

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

WRIT PETITION NO. 5131/2014

(Shri Madhukar s/o Janardhan Gondane vs. The Union of India Th:
national highway Authority of India and 4 others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Mr. Y.V.Nayyar, Adv. for petitioner
Mr. M.A.Sable, Adv. for Res. No.3
Mr.Prakash Tiwari, Adv. for Res.No.4
Mr. N.S. Khubalkar, Asst. Govt. Pleader for Respondent no.5

**CORAM : SMT. VASANTI A. NAIK &
A.M. BADAR, JJ.**

DATED : 15th April, 2015.

Heard.

By this petition, the petitioner impugns the order of the Additional Commissioner, dated 16.09.2014, rejecting an Appeal filed by the petitioner, under Section 53(3)(A) of the Bombay Village Panchayats Act, 1958.

Shri Y.V.Nayyar, the learned counsel for the petitioner states that the Additional Commissioner committed a serious error in rejecting the Appeal filed by the petitioner against the order issued by the Gram Panchayat under Section 53 (2) of the Act of 1958, for want of jurisdiction. It is stated that against a notice/order issued by the Gram Panchayat under the provisions of Section 53 of the Act asking the petitioner to remove the encroachment within a stipulated time, an Appeal could be preferred before the Commissioner, under Section 53 (3)(A) of the Act of 1958.

On hearing the learned counsel for the parties and on a perusal of the provisions of Section 53 of the Act of 1958, it appears that the Additional Commissioner was not justified in dismissing the Appeal filed by the petitioner, on the ground that a Revision was not tenable against the order of the Gram Panchayat. On a reading of the provisions of Section 53 of the Act of 1958, it is clear that an Appeal could be filed by an aggrieved person who is directed by the Gram Panchayat to remove the alleged encroachment. It was necessary for the Additional Commissioner to have decided the Appeal filed by the petitioner, on merits.

Hence, for the reasons aforesaid, the Writ Petition is partly allowed. The impugned order dated 16.9.2014 is quashed and set aside. The matter is remanded to the Additional Commissioner for deciding the Appeal afresh, in accordance with law.

Order accordingly. No order as to costs.

JUDGE

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