



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

PUBLIC INTEREST LITIGATION NO.35 OF 2024

Pandurang S/o Krushnaji Tonge, Wani

-vs-

State of Maharashtra, Thr. Principal Secretary, Urban Development Dept. Mantralaya, Mumbai
and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and the Registrar's orders.

Court's or Judge's Orders.

Shri M. P. Khajanchi, Advocate for petitioner.
Shri S. M. Ukey, Additional Government Pleader for respondent Nos.1 to 3.
Shri M. I. Dhattrak, Advocate for respondent No.4.
Shri S. K. Mishra, Senior Advocate with Dr R. S. Sundaram, Advocate and Shri
Kabir Jhamb, Advocate for respondent No.5
Shri S. K. Mishra, Senior Advocate with Shri U. P. Dable, Advocate and Shri P. K.
Bezalwar, Advocate for respondent No.6.
Shri A. P. Tathod, Advocate for respondent No.8.

CORAM : NITIN W. SAMBRE AND MRS VRUSHALI V. JOSHI, JJ.

DATE : December 16, 2024

P. C.

Civil Application(CAO) No.1188/2024

1. The prayer is for substitution of the name of Mr Bansi Madanlal Popali in place of Ravindra Damodar Yerene in respect of respondent No.5.
2. In view of no objection extended by the counsel for the parties, prayer is allowed. Appropriate amendment in respect of respondent No.5 be carried out within a period of three weeks.

Civil Application is allowed and disposed of.

Civil Application (CAO) No.1402/2024

3. In view of order dated 13/11/2024, the application does not survive. Stands disposed of accordingly.

Civil Application (CAO) Nos.1538/2024

4. Issue notice to the non-applicants, returnable on 21/01/2025.
5. Shri S. M. Ukey, learned Additional Government Pleader waives service of notice for non-applicant Nos.1 to 3.
6. Shri M. I. Dhatrak, learned counsel waives service of notice for non-applicant No.4.
7. Dr R. S. Sundaram, learned counsel appears for non-applicant Nos.5 and 6 and has filed reply to the application.
8. Shri A. P. Tathod, learned counsel waives service of notice for non-applicant No.8.
9. Respective counsel seek time to file reply.
10. We grant time of three weeks to file reply.
11. However, in view of order dated 13/11/2024 passed by this Court, we stay effect and operation of the un-reasoned order dated 14/10/2024 passed by the State Government until further orders.

Civil Application (CAO) Nos.1539/2024

12. The prayer for amendment to the petition is objected by the counsel for respondent Nos.5 and 6 on account that the amendment is based on separate cause of action.
13. If we consider the aforesaid objection, what can be noticed is the cause cited in the petition and one which is sought to be inferred by way of amendment is in continuation. The amendment is based on subsequent developments.
14. That being so, the application is allowed. Amendment be carried out within a period of two weeks.

Civil Application is disposed of.

Public Interest Litigation No.35 of 2024

15. This Court issued directions on 26/03/2014 for removal of unauthorised occupants from the shopping complex within the jurisdiction of the Municipal Council, Wani. Since same was not taken to logical end, the Court caused notice. Therefore, the petition pertains to the non-compliance of the order dated 26/03/2014 delivered in Writ Petition No.1614/2014 by the respondents-Collector, Yavatmal and Chief Officer, Municipal Council, Wani.

16. It appears that the eviction was stalled by obtaining a order from the State Government which was quashed and set aside by this Court on 13/11/2024.

17. We have recorded our reasons for quashing of the order dated 15/03/2024 passed by the State Government in the aforesaid order dated 13/11/2024.

Inspite of aforesaid, it appears that respondent No.8-Social Worker has approached the Revenue Minister and by suppressing the fact of quashing of earlier order passed by the State Government whereby stay was granted on 15/03/2024 obtained the order which is in the form of injunction from the Honourable Revenue Minister. As such, a restraint order was passed against the Municipal Council from taking action in accordance with the order of this Court dated 26/03/2014 delivered in Writ Petition No.1614/2014.

18. The respondent No.8 has approached the Minister for Revenue seeking the order of restraint against the Collector, Yavatmal from evicting the un-authorised occupants. Pursuant to said order, it appears that the Collector has issued a communication to the Chief Officer,

Nagar Council, Wani restraining him from carrying out eviction activity which goes contrary to the orders of this Court dated 14/08/2024 and order dated 26/03/2014 delivered in Writ Petition No.1614/2014 and also the fact about the order of State Government dated 15/03/2024 passed by the then Chief Minister.

19. Subsequent thereto the order of the then Chief Minister granting stay was quashed by this Court vide order dated 13/11/2024. Despite the issue being subjudice before this Court and the order of stay granted by the then Chief Minister was under challenge in the present Public Interest Litigation, by suppressing the aforesaid factual matrix, the respondent No.8 have approached the Revenue Minister who has granted the restraining order against eviction sufficiently prompted this Court to assume that the intention of respondent No.8 is questioning the authority of this Court. When the issue was subjudice before this Court, respondent No.8-Social Worker had no occasion or right to approach before the State Government seeking order contrary to the orders of this Court dated 14/08/2024 and the order dated 26/03/2014 delivered in Writ Petition No.1614/2014.

20. Order of the State Government whereby the Collector was directed not to take action has resulted into stalling the entire proceedings which should have taken in compliance with the order dated 26/03/2014 delivered in Writ Petition No.1614/2014. As such the respondent-Collector, Yavatmal so also the then Chief Officer of the respondent No.4-Municipal Council has equally acted in defiance of the orders of this Court referred above particularly dated 26/03/2014 delivered in Writ Petition No.1614/2014.

21. Shri M. I. Dhatrak, learned counsel appearing for the respondent-Chief Officer during the course of hearing has invited our

attention to the order dated 13/12/2024 issued by Shri Pankaj Aashiya, Collector, Yavatmal whereby he has directed the then Chief Officer, Municipal Council to proceed ahead in the matter of eviction pursuant to the compliance of order dated 26/03/2014 in Writ Petition No.1614/2024.

22. The collector infact was aware of the order dated 26/03/2014 delivered in Writ Petition No.1614/2014, the order of the Chief Minister passed on 15/03/2024 thereby staying the eviction proceedings and inspite of above, he has proceeded to pass the order on 03/12/2024 directing the Chief Officer not to take out any proceedings for eviction. The said order dated 03/12/2024 came to have been withdrawn/clarified vide order dated 13/12/2024 when infact the order dated 13/11/2024 was well within the knowledge of the Collector when he passed the earlier order dated 03/12/2024.

23. Though the order of this Court dated 13/11/2024 was within the knowledge of the Collector, Yavatmal, he has proceeded to communicate that the eviction proceedings be deferred so as to initiate action of regularization of the Nazul property which we fail to understand what nexus it has with the present petition. Communication dated 13/12/2024 is issued by the Collector, Yavatmal without there being any further communication from the State Government not to act upon the order passed by the Minister for Revenue. As such, this Court is of the view that inspite of knowledge of the Court proceedings and the order passed by this Court from time to time, the Collector not only has committed but aggravated the contempt.

24. As such, the act of the respondent-Collector, Yavatmal so also the Chief Officer, Municipal Council, Wani and respondent No.8 has to be

viewed as contemptuous.

That being so, issue notice of contempt to Dr Pankaj Aashia, Collector, Yavatmal, Shri Sachin Gade, Chief Officer, Municipal Council, Wani, and also to the respondent No.8-Nanakram Nebhnani calling upon them as to why they should not be proceeded against under the Contempt of Courts Act and be punished accordingly.

25. We direct Shri Tathod, learned counsel representing respondent No.8 to accept notice of contempt on behalf of respondent No.8 and communicate the present order.

Similarly, the Chief Officer, Municipal Council, Wani i.e. respondent No.4 is physically present in the Court. Shri M. I. Dhattrak, learned counsel for respondent No.4 has apprised the Chief Officer about the present order and that in response he has to make submission by the next date of hearing.

26. We direct the learned Additional Government Pleader to communicate this order to Dr Pankaj Aashia, Collector, Yavatmal and inform him to submit response before this Court by 20/01/2025.

27. Further, in response to the notice caused by this Court, the respondent No.4-Chief Officer, Municipal Council has filed his affidavit dated 13/12/2024 thereby stating that pursuant to the directions of the State Government, the action of eviction is being deferred.

28. Another affidavit is placed on record duly sworn by the very same Chief Officer for and on behalf of respondent No.3-Collector, Yavatmal.

29. Respondent No.3 is the Collector of Yavatmal within whose jurisdiction respondent No.4-Chief Officer, Municipal Council is working pursuant to the provisions of The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Under the said Act, the Collector of the district is recognised as an independent authority who has a supervisory control over the working/functioning

of the Municipal Council.

30. Having regard to the issue which is sought to be canvassed in the matter of inaction on the part of the Municipal Council for last more than 10 years and not taking the orders of this Court to their logical end, it was expected of the respondent-Collector to swear an affidavit on his own or any of his subordinate. Surprisingly the affidavit is sworn on behalf of the Collector by the Chief Officer, Municipal Council who is also an independent respondent in the petition.

31. We fail to understand as to the insensitivity with which the respondent No.3-Collector is handling the issue.

32. Apart from above, as respondent No.3-Collector in view of provisions of Section 308 of the Act of 1965 is recognised as the supervisory authority, the said authority ought not to have directed the Chief Officer, Municipal Council to file an affidavit on his behalf as this Court was expecting an independent action on the part of Collector in the matter of compliance of the order.

33. In view of the aforesaid, we deem it appropriate to direct the respondent No.3-Collector to file his independent affidavit duly sworn by himself explaining the aforesaid default.

34. Let such affidavit be placed on record by 20/01/2025.

35. Stand over to 21/01/2025.

(Mrs Vrushali V. Joshi, J.)

(Nitin W. Sambre, J.)

Asmita