



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

902 WRIT PETITION NO. 5627 OF 2024

SHABANA HARUN SHAIKH AND OTHERS

VERSUS

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

...

Ms.Pradnya S. Talekar, Advocate i/by Talekar And Associates,
Advocate for the Petitioners.

...

AND

WRIT PETITION NO. 5031 OF 2024

SHARAD DAGDU MHASKE AND OTHERS

VERSUS

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

...

Shri Adinath B. Jagtap, Advocate for the Petitioners.

...

AND

WRIT PETITION NO. 5036 OF 2024

ANSAR GANI PATHAN AND OTHERS

VERSUS

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

...

Shri S.A. Patel i/by Shri Pradeep G.Tambade, Advocates for the
Petitioners.

...

AND

WRIT PETITION NO. 5633 OF 2024

ARUN GOVIND RAYKAR AND AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS
PRINCIPAL SECRETARY AND OTHERS

...
Shri Adinath B. Jagtap, Advocate for the Petitioners.

...
Shri S.K. Tambe, AGP for the Respondents/ State.

Shri S.B. Parnere, Advocate for Respondent Nos.3 to 5 in
WP/5031/2024.

Shri Prashant R. Nangare, Advocate for Respondent Nos.5 and 6
in WP/5036/2024 and for Respondent Nos.7 and 8 in
WP/5031/2024.

Shri H.F. Pawar, Advocate for Respondent No.9 in WP/5031/24
and for Respondent No.7 in WP/5036/24.

Shri Shivaji Rambhau Kamble, Block Development Officer,
Pathardi, District Ahmednagar, is present in the Court.

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

DATE :- 13th June, 2024

Per Court :-

1. We have perused the order passed by this Court dated 29.01.2024, in a bunch of Writ Petitions [Writ Petition No.789/2024 (*Babasaheb Fakkad Randhawane and others vs. The State of Maharashtra and others*)] and connected group of cases. In view of the vehement submissions of the learned

Advocates for the Petitioners, we have once again considered the directions issued below paragraph 4 of the said order, threadbare.

Paragraph 4 of the order dated 29.01.2024 reads as under:-

“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.”

2. In the light of the directions reproduced above, we record the statements of the learned Advocate representing the Zilla Parishad as under:-

(a) In the light of clause 4(b) of the order dated 29.01.2024, the Block Development Officer (BDO) conducted a personal hearing with regard to each alleged encroacher.

(b) Each encroacher, who appeared before the BDO, has signed on the attendance sheet.

(c) There are a few encroachers, who did not appear before the BDO despite three different notices.

(d) Individual reports were tendered by the BDO to the Chief Executive Officer, Zilla Parishad and a specific order has been passed dated 08.05.2024, directing the BDO to proceed to initiate an action in the light of clause 4(e).

(e) Those Petitioners, if any, who did not appear before the BDO and if have filed any of these petitions, shall not be protected by this Court.

3. Though the issue of the purported Indira Awas

Yojana (Gharkul Scheme) is referred to before us, the Petitioners are unable to point out whether, the said scheme was operated by the Union of India or by the State Government or by any other statutory authority or by collaboration of the Union of India and the State Government like the Pradhanmantri Awas Yojana.

4. The Petitioners have been fair in contending that none of them are the owners of the shops or tenements presently occupied by them. Their foundation is that the Gram Panchayat has allocated such tenements/shops to them under the Gharkul Yojana. Being villagers, they are not aware of the sanctity of such scheme or allotments.

5. We, therefore, find several disputed issues before us. It does not call for any debate that a person can claim a right to continue in possession of the property, if such a right is enforceable and established. Several disputed issues before us would virtually invite our jurisdiction to embark on an exercise to trace out, by collecting evidence, as to whether, any of these Petitioners have any right or title over the properties, which are presently occupied by them. It is in this backdrop that we had

observed in paragraph 4(e) reproduced above that, if the encroachers are aggrieved by the decision of the Zilla Parishad, they would be at liberty to avail of the remedies as are permissible in law.

6. In view of the above and in the facts and circumstances before us, the Petitioners have approached this Court. We are of the view that such disputed issues cannot be gone into and the Petitioners would have to approach either the Civil Court or abide by the notices issued to them. We are informed that the learned Vacation Court has passed an order on 22.05.2024, in Writ Petition Nos.5036/2024 and 5031/2024, wherein, it has been recorded that the impugned notices would not be implemented till today.

7. Since the issue of residences and/or commercial shops of these Petitioners is involved and as they are occupying such tenements/ commercial shops, it is out of sympathy that we are protecting them for some time, in order to enable them to approach the Civil Court.

8. In view of the above, these **Writ Petitions are disposed off** with the following directions:-

(a) The Petitioners before us would prefer their individual suits before the appropriate Civil Court, on or before 20.06.2024.

(b) The concerned Zilla Parishad and the Gram Panchayat, which are likely to be the Defendants in the said suit proceedings, would produce relevant records before the Civil Court for the purpose of enabling the Civil Court to decide the interim applications/ Exhibit-5 applications, as the case may be.

(c) The statement is made by the commercial shop encroachers that they would strictly maintain the originally allotted (by the Gram Panchayat) size of their commercial shops and beyond the originally allotted size of the shops, they would themselves demolish/remove the structures and restore the shops to their original size, immediately. This statement shall be implemented and shall not be the subject matter of adjudication before the Civil Court.

(d) We expect the Zilla Parishad and the Gram Panchayat to file their Written Statements in the said suits, on or before 28.06.2024.

(e) Since the District Collector would be the Defendant in the said suits, a statement is made by the learned AGP, on instructions, that notice under Section 80 of the Code of Civil Procedure, would be waived.

(f) The parties to the suit proceedings shall advance their oral submissions on the temporary/ interim relief applications, on or before 05.07.2024.

(g) The Trial Court would pass an order on the temporary/ interim relief applications, on it's merits, without being influenced by this order of protection (which is passed purely on sympathy), on or before 15.07.2024.

(h) Those encroachers, who do not file their civil suits on or before 20.06.2024, shall not be protected by this order and the Authorities would be at liberty to initiate action for removal of encroachments, thereafter.

kps

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)