

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4364/2016

(GUNWANTRAO ZINGAJI FUSE **VERSUS** STATE OF MAHARASHTRA & OTHERS)

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

Court's or Judge's orders

Shri S.D. Harode, counsel for the petitioner.
 Shri D.P. Thakre, Additional G.P. for the R-1 to 4.

CORAM : SMT.VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : AUGUST 08, 2016.

Heard.

By this writ petition, the petitioner has sought action against the respondents to remove the encroachments made by the respondent nos.7 and 8 on the government land that is adjacent to the house of the petitioner.

If an obstruction or encroachment is made upon the open site within the gaathan of the village, it is necessary for the villagers to take appropriate proceedings under Section 53 of the Maharashtra Village Panchayats Act. According to the petitioner, though a representation was made to the Gram Panchayat, the Gram Panchayat has not taken any action. It is stated that this fact was brought to the notice of the Collector but, the Collector has also done nothing in the matter concerning the non-removal of encroachment by the Gram Panchayat.

Shri Thakre, the learned Additional Government Pleader appearing on behalf of the respondent-Collector, Amravati, states that the application at Page 12, dated 25.02.2015, does not appear to have been submitted in the Office of the Collectorate but, it is submitted in Zilla Parishad, Amravati (Panchayat Vibhag). It is stated that if the Collector has not received the application, the Collector would not be in a

position to take up appropriate steps in the matter. It is further stated that it would be first necessary to consider whether the land adjoining the house of the petitioner is the government land and whether there is any encroachment by the respondent nos.7 and 8 on the same.

On hearing the learned counsel for the parties, we find that the procedure as required by the provisions of Section 53 of the Act, needs to be followed while seeking the removal of obstruction or encroachment on open sites. If the Gram Panchayat is not taking action on the application of the petitioner, it was necessary for the petitioner to have submitted an appeal-application to the Collector, Amravati. The application, it appears, was not submitted before the Collector-Amravati. Hence, a direction to the Collector to decide the application cannot be issued.

The learned counsel for the petitioner now states that the petitioner would file an application before the Collector under Section 53(2-A) of the Act.

In the aforesaid circumstances, we dispose of the writ petition with no order as to costs. The petitioner is, however, free to make an appropriate application before the Collector, Amravati under Section 53(2-A) of the Act. We make it clear that we have not considered whether the respondent nos.7 and 8 have made any encroachment on the government land or not, in this writ petition.

Order accordingly.

JUDGE

JUDGE

CERTIFICATE

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

Uploaded by: Rohit D. Apte.

Uploaded on : 10.08.2016.