

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12731 OF 2017

Dattaram Babu Ganekar.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. Harshad Sathe i/b Sonam Singh for the Petitioner.

Ms. Nisha Mehra, AGP for Respondent Nos.1 to 4.

Mr. R. S. Datar for Respondent No. 8.

Coram : Ranjit More &
Smt. S. S. Jadhav, JJ.

Date : **April 12, 2018.**

P. C. :

1. Heard learned Counsel for the Petitioner, learned Counsel for Respondent No.8 and learned AGP for the Respondent-State. None appears for Respondent Nos.6 and 7 despite notice. This petition is filed for the following reliefs :

“this Hon'ble Court may be pleased to issue a writ of mandamus and/or writ in the nature or any other writ, order or direction, thereby directing Respondent No. 1 to 7 and more particularly Respondent No. 6 and 7 to initiate action of demolition of illegal construction carried out by Respondent No. 8 on the lands bearing Gat No. 302, village Marg Tambhane, Taluka Chiplun, Dist. Ratnagiri.”

2. The sole grievance of the Petitioner is that Respondent No. 8 has constructed his house in such a way which causes obstruction the public road. Respondent No.8, of course, denied this contention and submitted that the construction is made on the private land and there is no obstruction to the public road.

3. Respondent No.7 Sarpanch of the grampanchayat Marg

Tamhane has already issued notice to Respondent No.8 in the month of December 2012 and directed Respondent No.8 to remove the construction which is obstructing public road. After 2012, Respondent No. 6 and 7 have not taken any action against Respondent No. 8, therefore, the Petitioner was constrained to approach this Court by way of present writ petition.

4. The affidavit-in-reply is filed by Respondent No.8 opposing the petition. Respondent No.8 relies upon the letter of Block Development Officer to Respondent No.7, dated 4th September 2017 and the application of Respondent No.7 to the Tahsildar dated 11th September 2017. Relying upon these documents, Respondent No.8 tried to contend that before removing the alleged encroachment on the public road, Respondent Nos.6 and 7 must approach concerned Tahsildar under the Mamlatdar's Court Act. He submitted that as a matter of fact Respondent No.7 has approached the Tahsildar for appropriate orders regarding the removal of alleged encroachment.

5. We have gone through the scheme of section 53 of Maharashtra Village Panchayat Act [for short "*the said Act*"]. It deals with obstructions and encroachment upon public streets and open sites. Under sub-section (2) of section 53 of the said Act, the panchayat has power to remove any obstruction and encroachment on the public property after issuing notice to the person concerned. Under sub-section (2-A) of section 53 of the said Act, if the panchayat fails to take action for removal of the obstruction under sub-section (2), the Collector *suo motu* or on an application made in this behalf, may take appropriate action subject to submission of report thereof to

the Commissioner. Under sub-section (3-A) of section 53, the person aggrieved by the action taken either by the panchayat or Collector, may prefer an appeal within 30 days from the date of order to the Commissioner.

6. In the light of above, we are of the opinion that in order to remove illegal encroachment on the public road, the panchayat need not resort to the provisions of Mamlatdar's Court Act and need not approach the Tahsildar in this regard. The grampanchayat is empowered to remove such construction on its own. Only thing which is required to be done is that the same is required to be done after following the principles of natural justice.

7. In the above backdrop of the case, the interest of justice would be subserved by directing Respondent Nos.6 and 7 to proceed further in the matter by resorting to the provisions of sub-section (2) of section 53 of the said Act for removal of the alleged illegal structure. Ordered accordingly. Needless to mention that that can be done only after hearing Respondent No.8. It is expressly made clear that this Court has not gone into legality or otherwise of the subject structure allegedly carried out by Respondent No.8 and all questions in this regard are kept open. It is further made clear that in the event any order passed by Respondent Nos.6 and 7 is adverse to the interest of Respondent No.8, he is at liberty to approach the Commissioner by way of an appeal under sub-section (3-A) of section 53 of the said Act.

[Smt. S. S. JADHAV, J.]

[RANJIT MORE, J.]