

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1530 OF 2020

(Zanaklal s/o Surajlal Lilhare vs. The Collector, Gondia and another)

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

Shri D.M. Surjuse, Advocate for petitioner.
Shri S.Y. Deopujari, Government Pleader for
respondents.

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATED : MARCH 18, 2020

Heard Shri Surjuse, learned Counsel for
the petitioner, and Shri Deopujari, learned
Government Pleader for respondents, who appears
on waiving notice for them.

2) This petition seeks the following reliefs :

“(i) by way of suitable writ or direction be pleased
to quash and set aside the impugned notice dated
9/3/2020 issued by respondent no.2 Naib
Tahsildar, Gondia at Annexure “J” in the interest
of justice;

(ii) stay the effect and operation of impugned
notice dated 9/3/2020 issued by respondent no.2
Naib Tahsildar, Gondia at Annexure “J” during
pendency of petition.”

3) Similar issue was involved in Writ Petition No.4768/2017, which was filed by two petitioners, namely, Dhanpal s/o Dhadulal Dhuware and Ranjuta w/o Manoj Meshram. In that petition, petitioner was respondent no.1 and present respondent no.1 Collector, Gondia was respondent no.3. Naib Tahsildar, Gondia, who is respondent no.2 herein, was not party to that petition and in his place, Tahsildar, Gondia was made a party as respondent no.5. In that petition, the petitioners had sought direction from the Court to the Divisional Commissioner, Nagpur, Collector, Gondia as well as present petitioner regarding removal of encroachment made by respondent no.1 over a piece of land at Mouza Ratnara, Tahsil and District Gondia bearing Gat no. 75 and house no.230, having total area of 0.73 HR. In that petition, the issue of recommendation made by Tahsildar, Gondia to regularise the encroachment made by the present petitioner was raised by the petitioner himself and it was appropriately dealt by this Court while disposing of the petition. This Court in its judgment dated 29/1/2019, which disposed of that petition, held as follows :

“(5) In view of aforesaid position, we find that the respondent no.1 is encroacher, which is an

undisputed fact. The application filed by the respondent no.1 for regularisation of encroachment was pending since 1990 in which on 16/12/2015, the order was passed by the Additional Collector holding that the land in possession of the respondent no.1 needs to be regularised as encroacher. While filing affidavit before this Court, we cannot presume that the Collector is unaware of the order passed by the Additional Collector referred above. In view of this, it is open for the respondent no.3 Collector to proceed in the matter in accordance with law and if it is decided that the land admeasuring 0.73 HR is required for the purpose of Veterinary Hospital, the petitioners would obviously clear the way. We leave this matter to be decided by the respondent no.3 Collector. The Collector to take appropriate steps within a period of three months from today.”

4) It is clear that the petitioner, who has been found rank encroacher and not worthy of any consideration for regularisation of the encroachment by the Collector, could not have filed this petition in order to circumvent the specific directions given by this Court while disposing of the afore-stated petition. This Court had then directed the Collector to take appropriate steps within a period of three

months from the date of the judgment.

5) This petition is, therefore, an abuse of process of Court and it deserves to be dismissed in limine with suitable costs. The petition stands dismissed with costs of rupees five thousand to be deposited in the Account of High Court Bar Association, Nagpur within a period of four weeks from the date of this order, failing which costs shall be recovered from the petitioner as arrears of land revenue.

JUDGE

JUDGE

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