

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

**WRIT PETITION NO.3132 OF 2017**

Ganpat Sukhdeo Rathod,  
Aged about 55 years,  
Occ. Agriculturist, R/o Malsur,  
Taluka Patur, District Akola

**...PETITIONER**

**...V E R S U S...**

- 1) The Divisional Commissioner,  
Amravati Division, Amravati.
- 2) Gram Panchayat, Malsur,  
Through Gram Vikas Adhikari  
and Sarpanch, Malsur, Taluka  
Patur, District Akola.

- 3) Collector, Akola

**...RESPONDENTS**

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Shri R.L. Khapre, Senior Advocate with Shri S.Z. Qazi, Advocate  
for petitioner.

Shri S.M. Ukey, Addl. G.P. for respondent Nos.1 and 3.

Shri S.D. Chopde, Advocate for respondent No.2.  
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**CORAM:- V. M. DESHPANDE, J.**

**DATED :- JANUARY 22, 2021**

**ORAL JUDGMENT**

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

2.           On 05.01.2016 and 29.09.2016 respondent No.2 issued  
notices to the petitioner directing him to remove encroachment

made by him on the Government land.

3. Against the said notices, the petitioner approached to the respondent No.1 - Divisional Commissioner, Amravati Division, Amravati in a statutory appeal under Section 53 (3-A) of the Maharashtra Village Panchayats Act, 1959, which was decided on 17.05.2017. In the order, the Divisional Commissioner has observed that it is not clear whether the land belongs to the State Government or Gram Panchayat. Hence, it will be appropriate for the Gram Panchayat that if the site is vested in the Government the permission of the Collector or any officer authorised by him in that behalf shall have to be first obtained. The Collector, therefore, was directed to take necessary steps within a period of 15 days to remove the encroachment, if it is Government land, after following due procedure of law, Acts and Rules and thereafter remanded the matter to the Collector, Akola.

4. Thereafter, the matter lands in the office of Collector, Akola. In the meanwhile, there was an application filed on behalf of the petitioner for regularisation. The Collector vide order dated 15.12.2017 found that the petitioner is not entitled for

regularisation and directed for removal of the encroachment.

5. It is this order which primarily hurts petitioner, therefore he is before this Court.

6. Shri R.L. Khapre, learned Senior Counsel would submit that Government Resolutions dated 12.07.2011 and 16.02.2018, in respect of regularisations were not considered by the Collector, Akola. The said is not disputed by the learned counsel for respondents side.

7. In the light of the order passed by the Divisional Commissioner when the petitioner approached before the said authority under the statutory appeal challenging the notices given by the respondent no.2 – Gram Panchayat, it is observed by the Divisional Commissioner in paragraph No.4 of the order dated 17.05.2017 that it is not clear whether the land belongs to the State Government or to the Gram Panchayat.

8. Further, from the order of the Collector, Akola dated 15.12.2017 it is clear that application for regularisation was filed.

In that view of the matter, the writ petition can be disposed of by giving directions to the respondent No.3-Collector, Akola to decide the matter afresh on following points:

- (i) Whether it is proved that the petitioner has made encroachment either on Government land or on Gram Panchayat land.
- (ii) The regularization application filed on behalf of the petitioner be decided in the light of the Government Resolution dated 12.07.2011 and subsequent Government Resolutions, and shall further decided whether the petitioner is entitled to seek regularization in the light of those Government Resolutions.
- (iii) Till the matter is decided by the Collector, Akola afresh after giving opportunity of hearing to the petitioner as well as to the Gram Panchayat, Malsur, Taluka Patur, District Akola, the interim stay granted by this Court on 20.12.2017 that there shall be no coercive action for removal of alleged encroachment, shall continue.
- (iv) The Collector, Akola is directed to decide the proceedings afresh within a period of two months from the date of appearance before the Collector, Akola.

(v) The petitioner as well as respondent No.2-Gram Panchayat, Malsur are directed to appear before the respondent No.3-Collector, Akola on 04.02.2021.

The writ petition is disposed of. Rule is made absolute in the above terms. No order as to costs.

**JUDGE**

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