

Jvs.

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

PUBLIC INTEREST LITIGATION NO. 40 OF 2024

Mohd. Usman Shaikh	}	Petitioner
versus		
Kansari Mata Adivasi Samajik Vikas	}	
Sanstha & Ors.	}	Respondents

Mr. Bharat Mirchandani with Mr. Kainath Rakhanghi for petitioner.

Ms. Neha S. Bhide, Government Pleader with Mr. O. A. Chandurkar, Additional Government Pleader and Ms. S. R. Crasto, AGP for respondents 2 & 5.

Mr. Akshay Shinde for respondent no. 4.

**CORAM: ALOK ARADHE, CJ. &
M. S. KARNIK, J.**

DATE: APRIL 9, 2025

ORDER: (Per Chief Justice)

- 1.** Heard learned counsel for the parties.
- 2.** Rule. Rule is made returnable forthwith. With the consent of learned counsel for the parties, heard finally.
- 3.** In this writ petition, which has been filed as Public Interest Litigation (PIL), the petitioner, *inter alia*, has assailed the inaction on the part of the respondents 2 to 5 in failing to take action against respondent no. 1 for encroaching upon the Government land and running a Pay and Park facility.
- 4.** The petitioner claims himself to be the President of Nagrik Seva Sudhar Samiti, an NGO, which allegedly deals with social issues. According to the petitioner, one Kansari Mata Adivasi

Samajik Vikas Sanstha (respondent no. 1) has encroached on the Government land on C. S. No. 98, Aksa, Malad (West), Mumbai and operating illegal Pay and Park service. It is the case of the petitioner that despite submission of a representation, no action has been taken against the respondent no. 1.

5. Despite service of notice, none has appeared on behalf of the respondent no. 1.

6. Learned counsel for the petitioner submitted that suitable directions be issued to respondents 2 to 5 to remove the encroachment from the land in question.

7. On the other hand, learned Additional Government Pleader appearing for respondents 2 and 5 submitted that suitable action in accordance with law shall be taken.

8. We have considered the rival submissions made by the learned counsel for the parties.

9. The issue whether or not anybody has encroached on the public land is a question of fact and normally is disputed. The aforesaid fact cannot be adjudicated in exercise of summary jurisdiction under Article 226 of the Constitution of India as this Court normally is not examining disputed question of facts, however, in the peculiar facts and circumstances of the present case, we deem it appropriate to issue the following directions:

(i) The District Collector (Mumbai Suburban) or his authorised representative shall issue notice to the petitioner as well as to respondent no. 1 and to other persons who may be in occupation of the land in question.

(ii) Thereupon, the Collector or his authorised representative shall carry out survey to ascertain the encroachment on the land in question.

(iii) Thereafter, the Collector or his representative shall offer an opportunity of hearing to the parties and to submit documents in support of their claim.

(iv) In case the subject land is found to be a Government land, the District Collector or his authorised representative shall initiate an action for removal of encroachment in accordance with law.

(v) The aforesaid exercise shall be concluded within a period of 12 weeks from today.

(vi) The learned Additional Government Pleader undertakes that assistance of police shall be provided to the District Collector for removal of encroachment from the subject land, if found to be a Government land.

10. Needless to state that any person aggrieved by an order directing removal of encroachment shall be at liberty to take recourse to such remedy as may be available to them in law.

11. It is clarified that this Court has not expressed any opinion on the merits of the case.

12. With the aforesaid directions, the PIL is disposed of.

JAYANT
VISHWANATH
SALUNKE

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(M. S. KARNIK, J.)

(CHIEF JUSTICE)