

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

WRIT PETITION NO.2372 OF 2020
DNYANESHWAR BHIMRAO TOTARE
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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Shri V.M.Jaware, Advocate for the petitioner.
Shri S.K.Tambe, AGP for the respondents 1 and 2.

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CORAM: ROHIT B. DEO, J.
DATE : 05th February, 2020

Per Court:

1 Not on the Board. Mentioned. Taken on the Production Board.

2 The petitioner is aggrieved by the order dated 07.12.2019 dismissing the appeal preferred by the petitioner challenging the notice issued by the Gram Panchayat, Dawarwadi-Dera, Taluka Paithan, District Aurangabad, for removal of unauthorized construction.

3 It is not in dispute that the petitioner is an encroacher. The shop is constructed on the land belonging to the Gram Panchayat.

4 The learned counsel for the petitioner invites my attention to the No Objection certificate dated 27.05.2019. The said certificate is of no assistance to the petitioner since no objection is granted to setting up a shop on the land owned by the petitioner. The learned counsel then submits that the tax is paid and accepted by the Gram Panchayat. Assuming that the tax is accepted by the Gram Panchayat, that would not

legitimize the encroachment.

5 The learned counsel for the petitioner would then submit, relying on the decision of the learned Single Judge in *Tukaram Lingappa Nagthane vs. Grampanchayat Karyalaya, Sawargaon, 1989 Mh.L.J. 523 : 1990 (1) Bom.C.R. 271*, that the action is beyond six months from the encroachment coming to light and therefore, is illegal. The learned counsel has, however, missed the point that sub-section (2-A) of Section 53 of the Maharashtra Village Panchayats Act is amended after the decision of the learned Single Judge in *Tukaram Nagthane (supra)*. The words “*within such time as may be prescribed*” are deleted in 2006. The decision rendered by the learned Single Judge is based on the provisions as they stood then. Before amendment, the action was required to be taken within the time prescribed by the Rules. However, after the 2006 amendment, there is no such fetter.

6 It is finally submitted that there are other encroachers against whom no action is initiated. If this be so, the respondents would be well advised to initiate similar action against other encroachers.

7 The learned AGP is requested to bring this order to the notice of the Gram Panchayat within a week.

8 This Writ Petition is dismissed.