

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

902 WRIT PETITION NO.7882 OF 2020

**RADHAKISAN NAMDEO WAGHULE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Petitioner : Mr. G.Ä. Shaikh h/f Ms. S G Sonawane
AGP for Respondents : Mr. S.B. Yawalkar
Advocate for Respondent No.6 : Mr. Pratap Vikhe h/f Mr. R.R. Karpe
Advocate for Respondent No.7 : Mr. Sandeep D. Munde h/f Mr. S.S.
Gangakhedkar
...

**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, J.J.**

DATED : 26th AUGUST, 2021

PER COURT:-

1. The learned advocate for the petitioner is again not present today. A request is made for adjournment on her behalf. Considering the prayers put-forth and the order that we intend to pass, we are of the view that this matter need not be kept pending.

2. The petitioner has put-forth prayer clause (B) and (C) as under:

“B. Issue writ of mandamus or any other appropriate writ in the like nature, thereby kindly direct the respondent No.2 to 5 remove the encroachment carried out by Suhas Shivaji Wakhare and Shakil Wahed Bhailimakar in Gut No.245/1 in village Taklibhan as per the Sec 52(1) and Sec 53(2) Maharashtra Village Panchayat Act 1959.

C. Issue writ of mandamus or any other appropriate writ in the like nature; thereby kindly direct the Respondents No.4 and 5 to take appropriate step in view of the order passed by Respondent No.3 on order dated 17/09/2020 and 22/09/2020.”

3. Having considered the submissions of the learned counsel for the respective sides, we find that respondent no.3 has passed certain orders on 17.09.2020 and 22.09.2020. By the said orders, he had directed the Village Panchayat to initiate action against encroachers since the land at issue is said to be in possession of the Village Panchayat. It appears from the grievance of the petitioner that respondent no.3, after issuing the above stated notices, has put the matter in a dormant stage.

4. We have perused Section 53(2A) of the Maharashtra Village Panchayat Act, 1959 which clearly empowers the Collector to *suo moto* take action if the panchayat fails to take any action under sub-section 2 of Section 53 in relation to obstruction or encroachment. We are, therefore, entertaining this petition in the light of the prayers.

5. In view of the above, this petition is disposed off with a direction to respondent no.2 – District Collector to initiate appropriate steps for removal of encroachment, if any, by invoking his powers under Section 53(2A). We make it clear that we have not drawn any conclusion as to whether there is an encroachment. Since this aspect falls within the jurisdiction of the District Collector, we are directing him to do the needful as is prescribed in law.

(S.G. MEHARE. J)

(RAVINDRA V. GHUGE, J)