

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

WRIT PETITION NO.2831 OF 2021

[Uttam s/o Santu Ghewande and others .vs. Gut Gram Panchayat, Shelgaon Jahagir and one]

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

Court's or Judge's orders

Shri Sachin M. Awachar, Advocate for the petitioners.

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CORAM : N.B. SURYAWANSHI, J.

DATED : AUGUST 10, 2021.

This petition filed under Articles 226 and 227 of the Constitution of India challenges the notices dated 31.5.2021 and 1.6.2021 issued by the respondent no.1 under Section 53 (2) of the Maharashtra Village Panchayats Act, 1959 (for short 'said Act').

2. It is mentioned in the impugned notices that Gat Nos.189 and 190 of village Anvi are E-class lands of the government. The village panchayat has power to remove unauthorized encroachments made on the government lands within its area under Section 53 (2) of the Act. Therefore, the petitioners should take care not to encroach on the government lands by cultivating the said lands. If the petitioners try to encroach on the said lands, the necessary action will be initiated against the petitioners and the expenditure of the said process will be recovered from the petitioners.

3. The learned Advocate for the petitioners submits that the petitioners are cultivating the said lands since last many years. The respondent no.1 Village

Panchayat, by Resolutions passed on 30.6.1999 and 20.5.2004, resolved that the encroachments of the petitioners be regularized. Further submission is that the proposed action of the respondent no.1 is beyond limitation prescribed in Sub-Rule 3 of the Bombay Village Panchayats (Period for removal of obstruction and encroachment) Rules, 1971. In support of this contention, reliance is placed in **Tukaram s/o Lingappa Nagthane .vs. Grampanchayat Karyalaya, 1988 (3) BomCR 351.**

4. The record indicates that the petitioners are cultivating the encroached lands since long and their proposals for regularization are pending before the Competent Authority. *Prima facie*, it appears that the action proposed under Section 53 of the said Act by the respondent no.1 is beyond the limitation prescribed under the 1971 Rules. The ruling in **1988 (3) BomCR 351** (supra) supports the case of the petitioner. In this view of the matter and as the petitioners have alternate efficacious remedy under Section 53 (3-A) of the said Act, the present petition is disposed of by granting liberty to the petitioners to file proceeding under Section 53 (3-A) of the said Act. The impugned notices at 'Annexure-A' shall remain stayed for a period of four weeks from today. Needless to mention that all contentions of the petitioners are kept open.

Steno copy is allowed.

(N.B. Suryawanshi, J.)