

AGK

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

PUBLIC INTEREST LITIGATION NO.80 OF 2024

Radhabai Chandrakant Mukne & Ors. ... Petitioners

V/s.

The State of Maharashtra, through
it's Chief Secretary & Ors. ... Respondents

Mr. Vaibhav Kadam with Mr. Shrinath Badade and
Mr. Kalpesh Karkera for the petitioners.

Mr. P.P. Kakade, Government Pleader with Mr. O.A.
Chandurkar, Additional G.P. and Mrs. G.R.
Raghuwanshi, Additional G.P. for respondent Nos.1
to 6 – State.

Mr. Yashodeep Deshmukh with Mr. K. Amol, Ms.
Vaidehi Pradeep and Mr. Ameya Tawde for
respondent Nos.7 to 10.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ &
AMIT BORKAR, J.**

DATED : JULY 2, 2024

P.C.:

1. Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties, the matter is taken up for hearing and final disposal.

2. This petition ostensibly filed in public interest seeks a prayer for issuing a direction to respondent Nos.1 to 4 to give

a direction to respondent Nos.6 and 7 to rectify revenue records by making necessary amendments in respect of a dispute relating to some land, which, according to the petitioners, is said to be vested in the Grampanchayat (now Municipal Council). Another prayer made in this PIL petition is that a direction be issued to respondent Nos.1 to 6 to get the land in question vacated by ousting respondent Nos.7 to 11 and further to direct respondent Nos.1 to 4 and 5 to declare that respondent Nos.7 to 10 have no right, title, interest and authority to encroach and make constructions on the land in question.

3. We have heard Mr. Kadam, learned counsel representing the petitioners, Mr. Kakade, Government Pleader representing respondent Nos.1 to 6 – State as also Mr. Deshmukh, learned counsel representing respondent Nos.7 to 10.

4. Earlier a suit in the representative capacity was filed by some of the residents of the village concerned, namely, Regular Civil Suit No.52 of 2010 seeking a declaration in respect of the subject land and also an injunction against the respondents. The said suit was decreed by means of an order dated 13 July 2015 passed by the learned Civil Judge Junior Division, Ulhasnagar. However, the defendants in the suit filed an appeal against the said decree, which was allowed by means of an order dated 25 February 2022 and the decree under appeal was set aside and the matter was remitted back to the learned Trial Court for deciding the suit afresh. The said appellate order dated 25 February 2022 became subject matter of challenge before this Court in Appeal from Order

No.437 of 2022, which was permitted to be withdrawn by means of an order dated 27 April 2023.

5. It is the submission of the petitioners that the subject matter of the suit and the instant PIL petition is the same and that earlier the individuals pursuing the suit before the Civil Court have not only withdrawn Appeal from Order No.437 of 2022 but have also moved an application before the learned Trial Court for withdrawal of the suit itself. Learned counsel for the petitioners, thus, submits that the plaintiffs are now not interested in protecting the common property of the villagers and, accordingly, this PIL petition has been filed.

6. The suit appears to have been filed in the representative capacity, and in a situation where the plaintiffs filing a suit in representative capacity intend to withdraw the same, the persons or individuals whose interest is still involved have an option of moving an application before the learned Trial Court under Order I Rule 8(3) of the Code of Civil Procedure, 1908 seeking their impleadment and thereupon prosecuting the suit. It appears that this remedy is open to the petitioners. However, instead of resorting to the said provisions of the Code of Civil Procedure, 1908, the petitioners have approached this Court by filing this PIL petition under Article 226 of the Constitution of India.

7. Accordingly, in view of the aforesaid facts, we are of the opinion that this PIL petition cannot be entertained. The PIL petition is, thus, dismissed, with liberty to the petitioners to take recourse to any other legal remedy which may be

available to them in law.

8. We make it clear that we have not made any observations whatsoever in respect of the respective merits of the case of the parties.

9. Rule is, thus, discharged. No costs.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)