

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 16472 OF 2023**

Ramdas Namdev Sutar ...Petitioner
Versus
The Union of India through its Secretary & Ors ...Respondents

**WITH
WRIT PETITION NO. 12537 OF 2023**

Bhagwan Tukaram Nimhan ...Petitioner
Versus
The Union of India through its Secretary & Ors ...Respondents

**WITH
WRIT PETITION NO. 16483 OF 2023**

Atul Suresh Sutar ...Petitioner
Versus
The Union of India through its Secretary & Ors ...Respondents

**WITH
WRIT PETITION NO. 16476 OF 2023**

Dattatraya Damodar Kokate ...Petitioner
Versus
The Union of India through its Secretary & Ors ...Respondents

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WRIT PETITION NO. 16474 OF 2023

Dnyaneshwar Pandurang Sutar ...Petitioner
Versus
The Union of India through its Secretary & Ors ...Respondents

WITH

WRIT PETITION NO. 16473 OF 2023

Balu Nivrutti Sutar ...Petitioner
Versus
The Union of India through its Secretary & Ors ...Respondents

Mr Abhishek R Avachat, *with Ranjeet Patil, SH Deshpande & V Pandit, for the Petitioners in all Writ Petitions.*

Mr KB Dighe, Addl. GP, *with SR Crasto, AGP, for the Respondent-State in all Writ Petitions.*

Mr RM Pethe, *for the Respondent-PMC in WP/12537/2023.*

Mr MS Bharadwaj, *i/b Ritvik Joshi, for Respondent No 1-UoI in WP/12537/2023.*

Mrs Savita Ganoo, *with Amogh Singh, for Respondent No 1-UoI in WP/16472/2023, WP/16483/2023, WP/16476/2023, WP/16474/2023 & WP/16473/2023.*

Mr Abhijit Kulkarni, *with Krushna Jaybhay, Gourav Shahane & Sweta Shah, for the Respondent-PMC in WP/16472/2023, WP/16473/2023, WP/16474/2023, WP/16476/2023 & WP/16483/2023.*

CORAM **G.S. Patel &
Kamal Khata, JJ.**
DATED: **23rd February 2024**

PC:-

1. On 8th February 2024, an application for urgent ad interim relief was made before us. The matters were not on board. The representation was that the Petitioners had been given circulation on 15th and 16th February 2024, but that demolition was threatened by Monday, 12th February 2024. We said that the impugned notice would not be acted upon until 21st February 2024 and directed the matters to be listed on 16th February 2024 subject to removal of office objections.

2. On 21st February 2024, the matter reached after office hours. The Petitioners were not represented. The Respondents appeared. They made an allegation that our order of 8th February 2024 (there is a typographical error in that order since it mention 8th February 2023) was obtained by the Petitioners on a misrepresentation that a demolition was threatened only on 12th February 2024. The submission of the Respondents was that it had not been pointed out that demolition was carried out on 30th November 2023 and that the demolished constructions had been put up again. What was to be removed by 12th February 2024 was the renewed illegal construction.

3. In Writ Petition No 16472 of 2023, there is no mention of any demolition on 30th November 2023. Sub-paragraph (r) at page 12 alleges without particulars that there was a partial demolition. When the demolition was done is not stated. Some photographs are annexed at Exhibit 'J'. But these show an extensive demolition. Other photographs shown to us today by Mr Kulkarni establish that the demolition was carried out completely.

4. The Defence Authorities have been complaining for the longest time that these constructions are within 500 yards of the High Energy Materials Research Laboratory (“**HEMRL**”). The complaints from the Ministry of Defence go back to 2021. Show Cause Notices have been issued.

5. Apart from anything else, it is now settled law that a party who obtains an order by suppressing material particulars is not entitled to any relief. Such a Petition is liable to be dismissed at any stage summarily.¹

6. There is no reason at all why the Petitioners could not have mentioned the demolition of November 2023.

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- 1 *SP Chengalvaraya Naidu v Jagannath & Ors*, (1994) 1 SCC 1. Also see:
- i *Hari Narain v Badri Das*, (1964) 2 SCR 203;
 - ii *Rajabhai Abdul Rehman Munshi v Vasudev Dhanjibhai Mody*, (1964) 3 SCR 481;
 - iii *Gowrishankar & Anr v Joshi Amba Family Trust & Ors*, (1996) 3 SCC 210;
 - iv *Ashok Leyland Ltd v State of Tamil Nadu & Anr*, (2004) 3 SCC 1, paragraph 116;
 - v *AV Papayya Sastry & Ors v Government of AP & Ors*, (2007) 4 SCC 221;
 - vi *Dalip Singh v State of UP*, (2010) 2 SCC 114;
 - vii *Oswal Fats & Oils Ltd v Additional Commissioner (Administration) & Ors*, (2010) 4 SCC 728;
 - viii *A Shanmugam v Ariya Kshatriya Rajakula Vamsathu, etc*, (2012) 6 SCC 430;
 - ix *Maria Margarida Sequeira Fernandes & Ors v Erasmo Jack De Sequeira*, (2012) 5 SCC 370;
 - x *Sciemed Overseas Inc v BOC India Ltd*, (2016) 3 SCC 70;
 - xi *Dnyandeo Sabaji Naik & Anr v Pradnya Prakash Khadekar & Ors*, (2017) 5 SCC 496.

7. Interestingly, in Writ Petition No 16474 of 2023 and in other Petitions, there is a reference to the notices of 16th November 2021. But all the Petitions are in identical terms, virtually photocopied and the same sub-paragraph (r) is repeated again and again as if to suggest that the Pune Municipal Corporation has acted despite a request not to do so and only partially demolished structures on the land adjacent to the Petitioners' properties without the issuance of a fresh notice.

8. There is no question of issuance of fresh notices. The Petitioners have received one notice. There is no requirement in law that every Petitioner who commits an illegality is entitled to the issuance of constant fresh notices. There is no mention in any of the Petitions that after this demolition, complete or partial, the Petitioners have begun reconstructing their illegal structures.

9. The interim order of 8th February 2024 is vacated. All the Petitions are dismissed. This dismissal will be accompanied by an order of costs against each of the Petitioners quantified at Rs 1 lakh payable to such charitable purpose as the Municipal Commissioner of the Pune Municipal Corporation may direct. Costs are to be paid within one week of that communication from the Municipal Commissioner.

10. Mr Kulkarni points out that under the Unified Development Control and Promotion Regulations, 2020 ("**UDCPR**") there is a specific Regulation 10.1.4(b) that states if any land is within a prohibited distance of 500 yards from the crest of the outer parapet

of the HEMRL, Sutarwadi, Pune as shown on the development plan it cannot be used as a site for construction of buildings. This provision of the UDCPR is not under challenge and cannot be challenged.

11. We make it clear that under no circumstances will we compromise the interest of the Union of India and the Ministry of Defence for the interest of the private builders.

12. We expect the demolition to be carried out by the end of the day today.

(Kamal Khata, J)

(G. S. Patel, J)