

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 2640 OF 2016

Sudhir s/o Jagannath Mahajan
age 41 years, occ. agril.
r/o At Post Anturli, Tq. Muktai Nagar
Dist. Jalgaon

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its District Collector,
Jalgaon,
Tq. & Dist. Jalgaon
2. The Tahsildar,
Muktainagar,
Tq. Muktainagar Dist. Jalgaon
3. Zilla Parishad Jalgaon
Through its Deputy Chief Executive Officer
(Grampanchayat)
Tq. & Dist. Jalgaon
4. Panchayat Samiti, Muktainagar
Through its Block Development Officer,
Tq. Muktainagar, Dist. Jalgaon
5. Grampanchayat Anturli
Tq. Muktainagar, Dist. Jalgaon
Through its Village Development Officer
6. Grampanchayat Anturli
Tq. Muktainagar, Dist. Jalgaon
Through its Sarpanch
7. Swami Samarth Kendra
Anturli Tq. Muktainagar, Jalgaon
through Dattu Vishnu Patil

.. RESPONDENTS

Mr. V.B. Patil, advocate for petitioner.
Mr. V.M. Kangne, AGP for the State.
Mr. M.S. Sonawane, advocate for respondent no. 2.
Mr. M.G. Patil, advocate for respondents 5 and 6.
Mr. B.A. Shinde, advocate holding for Mr. V.P. Latange, advocate for
respondent no. 7.

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**CORAM : R.M. BORDE &
K.K. SONAWANE, JJ.
DATE : 5th OCTOBER, 2016.**

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith.
2. Heard finally with the consent of learned counsel for the respective parties.
3. Petitioner is praying for issuance of directions to respondents to remove encroachment towards open space i.e. land gat n o. 866/2 situate at village Anturli, Tq. Muktai Nagar, Dist. Jalgaon, in furtherance of the complaints presented by him on 02.11.2015 and 11.12.2015.
4. The open space which is vested in village panchayat out of gat no. 866/2 has been handed over in favour of respondent no. 7 under resolution no. 11 adopted by the Village Panchayat on 29.11.2010. The open space is alleged to have been handed over for development for social cause. Section 55 of the Maharashtra Village Panchayat Act relates to competence of Panchayat to lease, sell or transfer property. It is provided that every Panchayat shall be competent to lease, sell or otherwise transfer movable or immovable property which may become [vested in (otherwise than under the provisions of sub-section (1) of Section (51)] or be acquired by it and to contract and do all other things necessary for the purposes of this Act provided that no lease of immovable property other than property referred to in sub-section (1) of Section 56 for a term exceeding three years and no sale

or other transfer of any such property shall be valid unless such lease, sale or other transfer has been made with the previous sanction of the Chief Executive Officer. In the instant matter, the mode of transfer has not been disclosed i.e. either by way of lease or sale or any other permissible mode of transfer under the relevant act. The property appears to have been handed over by adopting resolution by the Village Panchayat in the year 2010. The property is possessed by respondent since about six years i.e. beyond three years period stipulated under section 55 of the Act.

5. Learned counsel for respondent Zilla Parishad has stated that there is no sanction of the Chief Executive Officer for the alleged transfer of the property. Since transfer of property itself is in breach of the provisions of Maharashtra Village Panchayat Act, such transfer cannot be recognised. The development carried out by respondent no. 7 over the property is unauthorised one and as such is liable to be removed.

6. In view of above, writ petition stands disposed of with directions to respondents 3 and 5 to 7 to remove encroachment over the open space which is part of gat no. 866/2 of village Anturli, Tq. Muktai Nagar, Dist. Jalgaon, as expeditiously as possible, preferably within a period of three months from today. Rule is accordingly made absolute. No costs.

(K. K. SONAWANE)
JUDGE

(R. M. BORDE)
JUDGE