

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

WRIT PETITION NO.2316 OF 2021

Parmeshwar s/o Narayan Raut,
Aged about 50 years,
Occ.Agriculturist, R/o. Wasi,
Tah. Samudrapur, Dist. Wardha. ... Petitioner

.. Versus ..

- 1] The State of Maharashtra,
Through Commissioner,
Nagpur Division, Nagpur.
- 2] Sarpanch, Grampanchayat,
Wasi, Tah. Samudrapur,
District-Wardha.
- 3] The Secretary,
Grampanchayat, Wasi,
Tah. Samudrapur, Dist. Wardha.
- 4] The Block Development Officer,
Samudrapur, Tah. Samudrapur,
District-Wardha.
- 5] The Deputy Chief Executive Officer,
(Grampanchayat), Zilla Parishad,
Wardha. ... Respondents

Shri B.B. Pantawane, Advocate with Shri Prakash Ramteke,
Advocate for the petitioner,

Shri S.M. Ukey, Additional Government Pleader for respondent
no.1-State,

Shri S.S. Ghate, Advocate for the respondent nos.2 and 3.

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CORAM : N.B. SURYAWANSHI, J.

DATED : 05.07.2021.

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of the parties.

2. The Gram Panchayat, Wasi, Tahsil-Samudrapur,
District-Wardha issued notice under Section 53 (2) of the
Maharashtra Village Panchayats Act, 1959 (for short 'Act of
1959') to the petitioner asking him to remove the encroachment
on open public place. It is not disputed that the petitioner's
father had erected a cattle shed by encroaching on the public
place. The petitioner replied the same claiming that
encroachment since the time of his father and it does not cause
any obstruction to anybody and the notice is issued malafide.

3. The petitioner challenged the said notice by filing Appeal under Section 53 (3-A) of the Act of 1959 before the Divisional Commissioner, Nagpur Division, Nagpur, which came to be dismissed, hence the present petition.

4. Heard the learned advocate for the petitioner, the learned Additional Government Pleader for respondent no.1-State and the learned advocate for the respondent nos.2 and 3.

5. The learned advocate for the petitioner vehemently submitted that the encroachment of the petitioner is on the government land, therefore, in terms of Section 53 (2) of the Act of 1959, without prior permission of the Collector, the encroachment cannot be removed by the Gram Panchayat. Since no permission from the Collector is obtained in the present case, the impugned notice is unsustainable. He submitted that the notice is issued mala-fide and Gram Panchayat has no authority to remove the encroachment of the petitioner. He further submitted that the first respondent – Commissioner has failed to appreciate the contentions of the petitioner properly and has erred in rejecting the appeal of the petitioner. He submitted that

the petition deserves to be allowed by setting aside the appellate order and the notice issued under Section 53 (2) of the Act of 1959. He also submitted that the impugned notice is issued contrary to the Resolution No.1 passed in the meeting of the Gram Panchayat dated 23.12.2020, wherein seven members opposed the removal of encroachment and only Sarpanch and one member were in favour of the removal of encroachment.

6. The learned Additional Government Pleader for respondent no.1-State supported the appellate order passed by the respondent no.1-Commissioner, stating that after conducting enquiry, as contemplated by Section 53 (3) of the Act of 1959, the Commissioner has rightly dismissed the appeal by a reasoned order, therefore, there is no merit in the writ petition.

7. The learned advocate for the respondent nos.2 and 3-Gram Panchayat, submitted that the petitioner has filed his written say to the notice issued by the Gram Panchayat on 28.6.2021, contending that as the agricultural season is going on, he may be given eight to ten days time, after that he is ready to remove the encroachment. In case he does not remove the

encroachment within eight to ten days, the Gram Panchayat may remove the same and the petitioner will not object to the same. The said reply is tendered across the bar by the learned advocate for the Gram Panchayat and the same is marked 'X' for identification. He further submitted that the encroachment of the petitioner is in public place and falls within the area vested in the Gram Panchayat. In terms of Section 53 (2) of the Act of 1959, Gram Panchayat has power to remove the said encroachment. By pointing out Annexure-'C', he further submitted that the Standing Committee of Zilla Parishad passed a unanimous resolution in the meeting dated 27.11.2020 and directed the Gram Panchayat to remove the encroachment, failing which, the Zilla Parishad would initiate action under Section 39 of the Act of 1959 against the Sarpanch. He, therefore, submitted that there is no substance in the petition, the same may be dismissed with costs.

8. The petitioner has not disputed that his cattle shed is by way of an encroachment. On going through the Resolution at Annexure-C passed by the Standing Committee, it is clear that encroachment of the petitioner is on the road passing through

the village and for removal of the said encroachment, various communications were issued to the Gram Panchayat by Construction Division and Panchayat Division of the Zilla Parishad, Wardha. Since the Gram Panchayat did not take any action on the same, by Resolution No.3 dated 27.11.2020, fifteen days notice was given to the Gram Panchayat to remove the encroachment, failing which, action against the Sarpanch was to be initiated under Section 39 of the Act of 1959. It appears from the said resolution that the encroachment of the petitioner is on the public place and it is on the area vested in the Gram Panchayat.

9. In terms of Section 53 (2) of the Act of 1959, the Gram Panchayat has power to remove any such obstruction or encroachment in any open site not being private property, whether such site is vested in the Panchayat or not. In that view of the matter, the Gram Panchayat was justified in issuing the impugned notice to the petitioner. The petitioner has failed to place on record anything to show that the encroachment is on government land.

10. The appellate authority, after conducting enquiry and after going through the record, has come to the conclusion that the petitioner's encroachment is on the public place by the side of mouza Washi to Pawangaon road constructed by Zilla Parishad. The Gram Panchayat has power to remove encroachment within its boundary. Therefore, the Gram Panchayat was justified in issuing the impugned notice. The order passed by the appellate authority is well reasoned order and no case is made out by the petitioner to interfere with the same.

11. In view of the fact that the encroachment of the petitioner is on the public place within the Gram Panchayat area, no permission of the Collector is necessary. The petitioner has failed to make out any case. The petition is devoid of any substance and the same is therefore dismissed.

12. Rule is discharged. There shall be no order as to costs.

(N.B. Suryawanshi, J.)