

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3869 OF 2021

Prakash Gangaram Jadhav & Ors ...Petitioners
Versus
Assistant Engineer, Maintenance Department, ...Respondents
MCGM Office & Ors

WITH
INTERIM APPLICATION NO. 435 OF 2024
IN
WRIT PETITION NO. 3869 OF 2021

International Network for Economic-Social & ... Applicant
Cultural Rights, etc

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In the matter of:-

Prakash Gangaram Jadhav & Ors ...Petitioners
Versus
Assistant Engineer, Maintenance Department, ...Respondents
MCGM Office & Ors

WITH
INTERIM APPLICATION NO. 844 OF 2024
IN
WRIT PETITION NO. 3869 OF 2021

Dr Rishika Sahgal ... Applicant

In the matter of:-

Prakash Gangaram Jadhav & Ors ...Petitioners

Versus

Assistant Engineer, Maintenance Department, ...Respondents
MCGM Office & Ors

WITH

INTERIM APPLICATION (L) NO. 9455 OF 2022

IN

WRIT PETITION NO. 3869 OF 2021

Prakash Gangaram Jadhav ... Applicant

In the matter of:

Prakash Gangaram Jadhav & Ors ...Petitioners

Versus

Assistant Engineer, Maintenance Department, ...Respondents
MCGM Office & Ors

WITH

WRIT PETITION NO. 549 OF 2023

Jitendra Damodar Jadhav & Ors ...Petitioners

Versus

Assistant Engineer, Assistant Municipal ...Respondents
Commissioners Office & Ors

WITH

INTERIM APPLICATION NO. 410 OF 2023

IN

WRIT PETITION NO. 549 OF 2023

Jitendra Damodar Jadhav ... Applicant

In the matter of:

Jitendra Damodar Jadhav & Ors

Versus

Assistant Engineer, Assistant Municipal ...Respondents
Commissioners Office & Ors

WITH

WRIT PETITION NO. 3284 OF 2021

Jitendra Dharma Pandav & Ors ...Petitioners

Versus

Assistant Engineer, Assistant Municipal ...Respondents
Commissioners Office & Ors

WITH

INTERIM APPLICATION (L) NO. 9527 OF 2022

IN

WRIT PETITION NO. 3284 OF 2021

Jitendra Dharma Pandav ... Applicant

In the matter of:

Jitendra Dharma Pandav & Ors ...Petitioners

Versus

Assistant Engineer, Assistant Municipal ...Respondents
Commissioners Office & Ors

WITH

WRIT PETITION (L) NO. 30586 OF 2023

Sylvester Anthony Fernandes	...Petitioner
<i>Versus</i>	
The State of Maharashtra	...Respondent

WITH

WRIT PETITION NO. 555 OF 2023

Yussuf Gafar Sayyad & Ors	...Petitioners
<i>Versus</i>	
Assistant Engineer & Ors	...Respondents

WITH

INTERIM APPLICATION NO. 1208 OF 2022

IN

WRIT PETITION NO. 555 OF 2023

Yussuf Gafar Sayyad	... Applicant
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In the matter of:

Yussuf Gafar Sayyad & Ors	...Petitioners
<i>Versus</i>	
Assistant Engineer & Ors	...Respondents

WITH

WRIT PETITION NO. 379 OF 2023

Shakuntala Gopal Ghag	...Petitioner
<i>Versus</i>	
Assistant Engineer N-Ward & Ors	...Respondents

WITH
WRIT PETITION NO. 548 OF 2023

Chandra Baliram Bhadrike	...Petitioner
<i>Versus</i>	
Assistant Engineer N-Ward & Ors	...Respondents

WITH
WRIT PETITION NO. 547 OF 2023

Sadanand Arjun Mohite & Ors	...Petitioners
<i>Versus</i>	
Assistant Engineer & Ors	...Respondents

WITH
INTERIM APPLICATION (L) NO. 6868 OF 2024
IN
WRIT PETITION NO. 547 OF 2023

Sejal Siddha Realtors LLP	... Applicants
<i>In the matter of:</i>	

Sadanand Arjun Mohite & Ors	...Petitioners
<i>Versus</i>	
Assistant Engineer & Ors	...Respondents

WITH
INTERIM APPLICATION (L) NO. 9529 OF 2022
IN
WRIT PETITION NO. 547 OF 2023

Sadanand Arjun Mohite ... Applicant

In the matter of:

Sadanand Arjun Mohite & Ors ...Petitioners

Versus

Assistant Engineer & Ors ...Respondents

WITH

INTERIM APPLICATION (L) NO. 30546 OF 2023

IN

WRIT PETITION NO. 547 OF 2023

Panchsheel Nagar (SRA) Cooperative Housing ... Applicants
Society

In the matter of:

Sadanand Arjun Mohite & Ors ...Petitioners

Versus

Assistant Engineer & Ors ...Respondents

**Ms Gayatri Singh, Senior Advocate, i/b Kranti LC & Kaustubh
Gidh, for the Petitioners in WP/547/2023, WP/549/2023 &
WP/3284/2021.**

**Ms Aneesha Cheema, i/b Milind Nar, for the Applicant in
IAL/30546/2023.**

**Mr GS Godbole, Senior Advocate, with Anoop Patil, Pooja Yadav &
Swapnil Bharti, for the Respondent-BMC.**

**Mr Mayur Khandeparkar, with Arun Panikar, i/b Vaibhav Parab, for
the Intervenor-Sejal Siddha Realtors LLP in IA(L)/6868/2024.**

Mr Jagdish G Aradwad (Reddy), for Respondent-SRA.

**Mr Abhay L Patki, Addl. GP, for the Respondent-State in
WP/549/2023 & WP/555/2023.**

Mr Milind More, Addl. GP, for the Respondent-State in

WP/548/2023.

Ms Lavina Kriplani, AGP, for the Respondent-State in
WP/3869/2021.

Mr Himanshu Takke, AGP, for the Respondent-State in
WP/547/2023.

Mr Manish Upadhye, AGP, for the Respondent-State in
WP/3284/2021.

Ms Rita Joshi, AGP, for the Respondent-State in WPL/30586/2023.

Mr Mohit Jadhav, Addl GP, for the Respondent-State in
WP/379/2023.

Mr Gautam Bhatia, i/b Arati Ranade, in IA/844/2024 in
WP/3869/2021.

Mr Shantanu M Shetty, for the Applicant in IA/435/2024 in
WP/3869/2021.

Mr VR Desai, Assistant Engineer (Survey), present.

Mr Harish Chavan, Assistant Engineer (Maintenance), present.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 5th April 2024

PC:-

1. This group of matters has been before us several times. The issues are, we believe, of wide public importance although the physical area in question is relatively small. But it often happens that the smaller the area, the bigger the issue; and so it is in this case. The area in question is roughly 100 mts x 60 mts at Pratiksha Nagar at Sion.

2. Today's order is for a limited purpose. This will become apparent from what follows. We fully anticipate that a second and more detailed order will become necessary, depending on the

instructions that Mr Godbole, learned Senior Advocate for the Brihanmumbai Municipal Corporation (“**BMC**”) receives on the question that we have put to him and on which he is to take instructions.

3. This case is a contest about land, shelter, municipal civic infrastructure works, and water. The rival contentions are very sharply divided indeed. Despite the number of matters in this group, there are fundamentally three principal contestants. On one side are the Petitioners represented by Ms Singh, learned Senior Advocate. They are, and this is not disputed, occupants of unauthorised structures on municipal land, i.e., the land in question. Opposing them is Mr Godbole representing the BMC. Mr Khandeparkar appears for the third contestant in this group; actually, two of them, a developer called Sejal Siddha Realtors LLP (“**SSRL**”) and the Panchsheel Nagar SRA CHSL (“**the Society**”). They are intervenors in one of the Writ Petitions (*Sadanand Arjun Mohite*).

4. Mr Bhatia has filed an Intervention Application on behalf of one Dr Rishika Sahgal in another Writ Petition (*Prakash Gangaram Jadhav*). This is more in the nature of what is known in American jurisprudence as an ‘amicus brief’ because Dr Sahgal, whose credentials no one has ever disputed, addresses larger questions of constitutional law regarding urban displacement.

5. We said earlier that one of the issues was water supply. That needs an explanation. Municipal water supply to Mumbai comes from various lakes and water reservoirs to the north. This has

traditionally been the source of water supply going back over a century. At the site in question there are apparently four pipelines on this 500 or 600 mt stretch, although the pipelines continue for several kms in either direction. Very roughly, these pipelines are in a north-south direction. There is the Mumbai Main pipeline and then there are the Old Tansa pipeline, New Tansa pipeline and Vihar Main.

6. On the site in question there are 211 hutments. It is not necessary for today's order to get into details of the number of individual occupants. That has been the subject of the previous orders and numbers have varied between 289, 85, 26 and so on but we will get into those details at a later stage. These hutments are all in this roughly 600 mts area. A more accurate visualization is provided by a sketch plan with markings that Mr Godbole has given us. A scan is annexed to this order.¹ This was prepared by the Tata Consulting Engineers and is apparently of 23rd March 2014. The date of the map will make a very little difference to the identification of the area concerned.

7. The BMC says that there is a 'vital infrastructure project'. This is related or connected to these pipelines, but the actual proposal is for the construction of a shaft and an underground tunnel. This is necessary, Mr Godbole explains, to augment the volume and quality of water supply (quantity and pressure) to points further south starting from the Sion-Wadala region and going south

¹ Paragraph 5 of the developer's Affidavit mentions four pipelines. Scan annexed shows only three.

to the rest of the city. The BMC's project at this location is 'affected' by the hutments. To complete the project the occupants of the hutments need to be relocated.

8. It is this proposed relocation that has brought the Petitioners to Court. The offer to them by the BMC was of an alternative site at village Anik which Ms Singh has argued is unfit for human habitation. A nearby location at the Mahul PAP Colony has been previously held by this Court to be similarly unsuitable. She has presented us with some data in this regard. We will be considering that material and also the underlying principle on the next date, not today. The existing municipal policy which Mr Godbole commends gives persons affected by such a vital infrastructure project (it is not necessarily applicable to all Project Affected Persons or PAPs) a choice. They can either take the alternative location that has been offered to them (at village Anik). If not, there is monetary compensation computed on the following basis. Every hutment dweller will receive cash compensation of a minimum of Rs 25 lakhs and subject to a maximum of Rs 40 lakhs irrespective of the area under occupation. The rate is computed at 75% of the current ready reckoner rate. Mr Godbole has been at some pains to point out that this is indeed generous. There are huts where the area of occupation is very small and even if 100% of the ready reckoner rate is taken, the compensation would work out to half or even less than half of Rs 25 lakhs. Only two or three persons, he says, would receive slightly more than Rs 25 lakhs, and by not much. None would hit the ceiling of Rs 40 lakhs.

9. The opposition from Ms Singh has been on the basis that this monetary offer is if not entirely illusory, at least arbitrary and without any regard to actual conditions in the city. There are issues of displacement that will come into play and a question of whether these persons, only because their initial entry on the land was said to be unauthorised, can be physically pushed out or can have some amount of money given to them after which they are expected to fend for themselves. We have not understood Ms Singh's submission to be that these persons are entitled to continue in their hutments in situ indefinitely. The argument rather has been on the *reasonableness* (or want of reasonableness) of the options or choices given to them and, consequently, the issue raised is under both Article 21 and Article 14 of the Constitution of India.

10. It is here that the amicus brief presented by Mr Bhatia will have a significant impact. We will consider the issues as they arise both under the Constitution, and, very likely, some principles derived from well-settled environmental jurisprudence.

11. It is undeniable that the land is BMC land. It is also undeniable that the BMC has done nothing to prevent this pocket of land from encroachment. There is no wall. There is no fence. For a very long time, the BMC has, despite knowing the alignment of these pipelines and knowing of their vital importance, done nothing to keep the area clear. In a series of orders in a PIL, a Division Bench of this Court has emphatically held that the public need is paramount and there must be a 10 mt buffer zone around these

pipelines along their entire stretch.² That tells us quite clearly that clearance is now a mandate of the Court. But it is the terms of that clearance and the manner in which it is to be effected that is a concern.

12. Mr Godbole for the BMC has fairly accepted that the situation today arises because of an initial failure of the BMC to protect these lands and keep them clear. Having said that, his emphasis is that this is, after all, a vital infrastructure project. There is a much ‘larger public need’. That need is for adequacy of water supply for the rest of the city. Precisely this argument is raised in courts again and again by the executive. In every single case, it is set against an invoked fundamental right. For the last six decades or more, our jurisprudence has not countenanced this argument *except* when it is specifically countenanced by the Constitution itself. An Article 19(1) fundamental right can be restricted only by a measure narrowly tailored under Articles (2) to (6). An Article 21 right cannot be curtailed except according to a procedure established by law — which means a statute, statutory rule, or statutory regulation.

13. In a somewhat Napoleonic turn of phrase, Mr Godbole says that the BMC’s obligation to augment water to Mumabi should be allowed to become its Waterloo. We reserve further comment for today.

14. It is at this stage that there enters into the picture Mr Khandeparkar with a slum rehabilitation solution to all problems, a

2 2016 SCC OnLine Bom 9200.

developer knight in slum rehab armour. His proffered solution is, to put it mildly, more than somewhat overwhelming. The slum project that his clients contemplate is not limited to this 600 sq mts patch of earth or these 211 persons. It is at least ten times larger. In a Supplementary Affidavit that Mr Khandeparkar's builder client has filed, there is a suggestion, one that Mr Khandeparkar says was made much earlier by a previous developer and in principle approved by a senior officer of the BMC (though this is denied by Mr Godbole), viz., that the developer would *at the developer's own cost* realign at least one Development Plan road and, in accordance with municipal specifications through whichever engineering consultant the BMC prefers, physically move three of the four pipelines underground.

15. Mr Godbole says he is more than somewhat taken aback by the seeming generosity of this proposal. He is suspicious of it, and stops just short of hashing a metaphor and describing Mr Khandeparkar's developer client as a wolf in sheep's clothing.

16. We do not believe there is anything remotely generous. The financial benefits are self-evident, and they are enormous. But that may not be a reason to reject the proposal instantly.

17. Mr Khandeparkar's proposal involves the inclusion in the slum rehabilitation scheme of every single one of the Petitioners. The instant response to this would have been "problem solved".

18. But that would be without taking into account or factoring the BMC. For “not so fast”, says Mr Godbole. There are possibly other issues. What these might be is difficult to exactly identify today. We do not know if there is on the BMC’s part resistance to some high-level engineering and hydraulic engineering (which given what is being done all over the city seems *prima facie* difficult to credit). We do not know if the resistance is because some municipal land will necessarily be taken up by the slum rehabilitation scheme.

19. What we do know is that there is presently resistance to the solution offered by Mr Khandeparkar, though this would address Ms Singh’s clients’ concerns immediately (even if we would necessarily have to set these in the appropriate jurisprudential context of constitutional principles as enunciated by Mr Bhatia).

20. We were yesterday faced with this issue and there seemed to be no immediate way out. One of Mr Bhatia’s submissions was that if a negotiated settlement or understanding is for any reason not possible — and he does stress the expression ‘for any reason’ — then the Court is bound, in exercise of its jurisdiction under Article 226 of the Constitution of India to adjudicate the issues according to settled constitutional and jurisprudential norms.

21. At a practical level, this presents us with a great deal of uncertainty. Uncertainty, as we all know, is the most implacable enemy of judicial determination. The uncertainty lies in two aspects. *First*, the number of hutments that are involved. *Second*, the actual physical area under consideration.

22. All have agreed before us that the hutments involved have been surveyed and structures given individual numbers. There is no dispute about this.

23. Apparently, the Slum Rehabilitation Authority (“SRA”) has been conducting a GIS survey. Mr Godbole expresses some outrage at this and asks by what authority the SRA is doing this on municipal land. We are proposing in future to avoid this by commanding the setting up of a joint force if that is the solution that presents itself. We will not accept a situation where individuals and human beings are constantly footballed between this authority and that.

24. Mr Godbole also states that the engineering or re-engineering proposal that Mr Khandeparkar says was accepted was in fact rejected. This does not address the issue that confronts us today.

25. We need to protect the site from further encroachment. We need to identify precisely the land in question.

26. A good deal of time was spent in Court trying to analyse how these purposes might be achieved. There seems to be no ready solution. We then ask parties to consider whether the appointment of a Court Receiver would assist all concerned in protecting the site. If there was consent, we have little doubt that we could have done it. But even on this, Mr Godbole did not have ready instructions. Ms Singh for her part agreed that a Court Receiver could be appointed even of the structures but only to take symbolic and notional possession.

27. To explain what we had in mind, bringing the site and the hutments into Receivership (separately) would have achieved two purposes. *First*, any hutment beyond those in Receivership would be immediately unauthorised if they came up after the date of appointment of the Court Receiver. The hutments to be taken into Receivership would be strictly in accordance with the Annexure II prepared showing the existence of the structures and the structure numbers. Therefore, and logically, any unnumbered structures that came up thereafter would receive no protection and would not be entitled to the benefits of any policy. *Second*, and in addition, if the land itself was identified, this would ensure that the BMC would face no further or expanded complications in the form of further encroachments on the site. Mr Godbole says that the municipal land is a stretch of 25 mts in width but the affected site is considerably less. We did bear in mind that we are today concerned with only a 500 or 600 mts stretch and that the actual length of the pipeline and the encroachments is much longer. Our suggestion was not intended to cover any other area.

28. The difficulty in our way is that in none of these proceedings — not in the Petitions, and not in the Interim Applications — is there a prayer for a Court Receiver. In a civil action, the law is settled that a Court Receiver can be appointed in the interest of justice if the Court believes this is necessary. We are accepting that principle *inter alia* as enunciated by learned Single Judge (RM Lodha J as he then was) in *Mulji Umershi Shah v Paradisia Builders Pvt Ltd & Ors*³ because we believe that such an order of

3 1997 SCC OnLine Bom 65 : (1997) 3 Mah LJ 532 : (1997) 4 Bom CR 97.

Receivership would keep all parties in the necessary status quo until there is either an agreement or a judicial decision. After all, if the matter does go to judgment, we should not be confronted with a situation where the judgment is rendered entirely ineffective because conditions on the ground have changed or altered in the meantime. We also do not see any prejudice being caused either to the Petitioners (those in the hutments) or to the BMC by an order of Receivership in two distinct parts as we have suggested earlier. Indeed, we believe that the BMC's interest would be well served by such an order because it then narrowly and accurately defines not only the persons who the BMC has to deal with but also the area in question.

29. Mr Godbole explains that there may be wider consequences to an order of Receivership. He does not have instructions to make a statement one way or the other. He adds that this should not be misunderstood to mean, at least at this stage, that the BMC is opposing the Receivership. He has not canvassed the proposition that an order of Receivership is not possible in exercise of the equitable discretion of this Court under Article 226 of the Constitution of India. He simply does not have instructions to indicate consent to the Receivership. He also adds that there may be certain further directions required if a Court Receiver is indeed to be appointed so as to more properly safeguard the interest of the BMC.

30. On a separate topic, Mr Godbole has said that the civil and hydraulic engineering proposal by Mr Khandeparkar's client is not

something that any officer of the BMC can accept immediately. The BMC proposes to engage Tata Consulting Engineers to study the proposal. There will be questions of technical feasibility and also financial viability. We reserve further comment at this stage on both these aspects because we do not want to put the officers of the BMC in an awkward position. This process is obviously going to take some time. We are not asking Mr Godbole to return an answer on the technical aspects of pipeline shifting at all. We have only asked him to take instructions on the transitional measure of the temporary appointment of the Court Receiver until that proposal is decided and further orders can be made or steps taken.

31. It is for this limited purpose that we have made this order today. We request Mr Godbole to take at least these instructions on Receivership at the earliest possible.

32. We are not, we clarify, demanding that the BMC must agree to the proposal for a Receivership. We are only asking if the BMC is willing to consent because there is not, as we noted, a specific prayer in any of these Petitions today for the appointment of a Court Receiver. If it does not, we will consider what best steps can legitimately be taken by the Court.

33. Leave to Mr Godbole to file the further Affidavit in Sadanand Mohite's Writ Petition.

34. List these matters for further orders on 18th April 2024 at 2.30 pm.

35. Previous orders, if any, to continue until the next date.

(Kamal Khata, J)

(G. S. Patel, J)

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