

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****PUBLIC INTEREST LITIGATION NO.35 OF 2007****WITH****CIVIL APPLICATION NO.10 OF 2009****WITH****CIVIL APPLICATION NO.25 OF 2009****WITH****CIVIL APPLICATION NO.114 OF 2010****WITH****CIVIL APPLICATION NO.175 OF 2010**

Harit Vasai Saurakshan Samiti

..Petitioner.

Vs.

The State of Maharashtra and others

..Respondents.

And

Sudhir Pralhad Barge

..Applicant.

(Applicant in CA 25 of 2009)

And

Mohammed Islam Khawja Momin

..Applicant.

(Applicant in CA 114 of 2010)

And

Balkrishna Sitaram Purnekar

..Applicant.

(Applicant in CA 175 of 2010)

....

Mr. Uday Warunjikar with Ms. Maria Dabre for the Petitioner in PIL  
35 of 2007.

Mr. Shriram S. Kulkarni with Mr. Sachin Chavan for the Applicant in  
CA 25 of 2009.

Mr. M.K. Banatwala for the Applicant in CA 114 of 2010.

Mr. Indrajeet Kulkarni for the Applicant in CA 175 of 2010.

Mr. Ravi Kadam, Advocate General with Mr. Vijay Patil, Government Pleader with Mrs. Neha Bhide 'B' panel counsel for Respondent Nos.1, 2, 7, 8, 15, 16 – for the State.

Mr. G.S. Hegde i/b M/s. G.S. Hegde & Associates for Respondent No.5.

Mr. Kiran Gandhi i/b M/s. Little & Co. for Respondent No.7 and 8.

Mr. R.S. Apte, Senior Advocate with Mr. Atul G. Damle for Respondent No.10.

Mr. P.S. Dani for Respondent No.11.

Mrs. A.R.S. Baxi with Ms. Anjali Alaspurkar for Respondent Nos.13 and 14.

Mr. N.R. Bubna for Respondents 17 and 18.

Mr. D.P. Adsule for Respondent No.22.

Mr. R.S. Datar for Respondent No.23.

Mr. B.D. Joshi for Respondent No.24.

Mr. M.S. Karnik for Respondent No.28.

Mr. A.S. Rao for KDMC.

**with**  
**PUBLIC INTEREST LITIGATION NO.36 OF 2007**  
**WITH**  
**CIVIL APPLICATION NO.173 OF 2010**  
**WITH**  
**CIVIL APPLICATION NO.174 OF 2010**  
**WITH**  
**CIVIL APPLICATION NO.176 OF 2010**

Harit Vasai Saurakshan Samiti	..Petitioner.
Vs.	
The State of Maharashtra and others	..Respondents.
And	
Jeetendra Satish Avad and another	..Applicants.
(Applicants in CA 173 of 2010)	
And	
Ek Nath Shinde and others	..Applicants.
(Applicants in CA 174 of 2010)	
And	
Balkrishna Sitaram Purnekar	..Applicant.
(Applicant in CA 176 of 2010)	

....

Mr. Uday Warunjikar with Ms. Maria Dabre for the Petitioner in PIL **36** of **2007**.

Mr. S.M. Oak i/b Mr. Sham Walve for the Applicants in CA **173** of **2010**.

Mr. G.T. Kanchanpurkar for the Applicants in CA **174** of **2010**.

Mr. Indrajeet Kulkarni for the Applicant in CA **176** of **2010**.

Mr. Ravi Kadam, Advocate General with Mr. Vijay Patil, Government Pleader with Mrs. Neha Bhide 'B' panel counsel for Respondent Nos. **1, 5, 6, 9** to **11** – for the State.

Mr. G.S. Hegde i/b M/s. G.S. Hegde & Associates for Respondent No. **4**.

Mrs. A.R.S. Baxi with Ms. Anjali Alaspurkar for Respondent No. **7** and **8**.

Mr. R.S. Apte, Senior Advocate with Mr. N.R. Bubna for Respondents **13** and **14**.

Mrs. P. Walimbe for Respondent No. **16**.

Mr. D.P. Adsule for Respondent No.22.

Mr. A.S. Rao for KDMC.

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**CORAM :MOHIT S. SHAH, C.J. &**  
**DR.D.Y.CHANDRACHUD, J.**

18 October 2010.

**P.C.**

1. In these Public Interest Litigations, the Petitioners are seeking directions against the Respondent authorities for removal of encroachments from public lands and for demolition of unauthorized constructions in Thane District.

2. These Petitions were first entertained on 18 April 2007 when the Court required the Respondents to file affidavits within four weeks. Thereafter while the hearing was adjourned at the request of learned counsel appearing for the respondents, on 29 August 2007 this Court observed that the reply filed on behalf of Respondents 1 to 8 was not satisfactory and, therefore, the Managing Director of CIDCO and Controller, Unauthorized Constructions CIDCO, (VVSR) Vasai were directed to file affidavits and to undertake all the steps they propose to take for removal of unauthorized structures in the area under their control. Thereafter on 27 February 2008 this Court passed further order recording that the Court was convinced there were a large number of constructions which were made unauthorizedly and illegally

and directed the Respondent authorities to hold a meeting and to take a decision with regard to demolition of the buildings which have been constructed in the whole district without permission. The Court also directed the respondents to evolve the mechanism and to fix a time limit for completing the task. In the order dated **23 April 2008** this Court recorded the submission of the Respondents that a survey was required to be made of the encroachments and that it will take some time and that after survey is completed, other steps for removal of unauthorized structures can be taken. Though various orders came to be passed from time to time, we must make a reference to the order dated **3 December 2008** wherein this Court recorded that there is a mushroom growth of illegal unauthorized construction in the areas referred to in the said order, that people in thousands have encroached on public and municipal lands and carried out unauthorized constructions and have been enjoying all civic amenities at the cost of tax payers. This Court also requested the Principal Secretary, Urban Development Department to file his affidavit on behalf of the State as to how the State proposed to deal with the problem of unauthorized encroachments on government and municipal lands.

**3.** The Court then passed order dated **28 January 2009** and noted that so far as the local bodies were concerned, they were showing helplessness in the matter for want of any co-operation from

the State Government in the form of funds and institution of mechanism for controlling the unauthorized constructions. Referring to the affidavit of the Secretary of the Urban Development Department, the Court observed that it was nothing but an eyewash. The Court then noted that in spite of having given sufficient time to the State Government to come up with some concrete steps to solve the problem in Public Interest Litigation, nothing was done. Therefore, the Court constituted a high level committee headed by the Chief Secretary of the State, Principal Secretary, Urban Development Department, Principal Secretary – Finance and Revenue and various other officers of the State Government and also gave an option to the Chief Secretary to add any other members. It appears that in compliance with the aforesaid direction, the State Government issued a resolution dated 2 March 2009 constituting the committee headed by the Chief Secretary.

4. Thereafter also the matter came up for hearing before the Court a number of times and ultimately when no progress was being made, this Court passed order dated 3 February 2010. This Court even suggested that disciplinary action be initiated against the responsible officers within whose jurisdiction any unauthorized construction and encroachment on public lands were noticed while conducting the survey. It was expected that the high power committee headed by the Chief Secretary would call for the periodical

reports from all the Municipal Corporations and other local bodies as regards steps being taken by them for removing unauthorized constructions from public and private lands. On **10 June 2010** the Court (Coram : J.N. Patel, Acting C.J. and S.C. Dharmadhikari, J.) recorded that the learned AGP requested for time to take instructions from the Chief Secretary as to by what date the State can remove the encroachments and unauthorized constructions from the public lands owned by the State Government and local bodies which would include roads, pathways and so on.

5. The Chief Secretary filed his affidavit dated **19 June 2010** indicating that non-residential encroachments shall be removed by **30 September 2010** and that the residential encroachments will be removed as per the time table in the annexure. The Chief Secretary further made the following averments and submissions in paragraphs **11** and **12** of the affidavit :

“I say and submit that, encroachments of residential nature i.e. slums prior to **01.01.1995** are protected as per the present policy of the State Government and the request of the State Government, to extend this protection to the slum hutments existing prior to **01.01.2000**, is pending before the Hon’ble Supreme Court in SLP No.3474/2007. Therefore, as regards the encroachments of residential nature that have come up between **01.01.1995** and **01.01.2000**, the Hon’ble High Court may kindly allow the State Government to wait till the decision of the Honourable Supreme Court in the aforesaid matter and take further necessary action in accordance with the decision of the Honourable Supreme Court.

12. I say and submit that, in view of the aforesaid factual position I have instructed all the concerned to prepare detailed date-wise and location-wise action plan for removal of encroachments and unauthorized constructions on public lands in consultation with the Police authorities on the aforesaid lines and start its execution in a systematic manner, with effect from the 1<sup>st</sup> October, 2010.”

6. It appears that at the meeting of the high power committee headed by the Chief Secretary held on 18 June 2010, a decision was taken to remove encroachments as per the following schedule :

“A) Non residential encroachments – To be Removed by the 30<sup>th</sup> Sept. 2010.

B) Residential encroachments – To be removed as per the following table

Action	Period
a) Issuance of notices under the relevant laws for eviction to all the encroachers	One month (Up to the 15 <sup>th</sup> July 2010)
b) Notice period	One month (Up to the 15 <sup>th</sup> August 2010)
c) Scrutiny of documents / papers, if any, submitted by the recipients of notice	15 days (Up to the 31 <sup>st</sup> August 2010)
d) Determination of <b>eligibility</b> for resettlement <b>as per the prevailing policy of the Govt.</b> and preparation of location-wise, time-bound action plan for removal / demolition etc.	One month (Up to the 30 <sup>th</sup> September, 2010)
e) Demolition / removal of ineligible encroachments	From the 1 <sup>st</sup> Oct. 2010.



7. The Respondent authorities accordingly commenced demolition of unauthorized structures from **6/7 October 2010**. The persons aggrieved by the aforesaid demolition have moved this Court and filed Writ Petition Nos.**8255 of 2010** and **8256 of 2010**.

8. It is contended that the petitioners cannot be removed and their hutments cannot be demolished without providing them with alternative accommodation. It is submitted that right to accommodation is a fundamental right under Article **21** of the Constitution and that the petitioners' case is that they have been occupying the hutments in question prior to **1 January 1995**.

9. Two Civil Applications have been filed being **173 of 2010** and **174 of 2010** by the Members of the Legislative Assembly in Thane District contending that those who have put up structures prior to **1 January 1995** cannot be removed without giving them alternative accommodation as provided in the Government Resolution dated **11 July 2001** (Exhibit A to the Application). In the said Civil Application the Applicants – Members of the Legislative Assembly have prayed for the following reliefs :

“(a) the State of Maharashtra and its instrumentalities in Thane District be directed not to proceed for demolition of slums in Thane District unless slum dwellers are rehabilitated as per G.R. dated **11<sup>th</sup> July 2001**;

(b) the State of Maharashtra be directed to postpone the demolition of slums in Thane District till final decision regarding granting of protection to the slums which have come upto 1<sup>st</sup> January 2000 is taken;

(c) the State of Maharashtra be directed to set new programme for demolition and or removal of encroachments by providing the name of the adjudicating authority for determination of eligibility and also the name of the Appellate Authority for challenging the adverse determination of eligibility;

(d) pending the hearing and final disposal of this Application demolition and/or removal of encroachments in Thane District as per the programme mentioned in the minutes of the meeting dated 18<sup>th</sup> June, 2010 be stayed.”

(emphasis supplied)

10. The Writ Petitioners in the Public Interest Litigations have opposed the Writ Petitions as well as the Civil Applications and submitted that this Court has granted sufficient time to the authorities to take action and that when the authorities have started taking action, no orders may be passed so as to prevent any demolition of unauthorized constructions.

11. Before we consider the rival submissions, we must note that the affidavit dated 15 September 2010 filed by the Tahsildar of Thane disclose disturbing facts. The Tahsildar has made the following averments in paragraph 12 of the affidavit :

“I say that as per the Government policy, in fact only the

huts prior to **1.1.1995** are protected. The issue of granting protection to huts prior to **1.1.2000** is pending before the Hon'ble Supreme Court in Special Leave Petition No. **3474** of **2007**. I say that inspite of this in the present removal of encroachment drive, I had informed the encroachers that initially only encroachments after **1.1.2000** would be removed. I say that neither the Petitioners not the other residents of Sainath Nagar Kalwa could establish that huts were existing prior to **1.1.1995** or even **1.1.2000**. I say that removal of encroachments was carried out on **6.10.2010** and **7.10.2010**. I say that when the notices were issued from **30.7.2010**, there were only **164** huts standing in Sainath Nagar. However, unauthorized structures by the time of removal were numbering **278**. The increase in number was due to new huts cropping up in intervening period. I say that these new huts were just tin sheds and almost all these sheds were not occupied at all." (emphasis supplied)

12. In paragraph **11** of the affidavit the Tahsildar has stated that notices were issued and served on the hutment dwellers from **30 July 2010** to **4 August 2010**. Notices were served on all the hutment dwellers of Sainath Nagar including those who have filed Writ Petitions **8255** of **2010** and **8256** of **2010**. At the relevant time there were **164** huts standing on the land in Sainath Nagar and therefore total **164** notices were issued and they were called upon to submit the proof of residence prior to **1 January 1995**. Several hutment dwellers submitted their replies by **31 August 2010** and even thereafter. The Tahsildar scrutinized those documents including **121** objections received from the hutment dwellers of Sainath Nagar. The Tahsildar found that not a single objector had submitted documents to prove that

their hut was existing prior to **1 January 1995**. The Tahsildar then prepared the list of unauthorized huts which had come up after **1 January 2000** and the said list was displayed on the notice boards in the offices of Talathi, Kalwa and Central Office, Mumbra. Wide publicity was given to the said display of lists, by publishing banners near the hutments. The Tahsildar thus gave wide publicity to the encroachers informing them that the encroachments which had come up after **1 January 2000** will be removed.

**13.** It is in the context of the aforesaid facts that we have to consider as to what reliefs may be granted to the petitioners in the writ petitions and the applications filed by the two members of the Legislative Assembly. It is shocking that when the show cause notices were issued by the Tahsildar on **30 July 2010**, there were only **164** huts in the Sainath Nagar, but when the action for removal of unauthorized structures was being taken in October **2010**, as many as **278** huts were found, including **114** newly constructed huts lying unoccupied. It is thus clear that a systematic effort is being made by “interested parties” in putting up new huts day in and day out and, therefore, this Court must guard against any such persons benefiting by any indulgence which the Respondent authorities may like to show on the ground of sympathy.

**14.** However, having regard to the fact that what is at stake for

the hutment dwellers is their claim for roof over their head for their families, we are inclined to accept the submission being made by the learned counsel for the hutment dwellers and the persons espousing their cause that one more opportunity be given to them for supporting their case that hutments had come up and that the concerned hutment dwellers have been residing therein prior to 1 January 1995 or even prior to 1 January 2000. We also find some substance in their contention that in case the first authority rejects their claim, they may be given one more opportunity by filing an appeal before the higher authority.

15. In view of the above, we direct that the concerned authority shall permit the concerned hutment dwellers to produce documents in support of their case that they had put up the structures in question prior to 1 January 1995 or even prior to 1 January 2000. The documents may be submitted before the Deputy Collector, Thane for encroachments on government lands, to the Assistant Municipal Commissioners for encroachments on municipal corporation lands and to the concerned officer of the Forest Department in case of forest land. This shall be allowed to be done within one month from today. Thereafter the officer shall consider such claims of the hutment dwellers within one month thereafter. In case any hutment dweller is aggrieved by rejection of his claim by the concerned officer, such aggrieved party will be at liberty, within fifteen

days from the date of receipt of the order, to file an appeal before an appellate authority to be named by the Chief Secretary of the State Government within one month from today. The appeal shall be decided within one month from the date of filing.

**16.** It is clarified that since notices were already issued by the concerned authority, no fresh notices need be served, but public advertisement shall be given by the Deputy Collector, Thane, Assistant Municipal Commissioner of the concerned Municipal Corporation and the Forest Officer in charge of the concerned forest land that the aforesaid schedule has been fixed for receiving documents in support of the concerned claims, for rendering decision and for filing appeal. The decision of the Deputy Collector / Assistant Municipal Commissioner / Forest Officer shall be communicated to the concerned person at the address mentioned in the application. The Deputy Collector / Assistant Municipal Commissioner / Forest Officer shall also inform the concerned party about the name and address of the appellate authority and time within which appeal may be filed.

**17.** Having regard to the averments made in paragraph **12** of the affidavit of the Tahsildar that the number of hutments in Sainath Nagar went up from **164** as on **31 July 2010** to **278** on the date of removal in the first week of October **2010**, we direct that the respondent authorities shall ensure that no further encroachments

shall be allowed to come up in Thane District or elsewhere and that any new encroachments shall be removed forthwith without seeking any further directions of this Court.

**18.** The women and children, who have been provided shelter as per order dated **11 October 2010** of this Court, shall be at liberty to join their families.

Stand over to **25 November 2010**.

**CHIEF JUSTICE**

**(DR. D.Y.CHANDRACHUD, J.)**