

Arjun

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

WRIT PETITION NO.2521 OF 2023

Shri. Dattatraya Krishnat Patil & Anr. ...Petitioners

V/s.

The Additional Divisional Commissioner, ...Respondents
Pune Division, Pune & Ors.

**WITH
INTERIM APPLICATION NO.14138 OF 2023
IN
WRIT PETITION NO.2521 OF 2023**

Shri. Dattatraya Krishnat Patil & Anr. ...Applicants

V/s.

The Additional Divisional Commissioner, ...Respondents
Pune Division, Pune & Ors.

Mr. Rakesh Sharad Patil, for the Petitioners/Applicants.

Mr. Ajay B. Chate, Addl. GP a/w Mr. P. P. Pujari, AGP, for the
Respondent Nos.1, 2 & 5-State.

Mr. Yuvraj Narvankar, for Respondent No.3.

**CORAM : MADHAV J. JAMDAR, J.
DATED : NOVEMBER 01, 2023**

JUDGMENT:

1. Heard Mr. Rakesh Patil, learned Counsel appearing for the
Petitioners, Mr. Chate, learned Additional GP along with Mr.
Pujari, learned AGP, for the Respondent Nos.1, 2 and 5-State and

Mr. Yuvraj Narvankar, learned Counsel appearing for the Respondent No.3.

2. By way of this Writ Petition filed under Articles 226 and 227 of the Constitution of India, the Petitioners who are the residents of village Haldi, Taluka-Karveer, District-Kolhapur and therefore, voters in the election of Respondent No.4-Gram Panchayat Haldi, are challenging the Order dated 9th February 2023, passed by the Respondent No.1-Additional Divisional Commissioner, Pune Division, Pune in Appeal No.14 of 2022 (“**impugned Order**”). By the said impugned order, the Appeal filed by the Respondent No.3 has been partly allowed by setting aside the Order dated 24th June 2022 passed by the Collector, Kolhapur in Dispute Application No.16 of 2021 and the matter has been remanded back. The operative part of the said impugned order dated 9th February 2023 passed by the Additional Divisional Commissioner, Pune Division, Pune, is set out herein below:

“आदेश

- १) अपिलार्थी यांचे अपिल अंशतः मान्य करण्यात येत आहे.
- २) जिल्हाधिकारी, कोल्हापुर यांनी विवाद अर्ज क्र.१६/२०२१. मध्ये दि. २४/०६/२०२२ रोजी दिलेला आदेश रद्द करणेत येत आहे. प्रकरणी निकालपत्रात नमुद केलेनुसार सार्वजनिक रस्ता व वाद मिळकत याबाबत संबंधीत यंत्रणा/विभागाने मोजणीची कार्यवाही चार आठवड्यात पूर्ण करावी. मोजणीपूर्वी प्रकरणातील सर्व हितसंबंधीतांना आगावूची लेखी सुचना देणेत यावी. मोजणीची कार्यवाही सर्व हितसंबंधीत व ग्रामस्थ यांचे उपस्थितीत पूर्ण करावी. तदनंतर प्राप्त अहवालाचे अनुषंगाने सर्व हितसंबंधीतांना बाजु मांडण्यासाठी

पुरेशी/वाजवी संधी देवून जिल्हाधिकारी, कोल्हापूर यांनी फेरचौकशी करून यथायोग्य आदेश पारित करावेत.

- ३) सदरचा निर्णय इतर प्रकरणी पुर्वोदाहरण समजणेस पात्र ठरणार नाही.
- ४) खर्चाबाबत आदेश नाहीत.
- ५) निकालाची समज संबंधितांना देण्यात यावी.”

(Emphasis added)

English translation of the above, is as follows:

“Order

- 1) Appeal preferred by the Appellant is partly allowed.
- 2) Order passed by the Collector, Kolhapur in Dispute-Application No.16/2021 on the date 24.06.2022 is set aside. As mentioned in the Judgement in this matter, the Machinery/Department concerned shall complete the process of carrying out survey in respect of the Public road and the property in dispute, within four weeks and prior to carrying out the survey, shall give the intimation in writing in respect thereof in advance to all the interested parties in the matter. The process of survey shall be completed in the presence of all the interested parties and the villagers and thereafter, the Collector, Kolhapur shall carry out re-enquiry by giving sufficient/reasonable opportunity to all the interested parties to put forth their say in view of the report received and shall pass appropriate order accordingly.
- 3) The said decision shall not be eligible to be treated as a precedent in other matters.
- 4) No orders as to costs.
- 5) Intimation of this decision shall be given to the parties concerned.”

(Emphasis added)

3. The Collector, Kolhapur by the order dated 24th June 2022 passed in the said Dispute Application No.16 of 2021, allowed the said Dispute Application filed under Section 16(2) read with Section 14(1)(j-3) of the *Maharashtra Village Panchayats Act (Act No.III of 1959)* (“**said Act**”) and the Respondent No.3 has been disqualified to be a member of the Gram Panchayat. The said disqualification is on the ground that the Respondent No.3 has encroached upon the Government land. As set out herein above, by the impugned order of the Additional Divisional Commissioner, order of the Collector is set aside and the matter has been remanded back to the Collector.

4. It is the contention of Mr. Patil, learned counsel appearing for the Petitioners that Respondent No.3 along with her husband and other members of her family, have encroached upon Government land, i.e., State Highway No.189. Therefore, the Petitioners filed Dispute Application No.16 of 2021 seeking disqualification of the Respondent No.3. In the Dispute Application No.16 of 2021, the Collector, Kolhapur by order dated 15th November 2023 directed the Survey Officer to measure the concerned property, i.e., Survey No.311 and, accordingly, after following the procedure in accordance with law, the Deputy Superintendent of Land Records, Kolhapur measured the

concerned property on 8th December 2021 and prepared the Survey Map. The said map clearly shows that the Respondent No.3 and her family members have encroached upon the Government land, i.e., State Highway No.189.

5. It is his further submission that Respondent No.3 admitted before the Collector, Kolhapur, that she would remove the encroachment within a period of one week, which implied that she has accepted that she has encroached upon Government land. He, therefore, submitted that the Additional Divisional Commissioner, Pune Division, Pune has committed grave illegality and irregularity in setting aside the order dated 24th June 2022 passed by the Collector, Kolhapur.

6. Mr. Patil, learned counsel submitted that it is the claim of the Respondent No.3 that said Survey No.311 is the joint family property of the Respondent No.3 and has an area of about 856 sq. ft.. In said Survey No.311, there are 4 houses belonging to the family of the Respondent No.3 and as per the 4 separate assessment extracts, the aggregate area of said Survey No.311 comes to about 2227.46 sq. ft. instead of 856 sq. ft.. He, therefore, submitted that family members of Respondent No.3 have encroached upon an aggregate area of 1370.96 sq. ft..

7. Mr. Patil, learned counsel relied on the affidavit-in-reply filed by Respondent Nos.1 and 2 and, particularly on paragraphs

8 and 9 of the same.

8. On the other hand, Mr. Narvankar, learned counsel appearing for Respondent No.3 submitted that principles of natural justice have been violated, as the notice of encroachment is silent on the nature of the encroachment and it also does not mention particulars of the property. It is his submission that, in fact, the Collector, Kolhapur while passing the order dated 24th June 2022 has not verified the encroachment. It is his further submission that the alleged encroachment is on Survey No.311 and the same is the ancestral property of Respondent No.3. He submitted that therefore, the provisions of Section 14(1)(j-3) of the said Act will not apply to the said alleged encroachment, assuming the same to be the encroachment. He submitted that there are separate maps of the roads maintained by the Public Works Department (“PWD”), and the markings on such maps show the encroachment, but no such map is produced. He submitted that the Respondent No.3 has legally constructed on the land belonging to them and is even paying the taxes/charges to the local authority.

9. It is his further submission that the record of the case does not show existence of an encroachment. He submitted that the affidavit filed by the Government is to be completely discarded as, the impugned orders are passed after holding an inquiry and,

therefore, the reasons cannot be supplied by way of the affidavit. He relied on certain decisions of the Supreme Court to substantiate the said contention, reference to which will be made as and when necessary.

10. Mr. Narvankar, learned counsel submitted that the assurance given by the Advocate of the Respondent No.3 cannot be held against the Respondent No.3 and the said assurance was only with respect to the *Pansa*, i.e., weather shed. He submitted that statement of Advocate of Respondent No.3 cannot be treated as admission on her part of the alleged encroachment. He further submitted that the said weather shed has been removed. He relied on the decision of the Supreme Court in the case of *Himalayan Coop. Group Housing Society V. Balwan Singh & Ors.*¹ to contend that if any doubt exists as to the purported admission, the Court should be wary to accept such admissions until and unless the counsel or the Advocate is authorised by his principal to make such admissions. He further submitted that filing of Application seeking disqualification of the Respondent No.3 is politically motivated.

11. He submitted that, in any case, by the impugned order, the Dispute Application is not dismissed and the same has only been remanded by directing that the fresh plans be drawn. He,

¹ (2015) 7 SCC 373

therefore, submitted that no interference under Articles 226 and 227 of the Constitution of India is warranted.

12. Before considering the rival submissions, it is necessary to set out certain factual aspects:-

- (i) The Respondent No.3 got elected as a member of the Gram Panchayat Haldi on 18th January 2021. Subsequently, the Respondent No.3 has been elected as Sarpanch of Gram Panchayat-Haldi.
- (ii) The Petitioners are the residents of Village Haldi and, therefore, are the voters in the election of said Gram Panchayat. By filing the Dispute Application No.16 of 2021 dated 26th February 2021 under Sections 16(2) read with Section 14(1)(j-3) of the said Act before the Collector, Kolhapur, the Petitioners prayed for the disqualification of the Respondent No.3 as a member of the said Panchayat on the ground available under Section 14(1)(j-3) and Section 16 of the said Act. The Section 14(1)(j-3) of the said Act provides that no person shall be a member of Panchayat or continue as such, who has encroached upon Government land or public property. In the said Dispute Application it was the contention of the Petitioners that on 10th February 2021, the Deputy Engineer, Public Works Department, Sub-Division has issued notice for the

removal of the said unauthorised and illegal construction. In the affidavit filed at the time of submitting the Application for candidature as a member of the said Gram Panchayat, it is specifically stated by the Respondent No.3 that the Respondent No.3 or any of her family members have not encroached upon Government land. The husband of the Respondent No.3, i.e., Balasaheb Shripati Sutar is conducting business of carpentry and iron works, and the said premises adjoins the road and is on the portion which is part of the road. It is contended that the same is Government land and Respondent No.3's husband has encroached upon it. Therefore, Respondent No.3 cannot continue as a member of the said Gram Panchayat.

- (iii) The Respondent No.3 filed reply dated 11th October 2021 in said Dispute Application, *inter alia*, stating that family of the Respondent No.3 is having houses on the said property for the past 70 to 80 years . The said property is numbered as City Survey No.311 and the same is ancestral property. In the year 1983-1984, the City Survey was conducted, and at that time, a Survey Officer prepared a map and numbered the said properties as City Survey No.311. As far as the contention regarding the said notice dated 10th February 2021 is concerned, Respondent No.3 has stated

that the said notice is totally incorrect. It is mentioned that the provisions of the *Prevention of Ribbon Development Act, 2007* are not violated, as measurement as contemplated under the same have not been carried out and the boundaries are not fixed.

- iv) The Gram Sevak of Respondent No.4-Gram Panchayat, Haldi, Taluka-Karveer, District-Kolhapur, filed a reply dated 8th November 2021, *inter alia*, contending that there is no encroachment as alleged by the Petitioners.
- (v) The Respondent No.5, i.e., the Deputy Engineer, Public Works Department, Sub-Division, Bhudargad filed detailed reply placing on record the encroachment by the Respondent No.3 and her family members.
- (vi) The said Dispute Application No.16 of 2021 was heard by the Collector, Kolhapur from time to time, and on 15th November 2021 the Collector, Kolhapur passed the following order :

“सुनावणी झाली. दोन्ही बाजुंनी आपले तोंडी युक्तीवाद केले आणि कागदपत्रे व लेखी म्हणणे सदर केले. खालील निर्देश देण्यात येत आहेत.

- १) अर्जदार यांनी **CTS No.311** ची मोजणी फी भरावी आणि **CTSO** यांनी या न्यायालयाच्या निर्देश समजून सदरील मोजणी त्वरीत करून द्यावी. तसेच त्यात रस्त्याची संपूर्ण रूंदी आणि **Ribbon Development** व इतर सर्व **T P** नियमांप्रमाणे अंतरे दर्शविण्यासाठी आवश्यक लगतच्या **CTS No** चे व जमीनीचे हद्दी व क्र. दर्शवावेत.
- २) **PWD** ने याविषयी स्पष्टता द्यावी की, संपादीत न केलेल्या

जमीनीवरील रस्ता अस्तित्वात येण्या आधीचे बांधकाम अतिक्रमण किंवा अनधिकृत कसे समजता येईल, ते ही कोणतेही *compensation* न देता?

- ३) *ADTP* यांनी वरील मोजणी नकाशावर सर्व *Control Lines* आखून द्याव्यात आणि अतिक्रमण / अनधिकृत बांधकाम याविषयीचे आपले स्वयंस्पष्ट अभिप्राय द्यावेत.
- ४) तहसिलदार, करवीर यांनी *CTS No.311* व त्याच्या लगतच्या सर्व जमीनी ज्यामध्ये मालमत्ता क्र. २९३/१, २९३/२, २९३/३, २९३/४ आहेत. त्या जमीनीचे ७/१२ प्रमाणित करून सादर करावेत.
- ५) अर्जदार यांनी म्हणणे सादर केले की, सदरील जमीन (*CTS No.311* सह) ही, तुकाई देवी व्यवस्थापक सरकार यांच्या मालकीच्या आहेत. सबब सदरील भोगवटदार यांना नोटीस काढून या जमीनी त्यांनी सद्य परिस्थितीत कोणाला, कोणत्या प्रयोजनासाठी दिलेल्या आहेत आणि सदरील ताबेधारक यांनी यावर कोणत्या परवानग्या आजपर्यंत दिल्या आहेत यांची माहिती घ्यावी.
- ६) *CTSO* यांनी *CTS No.311* अस्तित्वात येण्याआधी कोणत्या गट नं. /सर्वे नं. चा भाग होता याचा सविस्तर लेखी जबाब स्वयंस्पष्ट नकाशाच्या उताऱ्यासह घेऊन यावा.

वरील सर्व अनुपालनासाठी पुढील मुदत २०/१२/२१ १०: ३० a.m.”

(Emphasis added)

The English translation of the same reads as follows :

"Hearing has been held. Both the parties put forth arguments orally and submitted their say in writing and also the documents. Below mentioned directions are given.

1. The applicants shall pay the survey fee for survey of the land bearing C.T.S. No.311 and the C.T.S.O. shall carry out the said survey by treating this order as the direction of the Hon'ble Court. Moreover, in order to show the entire width of the road and to show distances as per Ribbon

Development and all other T. P. Rules, the necessary adjacent C.T.S. Numbers, boundaries of the land and numbers shall be shown therein.

2. The P.W.D. shall clarify in this regard as to how the structure standing on the non-acquired land before the road coming into existence, can be considered as encroachment or unauthorised and that too without giving any compensation.
3. The ADTP shall mark all control lines on the aforesaid Survey map and shall mention his self-explanatory opinion about the said encroachment/unauthorised structures.
4. The Tahasildar, Karveer, shall certify and produce 7/12 extracts in respect of the lands bearing C.T.S. No.311 and of all the lands adjacent thereto in which the Properties bearing Nos.293/1, 293/2, 293/3 and 293/4 are situated.
5. The applicant submitted say that the said lands (Together with the land bearing C.T.S. No.311) are of the ownership of Management of Shree Tukai Devi, Government. Therefore, notice shall be issued to the said Occupants and information shall be obtained as to whom and for what purpose, they have handed over the said lands at present and as to which permissions the said Possessor has given in respect thereof till today.
6. The C.T.S.O shall submit detailed say in writing as to of which Gat No./Survey No., the land bearing CTS No.311 was part before its coming into existence, together with self explanatory extract (copy) of the map in respect thereof.

Next date of Hearing for the compliance of the
aforesaid points is 20/12/21 at 10.30 a.m."

(Emphasis added)

(vii) Pursuant to the said order dated 15th November 2021, the Deputy Superintendent of Land Records carried out the measurement and prepared the map. The report of the Deputy Superintendent of Land Records was produced before the Collector on 20th December 2021.

(viii) Before 14th February 2022, all the parties except the Gram Sevak of the Gram Panchayat, Haldi, filed their written submissions. On 15th February 2022, in the *roznama*, the following order is passed :

“सुनावणी झाली. सर्व हजर. वि. प. १ यांनी लेखी व तोंडी युक्तीवाद केला. वि. प. १ यांनी अतिक्रमण एका आठवड्यात काढण्याचे कबुल केले आहे. या व्यतिरिक्त काही लेखी तोंडी म्हणणे नाही हे सर्वांनी मान्य केले. सबब प्रकरण निर्णयासाठी बंद करण्यात येते. निर्णय सर्वांना कळविण्यात येईल.”

(Emphasis added)

The English translation of the above, is as under :-

"Hearing has been held. All parties are present. Opposite Party No.1 put forth arguments orally and also in writing. **Opposite Party NO.1 has agreed to remove the encroachment within one week.** Besides this no one has any say orally / in writing and all the parties agreed to the same. Hence, the matter is closed for judgment. The judgment shall be informed to all the parties."

- (ix) On 25th February 2022, the Petitioners filed an additional say in the said Dispute stating that although the statement was made that the said encroachment would be removed within seven days, the same has not been removed.
- (x) The Collector, Kolhapur by the order dated 24th June 2022 passed in the said Dispute Application has found that the husband of Respondent No.3 has encroached upon Government land, and, accordingly, passed the order by exercising power under Section 14(1)(j-3) and Section 16 of the said Act, disqualifying the Petitioner as a member of the Gram Panchayat, Haldi.
- (xi) The said order has been challenged by Respondent No.3 before the Additional Divisional Commissioner, Pune Division, Pune on 5th July 2022 by filing Appeal No.14 of 2022.
- (xii) By the impugned order dated 9th February 2023 in Appeal No.14 of 2022, the Additional Divisional Commissioner, Pune Division, Pune set aside order dated 24th June 2022 passed by the Collector, Kolhapur and the matter was remanded back by directing that the authorities should measure the land after giving notice and the said measurement be carried out *inter alia* in the presence of villagers of the said village.

13. In view of the above factual position, it is necessary to consider important issue involved in the matter about the encroachment, if any carried out by the Respondent No.3 or her family members.

14. The admitted factual position on record shows that by the order dated 15th November 2023, the Collector directed the Deputy Superintendent of Land records, Karveer to carry out the survey. Accordingly, notice was given by the Deputy Superintendent of Land Records dated 25th November 2021, that the measurement would be carried out on 8th December 2021. The said notice has been received on behalf of the husband of Respondent No.3, by son of Respondent No.3. The allegation is against the husband of Respondent No.3 that he has constructed unauthorised structures on the road. Accordingly, the said measurement was carried out on 8th December 2021. The measurement map which has been prepared on the basis of measurement that was carried out on 8th December 2021 shows that there is an encroachment upon the State Highway No.189 and the same is by the husband of Respondent No.3, who is conducting the business from the said structure.

15. In this regard, it is significant to note the contentions raised in say filed by Respondent No.5, i.e., the Deputy Engineer, Public Works Department, Sub-Division, Bhudargad to the said Dispute

Application and more particularly in paragraph Nos.4(A) and 4(D) which are reproduced herein below for ready reference :

- “अ) सदर दावा अर्जातील दावा विषय असलेले अतिक्रमण हे वि. प. नं. ३ यांचे अखत्यारीत असलेल्या कोल्हापूर — गारगोटी, गडहिंग्लज, नागनवाडी रस्ता राज्यमार्ग क्र. १८९ या रस्त्यावर हळदी गावच्या गावठाण हद्दीत शासकीय रस्त्यावर वि. प. नं. १ यांचे पती बाळासाहेब श्रीपती सुतार व इतर अनेक लोकांनी व्यवसाय करणेसाठी व इतर कारणांनी अनेक वर्षांपासून अतिक्रमण केलेले होते व आहे व सदर रस्त्याची सुधारणा करणेचे काम महाराष्ट्र शासनातर्फे सुरू करणेत आल्याने व सदर रस्ता सुधारणा कामामध्ये सदर लोकांची अतिक्रमणे अडथळा ठरत असल्याने व ती काढणे आवश्यक असल्याने सदर हळदी गावातील सर्व अतिक्रमण धारकांना अतिक्रमण काढून घेणेबाबत दिनांक १०/०२/२०२१ ते १७/०२/२०२१ चे दरम्यान दिलेल्या नोटीसा व वि. प. नं. १ यांचे पतिस दि. १०/०२/२०२१ रोजी दिलेली नोटीस हे सदर दावा अर्जाचे कारण व विषय आहे.
- ब) वि. प. नं. यांचे पती बाळासाहेब श्रीपती सुतार यांनी सदर रस्त्याचे कि.मी. १४/९०० ते १५/५०० मध्ये साधारणपणे १^१/_२ मिटर म्हणजेच ५ फूट रुंदीचे रस्त्याचे हद्दीमध्ये अतिक्रमण केलेले आहे हे सदर रस्त्याची प्रत्यक्ष जागेवर मोजमापे घेतल्यानंतर वि. प. नं. ३ यांचे ध्यानात आलेनंतर सदरची नोटीस देण्यात आलेली आहे. सदर कामी रस्त्याची अस्तित्वातील रुंदी सदर ठिकाणी १६ मिटर भरणे आवश्यक आहे म्हणजेच मध्यामापासून दोन्ही बाजूस ८ मिटर इतकी भरणे आवश्यक आहे. परंतु वि. प. नं. १ यांचे पतीचे घरासमोर मध्यापासून रस्ता मोजला असता सदर घर रस्त्याचे मध्यापासून ६.५ मिटर इतक्या अंतरावर आहे. म्हणजेच १.५ मिटर अतिक्रमण आहे हे दिसून येते व रस्ता सुधारणाकामी व रस्त्याची रुंदी मध्यापासून ८ मिटर आवश्यक असल्याने व अस्तित्वातील रस्त्यावर १.५ मिटर अतिक्रमण केलेले असल्याने सदरची नोटीस देण्यात आली आहे. सदरची नोटीस ही योग्य व कायदेशीर आहे. वि. प. नं. १ यांचे पती यांचे बरोबर इतर अतिक्रमण धारकांना सुध्दा नोटीसा लागू केल्या आहेत. सबब, वि. प. नं. १ यांनी त्यांचे लेखी म्हणण्यात वि. प. नं. ३ यांचेवर राजकीय दबावापोटी नोटीसा दिल्या वगैरे म्हणणे गैरलागू आहे. वि. प. नं. ३ यांचा या बाबीशी काहीही संबंध नाही.
- क) वि. प. नं. ३ यांनी सदर कामी भूमि अभिलेख करवीर यांचेकडील विषयांकीत हळदी गावाचा नकाशा दि. २३/०३/२०२१ नुसार घेतला असून त्यामध्ये सदर

अर्जाचा विषय असलेल्या मिळकतीसमोर अस्तित्वातील रस्त्याची रुंदी ही १६ मिटर पेक्षा थोडी जास्तच दिसून येते व सदर रस्त्याची मध्यापासून ८ मिटरचे आत वि. प. नं. १ यांचे पतीने अतिक्रमण केलेले दिसून येते.

- ड) सदर रस्त्याचे अस्तित्वात असलेल्या रुंदीमध्ये वि. प. नं. ३ यांचे मार्फत सुधारणा करणेचे काम सुरू आहे. व त्यामध्ये येणाऱ्या अतिक्रमण धारकांनी स्वतःहून अतिक्रमण काढून घेतले पाहिजे तसेच त्यांना नुकसान भरपाई देण्याचा किंवा त्यांची जागा भूसंपाद करणेची कोणतीही आवश्यकता सदर कामी नाही कारण शासनाचे अस्तित्वातील हद्दीतच सदर काम सुरू आहे.”

(Emphasis added)

The English translation of the same is as follows :

- A) **The encroachment** which is the subject matter of the Suit-Application was and has been made since past several years by Balasaheb Shripati Sutar, husband of the Defendant No.1 and various other persons, on the Government Road i.e. State Highway No. 189 - Kolhapur - Gargoti - Gadhinglaj - Naganwadi Road - falling within the jurisdiction of the Defendant No.1 and within the boundary of Gaathan place of Village - Haladi for carrying out their business and for other purposes. As the Government of Maharashtra has commenced the work of improvement of the said road, the encroachments that have been made by the said persons are becoming obstacles in carrying out the said work of improvement of the said road and as it is necessary to remove the same, the Notices for removing the encroachments that have been issued to all the encroachers from the said Village - Haladi during the period from the date 10.02.2021 up to the date 17.02.2021 and the Notice dated 10.02.2021 issued to the husband of Defendant No.1 are the cause and subject of the present suit.

- (B) Balasaheb Shripati Sutar, husband of Defendant No.1, has made an encroachment of about 1½ meters i.e. about 5 ft. in width in the road between the kilometer stone 14/900 to 15/500 and when this fact came to the notice of Defendant No.3 on taking measurements of the actual site on the said road, the said Notice had been issued to him. For the purpose of carrying out the said work, it is necessary that the existing width of the road at the said place should be 16 meters i.e. 8 meters each on both the sides from the centre point of the road. However, when the measurement of the said road is taken from its centre point in front of the house of Defendant No. 1's husband, the said road is found to be located at a distance of 6.5 meters from the centre point of the road. That means, it is seen that there is an encroachment of 1.5 meters. As the width of the road for improvement of the road needs to be 08 meters from its centre point, and as encroachment of 1.5 meters has been made on the existing road, this Notice has been issued. This Notice is proper and lawful. Besides the husband of Defendant No.1, notices have also been served to other encroachers. Hence, the contention of Defendant No.1 that the notices have been issued due to political pressure on Defendant No.3 is irrelevant. Defendant No.3 has nothing to do with this matter.
- C) In this matter, the Defendant No.3 has obtained the map in respect of Village - Haladi concerned in this Suit from the Office of Land Records, Karveer, on the date 23.03.2021 and it is seen that the width of the existing road passing from in front of the property

which is the subject matter of the present Suit-Application is little bit more than 16 meters and that the husband of Defendant No.1 has made encroachment within 08 meters from the centre point of the said road.

- D) The work of improvement in the existing width of the said road has been commenced by the Defendant No.3 and therefore, the encroachers, on their own, should remove their encroachments that become obstacles in the said work. Moreover, there is no necessity to give them compensation or to acquire their land for the said work, because, **the said work is going on within the existing boundary of the Government Road.**

16. It is the main contention of Respondent No.3 that there is no encroachment and that the alleged encroachment is, in fact, a weather shed. However, photographs which are produced on record clearly show that the same is not a weather shed and the same is an unauthorised structure.

17. It is the contention of Mr. Narvankar, learned counsel appearing for the Respondent No.3 that the notice of an encroachment on which the Petitioners have relied, is completely silent on the nature of the encroachment and the same is cyclostyle in nature. It appears that the said notice is served upon several occupants who have encroached upon the said Government road. The said notice is on page 91 of the Writ Petition compilation and is dated 10th February 2021. The same

reads as under :

“उप अभियंता सार्वजनिक बांधकाम उपविभाग, भुदरगड यांचे कार्यालय	
दुरध्वनी क्र. (०२३२४) २२००६८	ई-मेल— bhudhargad.de@mahapwd.com
जा.क्र.तां.शा/भुद/अति/२१२/२०२१	दि. 10 FEB 2021

नोटीस

प्रति,

बाळासो श्रीपती सुतार

मु.पो.हळदी ता.करवीर
जि. कोल्हापूर

विषय — अतिक्रमण केले बाबत.....

वरील विषयास अनुसरून कळविणेत येते की, कोल्हापूर गारगोटी गडहिंगलज नागनवाडी रस्ता रामा क्र.१८९ वरील कि.मी. ५/५०० ते ४२/२५० रस्त्याचे काम प्रगतीत आहे. सदर रस्त्यावरील कि.मी. १४/९०० ते १५/५०० मध्ये रिबन डेव्हलपमेंट अॅक्टचा भंग करून रस्त्याच्या उजव्या बाजूस रस्त्याच्या मध्यापासून ८.०० मीटर अंतराचे आत खोके/इमारत/घर/टपरीचे अतिक्रमण केले आहे. तरी सदरची नोटीस मिळताच सदरचे केलेले अतिक्रमण काढून घेणे यावे. अन्यथा केलेले अतिक्रमण या खात्यामार्फत काढून टाकणेत येईल व शासकीय मार्गाने योग्य ती कार्यवाही करणेत येईल याची कटाक्षाने नोंद घ्यावी.

उपविभागीय अभियंता

सा. बां. उप विभाग, भुदरगड

प्रत :— मा. कार्यकारी अभियंता सा. बां (दक्षिण) विभाग, कोल्हापूर यांना माहितीसाठी सविनय सादर.

प्रत :- मा. तहसिलदार, करवीर यांना माहितीसाठी व आवश्यक कार्यवाहीसाठी सस्नेह अग्रेषित
 प्रत :- मा. पोलिस निरीक्षक, करवीर यांना माहितीसाठी व आवश्यक कार्यवाहीसाठी सस्नेह
 अग्रहित

प्रत :- मा. सरपंच, ग्रामपंचायत हळदी ता. करवीर जि. कोल्हापूर”

(Emphasis added)

The English translation of the said notice is as follows :

**"OFFICE OF THE DEPUTY ENGINEER,
PUBLIC WORKS SUB DIVISION, BHUDHARGAD.**

TELE NO. (02324) 220068	e-mail: bhudhargad.de@mahapwd.com
Outward No. : T.B./Bhud./Encro./ 212/2021	Date: 10 th Feb. 2021.

NOTICE

To,
 Shri Balasaheb Shripati Sutar,
At and Post - Haladi,
Taluka - Karveer,
District - Kolhapur.

Subject: Regarding encroachment.....

In connection with the abovementioned subject, it is informed that the work of the road between kilometer 5/500 to 42/250 on State Road No.189 - Kolhapur - Gargoti - Gadhinglaj - Naganwadi Road is in progress. Encroachment of Boxes / Building / House / stalls has been made within the distance of 8.00 meters from the centre point of the road on the right side of the said road by violating the provision of the Ribbon (Urban) Development Act. Hence, as soon as you receive this Notice, you should remove the said encroachment or else, the said encroachment shall be

removed by this Department and appropriate action shall be taken in lawful manner, which may be noted categorically.

(Signature Illegible)	(Signature Illegible) Sub Divisional Engineer, P.W. Sub Division, Bhudhargad.
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Copy respectfully submitted to the Executive Engineer, P.W. (South) Division, Kolhapur, for information.

Copy forwarded with compliments to the Tahasildar, Karveer, for information and necessary action.

Copy forwarded with compliments to the Inspector of Police, Karveer, for information and necessary action.

Copy to the Sarpanch, Grampanchayat Haladi, Taluka - Karveer, District - Kolhapur."

18. The said notice dated 10th February 2021 clearly shows that the unauthorised construction is within 8 meters from the center of the road. In the present case, it is significant to note that in the said Dispute Application No.16 of 2021, the Collector by order dated 15th November 2021 directed that measurement be carried out to ascertain about the encroachment. The record further shows that, accordingly, the Deputy Superintendent of Land Records, Karveer has completed the work of measurement on 8th December 2021 and prepared the map. In the said map, the Survey Officer has shown the encroachment made by the husband of Respondent No.3 and the same is on the road. The say filed by the Deputy Engineer, P.W.D., in said Dispute Application, relevant contents of which are set out herein above clearly show

the encroachment. Thus, assuming that the notice given by the Deputy Engineer, Public Works Department is vague, still it has been established that the husband of the Respondent No.3 has encroached upon Government land attracting disqualification under Section 14(1)(j-3) of the said Act.

19. It is the further contention of Mr. Narvankar, learned counsel appearing for the Respondent No.3 that the order of the Collector disqualifying the Respondent No.3 is completely silent on the nature of the encroachment and the property on which the same is made. It is significant to note that the Collector has taken into consideration the notice given by the PWD. The said notice has not been challenged in any Court contending that the same is illegal and also the Collector has relied on the survey report dated 17th December 2021 of the Deputy Superintendent of Land Records. Apart from these factors, the Collector has also relied on the fact that on 15th February 2022, Respondent No.3 agreed to remove the encroachment and, accordingly, the same is recorded in the *Roznama*. The survey map prepared on 17th December 2021 clearly shows the encroachment and, therefore, there is no substance in the contention that the Collector is completely silent on the nature of the construction/encroachment and the property on which it is made.

20. It is the further contention of learned counsel appearing for the Respondent No.3 that the said property is an ancestral property of the husband of the Respondent No.3 and the Collector Kolhapur has not considered the said aspect. However, the factual position on record clearly shows that apart from the old encroachment/unauthorised construction, the husband of the Respondent No.3 has further carried out new encroachment/unauthorised construction affecting the Government road and the disqualification order is not passed on the basis of the old construction/encroachment but the same has been passed on the basis of new encroachment/unauthorised construction. In fact, the *roznama* records the statement made by learned counsel appearing for the Respondent No.3. that the Respondent No.3 has agreed to demolish the unauthorised construction. It is clear that the same is concerning the new encroachment/unauthorised construction made by the husband of the Respondent No.3. Therefore, there is no substance in the said contention.

21. Mr. Narvankar, learned counsel appearing for the Respondent No.3 has submitted that the affidavit which has been filed by the Tahsildar, Taluka-Karveer, District-Kolhapur dated 17th August 2023 in this Writ Petition cannot be taken into consideration. He further submitted that it is well settled that the

legality or otherwise of an order passed by a statutory authority must be judged on the face thereof as the reasons contained therein cannot be supplemented by an affidavit. He relied on the following decisions :

[1] *Mohinder Singh Gill & Anr. V. Chief Election Commissioner, New Delhi & Ors.*²

[2] *Indian Red Cross Society V. New Delhi Municipal Committee & Ors.*³

[3] *Nandkishore Ganesh Joshi V. Commissioner, Municipal Corporation of Kalyan & Dombivali & Ors.*⁴

[4] *Commissioner of Police, Bombay V. Gordhandas Bhanji*⁵

22. On the basis of the above decisions of the Supreme Court, it is his submission that it is well settled that the legality or otherwise of an order passed by a statutory authority must be judged on the face thereof as the reasons contained therein cannot be supplemented by an affidavit. He submitted that, it is settled legal position that the statutory authority, when it acts in terms of a statute is bound by its action. It cannot supplement or supplant the reasons later on by way of an affidavit. He submitted that the quasi-judicial order or even an administrative order has

2 (1978) 1 SCC 405

3 (2003) 5 SCC 545 : 2003 SCC OnLine SC 586

4 (2004) 11 SCC 417 : 2004 SC OnLine SC 1328

5 (1951) SCC 1088 : 1951 SCC OnLine SC 70

to contain reasons, which can neither be supplied nor supplanted subsequently. There cannot be any dispute with the above legal position. However, in this case, the Collector, Kolhapur has given valid reasons for passing the order disqualifying the Petitioner and, in fact, in the said affidavit of Tahasildar dated 17th August 2023 filed in this Writ Petition, the factual position which was already on record before the Collector is reiterated. In fact, perusal of said affidavit-in-reply clearly shows that what is set out in the said affidavit-in-reply filed in the present Writ Petition is already set out in the say filed by the Respondent No.5, the Deputy Engineer, Public Works Department, Sub-Division before the Collector. In any case, adequate reasons are given by the Collector, while passing the disqualification order.

23. It is the submission of Mr. Narvankar, learned counsel appearing for the Respondent No.3 that an order could not have been passed on the basis of admissions made by the learned Advocate appearing for the Respondent No.3 before the Additional Divisional Commissioner. He submitted that Respondent No.3 is in fact not bound by the statement or admission which has been made by her Advocate without any authority. He submitted that, the Respondent No.3 could not have made such an admission as the same would in fact, amount to accepting the encroachment and the same would have drastically

affected her preventing her from holding office of Sarpanch and also as a member of the said Gram Panchayat. To substantiate the said contention, he has relied on *Himalayan Coop. Group Housing Society (supra)*.

24. It is to be noted that the Collector while passing an order disqualifying the Petitioner has relied on several factors including that a notice has been served by the PWD regarding the said encroachment, the said notice has not been challenged in any Court by the Respondent No.3 or her husband, pursuant to the order passed by the Collector dated 15th November 2021 the survey map was prepared by the Deputy Superintendent of Land Records on 17th December 2021 and that the said survey map shows the encroachment. Thus, it is clear that the impugned order is not passed only on the basis of the admission made by Respondent No.3 as noted in the *roznama* dated 15th February 2022 and the same is an additional corroboration of the fact about encroachment on Government road/land by the Respondent No.3 or her family members.

25. The submission of Mr. Narvankar, learned counsel appearing for Respondent No.3 that said admission is only with respect to weather shed is without any basis. The relevant portion of *Roznama* clearly show that what is represented by the Respondent No.3 is as follows:-

“वि. प.१ यांनी अतिक्रमण एका आठवड्यात काढण्याचे कबुल केले आहे”.

(Opposite Party No.1 has agreed to remove the encroachment within one week).

Thus, the Respondent No.3 agreed to remove the encroachment and by no stretch of imagination, it can be said that the same is only concerning the weather shed.

26. The reasons recorded in paragraph 6.3 of the impugned order dated 9th February 2023 passed by the Additional Divisional Commissioner, Pune Division, Pune, are totally contrary to the map prepared by the Deputy Superintendent of Land Records, Karveer. In fact, the said reasons are imaginary and the reasons given in paragraph 6.4 are also not correct as the notice of measurement has been given to the concerned person. In fact, the Additional Divisional Commissioner, Pune Division, Pune stated in the operative part that the notice should be given to all concerned and inquiries as well as the measurements be done in the presence of the villagers. It is not clear why the measurements are directed to be carried out in the presence of the villagers. Section 14(1) (j-3) of the said Act contemplates that, no person shall be a member of Panchayat or continue as such who has encroached upon Government land or public property and for determining the same, presence of villagers is not necessary. Therefore, there is no basis for such directions. In

any case, the Deputy Superintendent of Land Records has prepared the measurement plan after following the procedure established by law. The entire reasoning given by the Additional Divisional Commissioner, is contrary to the documents on record. Thus, impugned order is perverse and requires to be quashed and set aside. The Collector by giving very valid and cogent reasons has passed the order of disqualification. Thus, the same deserves to be restored.

27. Accordingly, the following order is passed :

- (i) The order dated 9th February 2023 passed by the Additional Divisional Commissioner, Pune Division, Pune in Appeal No.14 of 2022 is quashed and set aside and the order dated 24th June 2022 passed by the Collector, Kolhapur in the Dispute Application No.16 of 2021 is restored.
- (ii) The Writ Petition is allowed in the above terms with no order as to costs.
- (iii) In view of the disposal of the Writ Petition, nothing survives in the Interim Application and the same is also disposed of.

[MADHAV J. JAMDAR, J.]