently it is brought to our notice that there has been unnecessary delay or lapses on the part of the Respondents, we would take recourse to the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005, if we are convinced that a particular Officer is guilty of causing deliberate delay.”

4. It is, thus, obvious that what we have expressed is that due procedure laid down in law for removal of encroachment is to be followed in letter and spirit. It would be too much for the litigating parties to draw an inference from our order that we have directed the Revenue Authorities to keep the law aside and proceed hastily. That is not the import of our order inasmuch as, this could never have been ordered by any court.

5. Today, the Petitioners before us have a host of reasons to canvass the prayers put forth. In the first place, we have declined to entertain the issue of encroachment considering the conspectus of the matter and various facets which have to be taken into account. Earlier, this Court has passed a similar order dated 18.08.2016 in Writ Petition No.4764/2016 (***Tejas Construction and Infrastructure Pvt.Ltd. vs. State of Maharashtra and others***) directing the State Government to take an appropriate

decision or issue appropriate directions/ guidelines and on receipt of such guidelines, the Collector was directed to take an appropriate decision. It was also recorded that if an adverse order is passed as against any of the shopkeepers, the Petitioner being one of them, they would be at liberty to avail of the remedies as are permissible in law.

6. The learned Senior Advocate points out the earlier judgment dated 27.07.2010 delivered by this Court [Coram: B.R. Gavai (as His Lordship then was) and S.V. Gangapurwala (as His Lordship then was), JJ.] in Writ Petition No.4658/1999 and in connected matters (*Chandrakant Sitaram Jain and others vs. The State of Maharashtra and others*), and more particularly paragraphs 13, 14 and 15, which read as under:-

- “13. *Since the petitions involve various disputed facts, we are not inclined to enter into the said questions inasmuch as we find that without the parties being permitted to lead evidence in that behalf, it will not be possible to decide rival claims of the parties. We find that such an exercise would not be permissible in our extraordinary jurisdiction under Article 226 of the Constitution of India.*
14. *However, in view of settled position of law, we are inclined to grant the limited relief that is sought by the petitioners to the effect that the petitioners will not be evicted without following due process of law. We leave it to the authorities as to what would be the due process*

of law in facts of the case. However, with a rider that such process should be one which has authority of law.

15. *We, however, make it clear that if the better counsel prevails upon the petitioners, the petitioners should be always at the liberty to approach the Municipal Council for grant of alternate accommodation and the Municipal Council would consider their request with all the earnesty.”*

7. Considering the chequered history and the problem of encroachment dogging the Chalisgaon Municipal Council and in turn the office of the District Collector, Jalgaon, we are at pains to record that very little has been done by the office of the District Collector, Jalgaon. Had appropriate steps been taken earlier when the first judgment was delivered in ***Chandrakant Sitaram Jain (supra)***, the matters would not have repeatedly reached this Court. So also, the Petitioners before us have preferred the Civil Suits and we are informed by the learned Senior Advocate, on instructions, that in none of these suits, there has been any injunction order issued by the Trial Court. Per contra, the learned Advocate Shri Gangakhedkar submits that there are injunctory orders in force even today. The District Collector has been directed by the State to initiate appropriate steps in the light of the communication dated 03.03.2017.

8. In view of the above, it is obvious that no ground for reviewing the order passed by this Court, has been made out. Consequentially, **the Review Petition stands dismissed.**

9. In view of this order and our earlier orders, **Writ Petition No.6776/2023 would not survive and stands disposed off.**

kps

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)