

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

WRIT PETITION NO.4606/2016

Atul s/o Khushalrao Thakre

...Versus...

Additional Commissioner, Amravati Division, Amravati and others

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

Court's or Judge's orders

Shri N.R. Saboo, Counsel for petitioner
Shri Sanjeev Deshpande, Addl. G.P. for respondent nos.1, 2 and 5
Shri M.G. Rathi, Counsel for respondent no.3
Shri A.A. Pannase, Counsel for respondent no.4

CORAM : AVINASH G. GHAROTE, J.

DATE : 03/03/2020

1. Heard Shri Saboo, learned Counsel for the petitioner, Shri Sanjeev Deshpande, learned Additional Government Pleader for respondent nos.1, 2 and 5, Shri Rathi, learned Counsel for respondent no.3 and Shri Pannase, learned Counsel for respondent no.4.

2. On a complaint made by the petitioner, to the effect that the respondent no.4, had committed an encroachment on Government road, a notice was issued by the Gram Panchayat to the respondent no.4 for removal of the same. As no action was taken, the petitioner filed proceedings under Section 53 (2-A) of the Maharashtra Gram Panchayat Act, in which by an order dated 31/12/2015, the Additional Collector, Amravati, directed removal of the

encroachment by the Tahsildar with the assistance of the Gram Panchayat, Koundanyapur.

3. The order of the Deputy Collector, was challenged by the respondent no.4 before the Commissioner in appeal. The Additional Commissioner by his order dated 26/5/2016 held that the factum of encroachment was not completely proved and therefore, quashed and set aside the order of the Additional Collector, Amravati, dated 31/12/2015.

4. The present petition questions this order, dated 26/5/2016, as passed by the Additional Commissioner, Amravati.

5. By an order dated 20/01/2020, this Court after noticing the controversy, in order to dissolve the dispute, directed the T.I.L.R. to carry inspection and submit a report before this Court along with an affidavit so that the facts on the ground can be verified by this Court.

6. The T.I.L.R., in pursuance of the above order, carried out measurement, copy of which is placed on record, with the measurement plan at Annexure-3, page 84 of the record which clearly demonstrates that the respondent no.4 has committed an encroachment on the Government road which is demarcated by letters A,B,C,D. An affidavit of one Subhash Jagatram Chavan is also filed on record, in which it is categorically stated that the respondent no.4 Suresh Gulabrao Thakre has constructed a shop admeasuring 28.18 sq. meters, which is on the Government land.

7. This being the position, the order as passed by the Additional Commissioner, dated 26/5/2016 cannot be sustained. The same is, therefore, quashed and set aside and the order as passed by the Additional Collector, Amravati dated 31/12/2016 is restored.

8. The writ petition, accordingly, stands allowed in the above terms. No order as to costs.

At this stage, Shri Pannase, learned Counsel for the respondent no.4, on instructions from the respondent no.4, seeks time of two weeks to demolish the construction and clear the encroachment, as indicated by letters A,B,C,D in the plan at page 84 of the record.

Two weeks' time is accordingly granted for demolishing the construction and removing the encroachment, subject to an undertaking by the respondent no.4, being submitted to the satisfaction of the Registrar (Judicial) of this Court, within a period of two days from today.

It is made clear that if the undertaking is not furnished, it shall be open for the Tahsildar to execute the order of the Additional Collector, Amravati for removal of the encroachment.

JUDGE