

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

73 WRIT PETITION NO.14725 OF 2023

**KESHAV SHANKAR WANI
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
AND
WRIT PETITION NO. 12863 OF 2022**

**ANIL DHANRAJ JAIN AND ANOTHR
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
AND
WRIT PETITION NO.13263 OF 2022**

**KISHOR RAMRAO PATIL
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS**

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Advocate for Petitioners : Mr. Bolkar Yogesh B.
AGP for Respondents State: Mr. P. S. Patil

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

DATE : 4th December, 2023

ORDER:

1. In Writ Petition No. 14725 of 2023, the Petitioner has received notice dated 21.11.2022 calling upon him to remove encroachment /structures. He has tendered his reply dated 30.11.2022 to the Additional District Collector and Sub Divisional Officer, Dhule. Thereafter, no orders have been passed. After a period of 12 months, the Petitioner has approached this Court on an apprehension that

something is likely to happen. There is nothing placed on record to indicate that there is any order passed by the Additional District Collector.

2. In a judgment delivered on 24.02.2014 (to which one of us, Ravindra V. Ghuge, J., is a party) in Writ Petition No. 1440 of 2010 (Sanjay Anand Chawdhari Vs. The Collector, Dhule and ors.), this Court has recorded in paragraph Nos. 9, 10, and 11 as under:

"9. We clarify that all those who have been proceeded against or will be proceeded against by terming them as encroacher, or against whom any orders are passed under section 50 or otherwise, are at liberty to approach such courts as are permissible in law or such of the authorities which are prescribed for redressal of their grievance and establishing their rights. We clarify that we have not expressed any opinion on whether the petitioner having termed them as encroachers that all such applicants can be termed as encroachers. We also do not express any opinion on the contents of the affidavits filed on behalf of the State. We are of the opinion that passing of the order and drastic in nature, served no purpose. After that order is passed, no action was taken because of the further interim orders of this Court. Under these circumstances, we clarify that all such authorities who have been empowered by law to proceed against the parties like the applicants may proceed against them, if they have not already proceeded against. The necessary action to be taken within a period of three months from today. In the event, any orders are made against the applicants they ought to be passed after giving the applicants an opportunity of being heard and placing such material as is relevant for the purpose of the limited inquiry. Thereafter, it would be open for the Applicants to avail of all such remedies are are provided by law. In the event, any of the applicants wish to

approach any civil court or competent authority they may do so and the orders passed on the civil applications shall continue for a period of eight weeks from today so as to enable them to approach such court or authority.

10. We clarify that we have passed the order of continuing the ad interim arrangement only to facilitate the applicants to approach the competent court or authority. Beyond that, we have not expressed any opinion on the contentions raised in these civil applications or the documents appended thereto. The writ petition and the civil applications are disposed of.

11. Needless to clarify that if Mr. Uddhav Ukha Kotkar (applicant in Civil Application No.3851 of 2010), who is stated to have filed Regular Civil Suit No.196 of 2007 having lost before the trial Court, because of decree of dismissal of the suit dated 9th April, 2012, then, our order will not prevent him from filing any appeal if he has not already filed, in accordance with law. We would like a public spirited and vigilant party like the petitioner to also appear on his own before the competent authority or the courts so as not to allow the parties like Mr. Kotkar to obtain any ex parte ad interim or interim orders. In the larger public interest, it is not as if parties like the petitioner can urge that their duty, obligation is discharged by approaching this Court. If the court makes over the matter to some other court, parties like the petitioner are expected to appear before that court. Public interest and vigilance need not be emphasised only in the higher courts."

3. In view of the above, **this Petition is disposed off** with a direction to Respondent No.4 to consider the reply of the Petitioner and by following the due procedure laid down in law, pass an appropriate order within a period of 45 days from today, keeping in view the reproduced observation herein-above from our judgment dated 24th February, 2014 (supra).

4. The procedure as contemplated in law before passing the order on the show cause notice dated 21.11.2022, shall be followed by the concerned authorities.

5. In view of the directions set out herein above, we pass the same order in the two Petitions bearing Writ Petition No. 12863 of 2022 and Writ Petition No. 13263 of 2022.

6. Needless to state, after the competent authority passes the order, if the Petitioners have any grievance, the liberty available to them in terms of Paragraph No.9 of the order dated 24.02.2014 would be available.

7. In the event the authorities conclude that these Petitioners are encroachers, appropriate notice alongwith a time frame of minimum 15 days be granted to them for voluntary removal of their encroachments. If not, the authorities would initiate coercive steps.

8. All these **Petitions are disposed off.** Pending **Civil Applications**, if any, would not survive and **stand disposed off.**

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)