



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

179 WRIT PETITION NO. 789 OF 2024

BABASAHEB FAKKAD RANDHAWANE AND OTHERS

VERSUS

**THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY AND
OTHERS**

180 WRIT PETITION NO. 819 OF 2024

**LOKMANYA GRAMIN BIGARSHETI SAHAKARI PATH SANSTHA LTD
THROUGH ITS AUTHORIZED PERSONS**

VERSUS

**THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY AND
OTHERS**

181 WRIT PETITION NO. 828 OF 2024

ARUN GOVIND RAYKAR AND OTHERS

VERSUS

**THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY AND
OTHERS**

182 WRIT PETITION NO. 833 OF 2024

POPAT YOHAN SHINDE AND ANOTHER

VERSUS

**THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY AND
OTHERS**

183 WRIT PETITION NO. 844 OF 2024

SHARAD DAGDU MHASKE AND OTHERS

VERSUS

**THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY AND
OTHERS**

184 WRIT PETITION NO. 847 OF 2024

SAYYAD SHAUKAT ALI HAMID KAZI AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

185 WRIT PETITION NO. 855 OF 2024
SHASHIKANT CHANDRABHAN SASANE AND OTHERS

VERSUS

**THE STATE OF MAHARASHTRA THROUGH THE PRINCIPAL SECRETARY
AND OTHERS**

186 WRIT PETITION NO. 868 OF 2024
MACCHINDRA RAMDAS SAWANT AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

187 WRIT PETITION NO. 882 OF 2024
YOGESH BHAUSAHEB LOKHANDE AND OTHERS

VERSUS

**THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY AND
OTHERS**

WITH

WRIT PETITION NO. 883 OF 2024

188 WRIT PETITION NO. 884 OF 2024
IMRAN BHAIYYA SHAIKH

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

189 WRIT PETITION NO. 934 OF 2024
RAJU BABU SAYYAD AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

190 WRIT PETITION NO. 935 OF 2024
JADAHV SUBASH CHINTAMANI AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

Mr. N.B. Narwade, Mr. V.V. Wagh, Mr. V.D. Sapkal, Sr. Advocate i/b. Mr. A.B. Jagtap, Mr. A.G. Ambetkar, Mr. V.D. Hon, Sr. Advocate i/b. Mr. Vakil Afzal

Hussain M., Mr. T.Y. Sayyed, Advocates for the petitioners.

Mr.S.K. Tambe, Mr. S.B. Narwade, Mr. R.S. Wani, AGPs for the respondent/
State.

Mr.S.B. Parnere, Mr. A.D. Aghav, Advocates for the respondent – Zilla Parishad,
Ahmednagar.

Mr. H.F. Pawar, Advocate for R-9 in WP No. 789 of 2024.

Mr. P.R. Nangare, Advocate for R-7 & 8 in WP No. 789 of 2024.

**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.**
DATED : 29.01.2024

PC :-

01. In all these writ petitions, we had passed an order on 22.01.2024
as under :-

“1. In all these Writ Petitions, the Petitioners are aggrieved by the orders passed by the Block Development Officer, Panchayat Samiti, Pathardi, District Ahmednagar, by which, the Petitioners have been directed to voluntarily remove encroachments. The foundation of these orders is the order passed by this Court dated 17.08.2023 in Public Interest Litigation No.4/2022 (**Valmik Rajaram Garudkar vs. The State of Maharashtra and others**). It would be apposite to reproduce the directions issued by this Court below paragraph 4, here under:-

- “4. In view of the above, this petition is disposed off with the following directions:-
- [a] Respondent No.4 shall initiate steps as are permissible in Law, for the removal of encroachment.
 - [b] All the persons alleged to be the encroachers, shall be issued with appropriate notices, as is prescribed in Law.
 - [c] Respondent No.3 would personally monitor the abovesaid exercise and respondent No.4 would be bound to report to Respondent No.3, on weekly basis with regard to the progress made.
 - [d] All the stake holders and concerned persons would be granted adequate opportunity of representation and would be permitted to produce their title documents to indicate their ownership or their legally sustainable interest, over the concerned properties.
 - [e] The above stated exercise would be completed within a period of 150 days.”

2. The Block Development Officer, Panchayat Samiti, Pathardi, has entered an affidavit in reply dated 22.01.2024 along with several documents. During the course of this hearing, he frankly stated that though this Court has directed in the PIL (reproduced portion as above) that the Block Development Officer should pass final orders and initiate steps for removal of encroachment, the task is herculean and the Block Development Officer is finding the said task too heavy to be handled.

3. While these matters are being heard, we have been categorically informed by the Petitioners that the in-charge Block Development Officer Dr. Jagdish Palve had heard all these purported encroachers. However, after the regular Block Development Officer, namely, Mr. S.R. Kamble, was appointed, there was no further hearing conducted and on the basis of the hearing held by Dr. Palve, Mr. Kamble has passed the impugned orders. We do not find that such procedure could be countenanced. It is well settled that the Presiding Officer, who hears the parties, is supposed to pass an order. If the coram has changed, the new officer is supposed to conduct a re-hearing and pass orders. So also, considering the view of the Block Development Officer before us, we find that certain steps will have to be initiated in order to ensure that the superior officer could deal with this entire exercise, which appears to be burdensome and cumbersome for the Block Development Officer.

4. The learned AGP would take instructions from the District Collector, Ahmednagar and would address this Court. He prays that the disposed off PIL No.4/2022 be listed along with these matters on the next date.

5. The learned Advocate appearing for the Respondents/ Zilla Parishad and Panchayat Samiti (Block Development Officer), submits that time was granted to the purported encroachers to voluntarily remove their encroachments until today evening (22.01.2024). The Block Development Officer would extend the time until 31.01.2024.

6. Since the learned Senior Advocate Shri Sapkal is leading the learned Advocates in these matters, we expect him to have proper instructions from the briefing Advocates and convey to the Petitioners that those who have actually constructed by encroachment, they should remove such encroachments by themselves on or before 31.01.2024.

7. **List these matters on 29.01.2024 at 02:30 PM.**

8. We find it appropriate to record that the concerned Gram Panchayat will not extend any lease agreements with any of these Petitioners without the leave of this Court.

9. Since most of the parties are before us on the Advocate's notice, we grant liberty to the Petitioners to serve the Gram Panchayat through its Sarpanch and/or Gram Sevak by humdust.

10. Leave to add the original PIL Petitioner as the Respondent. Addition

be carried within two days. Shri H.F. Pawar appears on his behalf.”

02. We have heard the learned Sr. Advocates Mr. Hon and Mr. Sapkal and briefing Advocates on behalf of the respondents. We have perused the law laid down by the Hon’ble Supreme Court in **Jagpal Singh & Ors. Vs. State of Punjab & Ors., (2011) 11 SCC 396.**

03. It is, thus, obvious that after the directions were issued in Paragraph No.4 in **Valmik Rajaram Garudkar (Supra)**, which are reproduced hereinabove, the BDO issued notices to all the purported encroachers and started hearing each one of them and started receiving the documents that they were tendered. The BDO was expected to prepare reports on the case of each encroacher and submit the same to the CEO. Since the land was under the charge of the Grampanchayat and considering Section 53 of the Maharashtra Village Panchayats Act, the Panchayat had the power to remove such obstructions or the encroachments. Under sub-section 2-A, if the Panchayat fails to take action under sub-section 2, the Collector *suo moto* or on an application made in that behalf, can take action and submit a report to the Commissioner. The expenses of such removal is to be paid by the person who has caused the said obstruction or encroachment.

03. We were informed in the PIL that the BDO would be conducting the exercise of hearing the encroachers after issuance of notices, receive the documents tendered by them and submit a report to the CEO, who would take a final decision. What has actually happened is recorded in paragraph 3 of our order reproduced above, which would indicate that the In-charge BDO Dr. Jagdish Palve had heard the purported encroachers and thereafter, the regular BDO Mr. S.R. Kamble passed the impugned orders. This procedure is alien to law.

04. In view of the above, **all these petitions are disposed off** with the following directions :-

(a) Since a regular BDO is now appointed, namely Mr. S.R. Kamble, he would proceed to issue fresh notices to each of the encroachers granting them seven days' time to tender their written replies accompanied with all documents.

(b) He would prepare confidential reports of each hearing conducted by him in each case, with his impressions about the documents and submit the report in a sealed envelope to the CEO as directed in the order dated 17.08.2023 in the PIL filed by **Valmik Rajaram Garudkar (Supra)**.

(c) After the hearing of all the encroachers is concluded and the reports are submitted in sealed envelopes to the CEO, the

said Authority will open the envelopes at the same time and will be at liberty to follow the due procedure laid down in law for taking action on the said reports.

(d) Since we are informed that there are about 401 encroachers, we would grant 120 days time for completion of this entire exercise. If the BDO or the CEO finds itself short of time, an application with proper justification shall be tendered to the Court for seeking extension of time. However, this would not mean that the said Authorities would proceed slowly in these matters.

(e) After the final decision is arrived at by the Competent Authorities, if the encroachers are aggrieved by such decision, they would be at liberty to avail of remedies as would be permissible in law.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]