

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

4 WRIT PETITION NO. 12528 OF 2015

BHASKAR KAUTIK CHAVAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Anudeep Sonar h/f. Patil Vijay B.

AGP for Respondents: Mr. P.S. Patil

Advocate for Respondents : Mrs. Chaitali Kutti Choudhari for R/3 to 5

Advocate for Respondents : Mr. A.N. Nagargoje for R/6

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**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE : 03.07.2017.

P.C. :-

. The petitioner has complained to this Court that there is an encroachment.

2. The encroachment is within the limits of the Village Panchayat, Mhasawad, Taluka and District Jalgaon.

3. The encroachment is set out in this petition by the local resident. The extent of the said encroachment is also set out in details in the representation. In the representation of 18.06.2013 annexure 'A' page 9 , the petitioner has set out in detail that the encroachments are on gaathan shivar and particularly the market area on a public road. He

has given such details of the encroachment and which are committed by private parties / structure owners. The result is that there is a traffic jam. This complaint was reiterated in writing on 18.12.2013. As is usual one of the statutory authorities and subordinate in the line is directed by the superiors to go and inspect the site, draw a panchnama and report the extent of the encroachment, if any. That has been done through the Block Development Officer Panchayat Samiti, Jalgaon-respondent no.5. Evidently, the Zilla Parishad, the Controlling Authority was also informed about this encroachment and against which the Village Panchayat has refused to take any action.

4. The petitioner being fed up with the inaction of all the authorities, to our mind rightly because he is not concerned with which authority has the power or jurisdiction to proceed against the encroachment, he wants a removal of the encroachment so as to facilitate smooth movement of pedestrian and vehicular traffic on a public road. Hence, he invoked the powers of the Divisional Commissioner first respondent to this petition. He made an application/complaint in writing to him, there he raised expressly the issue of inaction or delay on the part of the other authorities in dealing with and removing the encroachments. Upon such an application as well, we find that beyond

addressing a letter dated 19.11.2014, copy of which is at page 25 the Commissioner has done nothing.

5. If the Commissioners and Collectors of the District are helpless, then, we are the afraid the entire edifice of the Maharashtra Village Panchayat's Act will collapse. Section 53 of this Act reads as under:

“Sec. 53. Obstructions and encroachments upon public streets and open sites (1) Whoever, within the limits of the village,—

(a) builds or sets up any wall, or any fence, rail, post, stall, verandah, platform, plinth, step or structure or thing or any other encroachment or obstruction, or

(b) deposits, or causes to be placed or deposited, any box, bale, package or merchandise or any other thing, or

(c) without written permission given to the owner or occupier of a building by a panchayat, puts up, so as to protect from an upper storey thereof, any verandah, balcony, room or other structure or thing,

in or over any public street or place, or in or over upon any open drains, gutter, sewer or aqueduct in such street or place, or contravenes any conditions, subject to which any permission as aforesaid is given or the provisions of any by-law made in relation to any such projections or cultivates or makes any unauthorised use of any grazing land, not being private

property, shall, on conviction, be punished with fine, which may extend to fifty rupees and with further fine which may extend to five rupees for every day on which such obstruction, deposit, projection, cultivation or unauthorised use continues after the date of first conviction for such offence.

(2) The panchayat shall have power to remove any such obstruction or encroachment and to remove any crop unauthorisedly cultivated on grazing land or any other land, not being private property, and shall have the like power to remove any unauthorised obstruction or encroachment of the like nature in any open site not being private property, whether such site is vested in the panchayat or not, provided that if the site be vested in Government the permission of the Collector or any officer authorised by him in this behalf shall have been first obtained. The expense of such removal shall be paid by the person who has caused the said obstruction or encroachment and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter IX.

[It shall be the duty of the panchayat to remove such obstruction or encroachment immediately after it is noticed or brought to its notice, by following the procedure mentioned above.]

2[(2A) If any panchayat fails to take action under sub-section (2) [*], the Collector suo motu or on an application made in this behalf, may take action as [provided in that sub-*

*section, and submit the report thereof to the Commissioner].
The expense of such removal shall be paid by the person who
has caused the said obstruction or encroachment or
unauthorised cultivation of the crop and shall be recoverable
from such person as an arrear of land revenue.]*

*(3) The power under [sub-section (2) or sub-section (2A)]
may be exercised in respect of any obstruction, encroachment or
[unauthorised cultivation of any crop] referred to therein
whether or not such obstruction, encroachment or
[unauthorised cultivation of any crop] has been made before or
after the village is declared as such under this Act, or before or
after the property is vested in the panchayat.*

*[(3A) Any person aggrieved by the exercise of the powers by the
panchayat under sub-section (2) or (3) may, within thirty days
from the date of exercise of such powers, [appeal to the
Commissioner and the Commissioner, after making such
enquiry as he thinks necessary shall pass such orders as he
deems necessary] after giving such person a reasonable
opportunity of being heard.]*

*[(3B) Any order made by the Collector in exercise of powers
conferred on him under sub-section (2A) or (3) shall be subject
to appeal and revision in accordance with the provisions of the
Maharashtra Land Revenue Code, 1966.]*

(4) Whoever, not being duly authorised in that behalf

removes earth, sand or other material from, or makes any encroachment in or upon an open site which is not private property, shall, on conviction, be punished with fine which may extend to fifty rupees, and in the case of an encroachment, with further fine, which may extend to five rupees for every day on which the encroachment continues after the date of first conviction.

(5) Nothing contained in this section shall prevent the panchayat, from allowing any temporary occupation of, or erection in, any public street on occasions of festivals and ceremonies, or the piling of fuel in by-lanes and sites for not more than seven days, and in such manner as not to inconvenience the public or any individual or from allowing any temporary erection on, or putting projection over, or temporary occupation of, any such public street or place for any other purpose in accordance with the by-laws made under this Act.”

6. It is conceded before us that, if any, panchayat fails to take action under Sub-section 2 of Section 53, then the Collector sou-moto or on an application made in this behalf may take action as provided in that Sub-section and submit the report thereof to the Commissioner. The expenses of removal of this encroachment and obstructions upon public streets and open sites can be recovered from such person as is responsible for the same as an arrear of land revenue. With such

authority and power vesting in the Collector, we are sorry to say that they have failed to act in accordance with law. They cannot feel helpless in such a situation. It is now assured that the Collector of the District/Respondent no.2 to this writ petition shall take the necessary steps and in accordance with law and particularly Section 53 (2A) as expeditiously as possible and within a period of two months from today. We accept this statement made on behalf of the Collector of Jalgaon District as an undertaking to this Court. In the light of this statement, nothing survives in the writ petition and it is disposed of.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]