

Digitally
signed by
PURTI
PRASAD
PARAB
Date:
2023.10.25
10:44:02
+0530

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

WRIT PETITION NO. 13057 OF 2022

Digambar Baban Darade and Ors.

....Petitioners

V/s.

The State of Maharashtra and Ors.

...Respondents

Mr. Ajinkya Vilas Taskar i/b Mr. Narayan Gopinath Rokade for Petitioners.

Mr. A.I. Patel, Addl. G.P. a/w Ms. K.N. Solunke, AGP for State-Respondents.

CORAM : K.R. SHRIRAM &

NEELA GOKHALE, JJ.

DATED : 19th OCTOBER 2023

P.C. :

1. The villagers are stated to be farmers and having agricultural land near the North-South Road - Bokaddare-Gajarwadi Road, Niphad, Nashik. It is alleged in the petition that one Mr. Chandrakant Ramkrishna Sangale purchased 12 R of land and thereafter converted the land for non-agriculture purpose and later constructed hotel by encroaching upon the public road which is located towards the eastern side of Gut No. 117. It is also alleged that despite the representation/complaint in the form of the notice dated 28th July 2022 no action has been taken and this petition came to be filed on or about 23rd September 2022.

2. An affidavit in reply has been filed by one Mr. Sharad Barku Ghorpade, Tahsildar, Niphad affirmed on 6th July 2023 in which the stand taken by Respondent No.3 is that petitioners should file complaint/

application before Respondent No.3 and then only Respondent No.3 will be able to take action against any alleged encroachments. In the affidavit it is further stated that since the alleged encroacher is not party to petition, the petition is bad for non-joinder of necessary parties. In the affidavit it is also stated that petitioners be directed to file necessary complaint/application alongwith documentary evidence against the concerned encroachers and such application shall be filed before Respondent No.3 to enable Respondent No.3 to take necessary action.

3. We are rather aghast with this attitude and approach of Respondent No.3. Respondent No.3 only wants to shirk his responsibility. Nothing prevented Respondent No.3 from acting on the notice dated 28th July 2022, copy whereof is at Exhibit "C" to the petition. In fact, Respondent No.3, if he was only a conscientious government employee, should have acted upon receiving the notice dated 28th July 2022 or atleast on the copy of the petition that was served upon him and should have made enquiries and taken necessary action than taking an adversarial stand with petitioner. The allegations in the petition is that there is encroachment in public land and Respondent No.3 must be as much interested in preventing encroachments as petitioners. It does point towards want of diligence on the part of Respondent No.3. It makes us wonder - Is Respondent No.3 personally interested in the structure that is alleged to have encroached ?

4. Respondent No.2 is directed to look into the matter and within two weeks from the date of this order being uploaded, take necessary steps in accordance with law including directing Respondent No.3 to make necessary enquiries and take action against any party who has encroached on public land.

5. We clarify that we have not made any observations as to whether the said Mr. Chandrakant Ramkrishna Sangale has encroached on any public Road because he is not before us and he is not made party to the petition. Respondent No.2 and 3 shall make site inspection and take steps in accordance with law after hearing the parties. If there is encroachment, the same shall be removed and the local police shall deploy such number of personnel as required to ensure there is no law and order problem while encroachment, if any, is being removed.

6. In fact if such encroachments have come up, Respondent No.2 - the Collector, should hold Respondent No.3 responsible for not having those encroachments removed immediately. Perhaps government could consider monitoring through camera by installing functional CCTV system to immediately find out if there are any encroachments. By doing this government will not be giving any fresh rights on public land.

7. A copy of this order be also forward to the Principal Secretary,

Revenue Department as also the Chief Secretary, Government of Maharashtra and learned Advocate General of Maharashtra for information and necessary action.

8. Petition disposed.

(NEELA GOKHALE, J.)

(K.R. SHRIRAM, J.)