

SUPREME COURT OF INDIA

Sabir Siddiq Malik

Vs.

Bombay Environmental Action Group

C.A.No.... of 2009

(Dr. Arijit Pasayat J.)

08.05.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. In these appeals challenge is to the judgment of a Division Bench of the Bombay High Court in several writ petitions and notice of motion.

“Allegation was that appellants were encroachers in Sanjay Gandhi National Park and therefore they were to be evicted. The basic stand of the appellants is that they are not encroachers and they are not occupying any portion of Sanjay Gandhi National Park. It is their case that the High Court has shut out all remedies statutorily available. It is submitted that there has to be factual adjudication as to whether they are encroachers.”

2. Learned counsel for the respondent-State of Maharashtra submitted that these questions are being repeatedly raised by the appellants. There has been not once but several adjudications made by various authorities that they are in fact unauthorized occupants/encroachers who have made unauthorized constructions. It is submitted that the High Court has appointed a High Level Committee to look into the grievances to cut short the prolonged litigation and repeatedly filing of petitions to prolong the proceedings, the High Court has directed to constitute a Committee who shall entertain any proceeding in this behalf.

3. Whether the appellants are unauthorized occupants cannot be decided obviously in a writ petition. The Bombay Environment Action Group one of the writ petitioners had brought to the notice of the Court that there were large number of persons unauthorisedly occupying vast portion of the land in Sanjay Gandhi National Park. There is dispute that the question relating to unauthorized occupation has to be adjudicated by any competent authority statutorily.

4. Learned counsel for the State of Maharashtra submitted as noted above that there have been several rounds of adjudication. This position is strongly denied by learned counsel for the appellants. There can be absolutely no doubt that the question whether a person is unauthorisedly in occupation cannot be decided in a writ petition. Where factual disputes of this nature can be adjudicated, obviously, adjudication has to be done by statutory authority. It is open to the appellants to move any authority which according to them has the jurisdiction to decide that issue within four months. If there is adverse adjudication it shall be open to the appellants to move to the statutorily provided forum to consider the grievances. To the extent the order of the High Court is varied. The grievance redressal committee cannot be substituted for statutorily prescribed body. Needless to say the challenge if any to the prescribed authority in case of adverse adjudication has to be taken within the prescribed period of limitation. It is open to the parties to seek such protection as is available in law pending 3 final decision of the matter. We express no opinion in that regard. The appeals are accordingly dismissed.