

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

**REVIEW PETITION NO.14/2018
IN
WRIT PETITION 12528 OF 2015**

- 1] Kailas Julal Chavan
Age 50 years, Occ.Aгри,
- 2] Rajendra Julal Chavan
Age 48 years, Occupation : Business
Both R/o. Mhaswad,
Tq. & Dist.Jalgaon .. PETITIONERS

Versus

- 1] Bhaskar Kautik Chavan,
Age 73 years, Occupation : Pensioner
R/o Near JDCC Bank, Mhasawad
Tq. & Dist.Jalgaon.
- 2] The State of Maharashtra
Through its Divisional Commissioner,
Nashik Division, Nashik.
- 3] The Collector,
Collector office Jalgaon,
Dist.Jalgaon.
- 4] The Zilla Parishad Jalgaon
Dist.Jalgaon through its
Chief Executive Officer.
- 5] The Zilla Parishad Jalgaon
Dist.Jalgaon, through its
Deputy Chief Executive Officer
(Grampanchayat)

- 6] The Block Development Officer
Panchayat Samiti, Jalgaon
- 7] The Village Panchayat
Mhaswad Tq. & Dist. Jalgaon
Through its Sarpanch/Village
Development Officer .. RESPONDENTS

[Respondent no.1 to 4 to be served
through Assistant Government Pleader,
High Court of Judicature of Bombay
Bench at Aurangabad]

Mr. Bhausaheb S. Deshmukh Advocate for petitioners
Mr. G.A. Nagori, Advocate for respondent no.1
Mr. Kishor Patil AGP for Respondents 2 & 3
Mr. C.R. Choudhari, Advocate for respondents 4 to 6.

**CORAM : S.S. SHINDE &
MANGESH S. PATIL, JJ.**

**RESERVED ON : 03/08/ 2018.
PRONOUNCED ON : 18/09/2018.**

JUDGMENT (PER MANGESH S. PATIL, J.) :

1] Rule. Rule is made returnable forthwith. Heard finally
with the consent of all the parties.

2] The review petitioner who is stranger and not a party to the
Writ Petition No.12528/2015 is seeking review of the order passed by
the Division Bench of this Court on 3/7/2017.

3] According to the learned advocate for petitioners, the
respondent no.1 had preferred the Writ Petition and had obtained
order by not disclosing the fact that a civil litigation was pending

between them and him in respect of their property bearing City Survey No.401. Pursuant to such direction, a proceeding has been initiated by the Collector by invoking powers under Section 53 (2-A) of the Maharashtra Village Panchayats Act, 1958 and under the guise of espousing a public cause a circuitous attempt has been made to obtain an order against them in respect of City Survey No.401. This was an important fact which was not brought to the notice of the Court while passing the order under review. They were not made parties to the Writ Petition and so were the other villagers who were likely to be affected by the order and therefore the order may be reviewed.

4] The learned AGP referring to the affidavit in reply of the concerned Sub Divisional Officer filed on behalf of the respondents no.2 and 3 submitted that the order under review only directs the respondent no.2 Collector to take necessary steps in accordance with the provisions of Section 53 of the Maharashtra Village Panchayats Act for removal of encroachment on a public street and it is only in accordance with such power that the steps are being taken as contemplated in law. Since the review petitioners were not the parties to the Writ Petition they could avail of the remedies as may be permissible in law. There are no sufficient and cogent reasons/grounds to review the order.

5] The learned advocate for the respondent no.1 by referring to the affidavit in reply also opposed the review petition. He submitted that though the dispute between review petitioners and the respondent no.1 is pending in the civil court, the subject matter of the suit is different than the subject matter involved in the Writ Petition. By Writ Petition a general and all pervasive allegations regarding

encroachment on a public street by various property holders adjoining the street was espoused and a direction was solicited to remove the encroachment by invoking the powers under the Maharashtra Village Panchayats Act. There was no error apparent on the face of the record and no new material has surfaced since the passing of the order under review. In fact pursuant to the direction steps are being taken against various property holders for removal of encroachment. Without there being any right and under the garb of review, the petitioners are avoiding the encroachment to be removed by the Collector.

6] As far as *locus standi* of the petitioners to seek a review on the ground that they were not parties to the Writ Petition is concerned, one need not delve much. As can be seen from the wordings of Section 114 as well as Rule 1 of Order XLVII of the Code of Civil Procedure any person can seek a review and it is not necessary that he should be a party to the proceeding.

7] Now coming to the factual aspects, as can be seen from the order under review, this Court has simply expected the Commissioner and the Collector to invoke the powers and duties cast upon them under Section 53 of the Maharashtra Village Panchayats Act. It nowhere concludes that there was any encroachment on the public street much less by the review petitioners. The order does not even refer to any specific property and does not refer to the property of the review petitioners. Needless to state that it is only by way of reminder to the Collector that the order under review was passed.

8] True it is that in the Writ Petition, the respondent no.1 had *inter*

alia referred to and solicited a direction against the Collector and the other revenue officials to remove encroachment as pointed out by him in the letter dated 18/6/2013 (Exh.A in the Writ Petition) and the representation dated 12/11/2014 (Exh.E in the Writ Petition) and in one of these communications he had referred to the City Survey No.401 by alleging that the owner of that property had carried out construction of a platform encroaching upon the road. But then, when no specific finding was recorded in the order under review as to whether the review petitioners being the owners of City Survey No.401 have actually carried out encroachment, one fails to understand as to how they can be said to be aggrieved by the order under review.

9] As can be seen from the order under review, the Collector of the District was only directed to take necessary steps in accordance with Section 53 (2-A) of the Maharashtra Village Panchayats Act, as expeditiously as possible and the order in our considered view is rather innocuous and does not necessarily affect the review petitioners unless ofcourse if they have not made any encroachment over the public street which vests in the Gram Panchayat.

10] Considering all the aforementioned aspects, in our considered view, there are no defects or any error apparent on the face of the record or any other justifiable reason to review the order.

11] The Review Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL,J.)

(S.S.SHINDE,J.)