

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7583 OF 2021

Dattatraya S/o. Vitthalrao Gaikwad,
Age : 80 years, Occu. : Retired Teacher,
R/o : Ambedkar Chowk, Jalkot,
Tq. Jalkot, Dist. Latur

.. Petitioner

Versus

1] The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32

2] The District Collector,
Latur

3] The Chief Officer,
Municipal Council, Jalkot,
Tq. Jalkot, Dist. Latur

4] Jeevan S/o. Dhondiba Gaikwad,
Age : 77 years, Occu. : Agriculture,
R/o : Ambedkar Chowk, Jalkot,
Tq. Jalkot, Dist. Latur

.. Respondents

...
Advocate for petitioner : Mr. U.R. Awate h/f. Talekar and Associates
AGP for the respondent – State : Mrs. M.A. Deshpande
Advocate for respondent no. 3 : Mr. V.D. Gunale
Advocate for the respondent no. 4 : Mr. Parag Barde h/f. Mr. M.K. Bhosale
...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 11 AUGUST 2022

ORDER (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. Learned AGP and learned advocate Mr. Bhosale waives service. At the request of the parties, the matter is heard finally at the stage of admission.

3. The petitioner is aggrieved by the order passed by the respondent no. 2 – Collector on 03-02-2020 whereby, on a complaint filed by respondent no. 4, purportedly under section 53 of the Maharashtra Village Panchayats Act, 1959 (Village Panchayats Act) he has directed a measurement to be carried out of the house properties belonging to both of them and if it was found that there was 5 feet wide road in existence in South-North direction which was encroached over, to remove it.

4. (a) The learned advocate for the petitioner would vehemently submit that there has been long standing dispute between him and the respondent no. 4 regarding the alleged portion which the latter claims to be a way for his use. A suit filed by the petitioner was decreed restraining the *Gram Panchayat* from causing obstruction to petitioner's possession over his house property. It was the specific stand of the *Gram Panchayat* in the written statement regarding existence of the very same disputed 5 feet wide road. According to it, the petitioner had encroached over it and was in wrongful possession. Still the suit was decreed way back in the year 2005.

(b) Simultaneously, the respondent no. 4 along with one more person had also filed a suit against the petitioner around the same time i.e. in the year 1998 asserting the fact regarding existence of the disputed way and its obstruction by the petitioner. However, the suit was dismissed and even that decision has reached finality.

(c) *In spite* of such a state-of-affairs, the respondent no. 4 once again submitted a complaint with the respondent no. 2 – Collector on which the impugned order has been passed. The Collector had no jurisdiction. Jalkot Gram Panchayat was subsequently re-constituted as Municipal Council. The provisions of the Village Panchayats Act had ceased to be operational and the provisions of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Municipal Councils Act) had come into effect. Unlike section 53 of the former Act, the latter Act does not contain and confer any powers to be exercised by the Collector.

(d) The decisions of the civil court were brought to the notice of the Collector. He had no jurisdiction and power under the Municipal Councils Act to pass the order under challenge.

5. The learned AGP and the learned advocate for the respondent no. 4 would submit that it was a matter of encroachment over a *gairan* land and even in respect of the property situated in the

urban area or the Municipal area, the Collectors have been conferred with the power to take steps for removal of encroachment from the public premises, by the Government circular dated 10-10-2013. Consequently, in spite of conversion of Gram Panchayat as a Municipal Council, he had powers to pass appropriate orders. There is no illegality. They would further submit that pursuant to the directions by the respondent no. 2 – Collector, the measurement has been carried out by the Taluka Inspector of Land Records and an encroachment made by the petitioner has been revealed. Therefore, the petition be dismissed.

6. We have carefully considered the rival submissions and perused the papers. There is no dispute about the fact that the disputed piece of land situates at Jalkot town which was a Gram Panchayat till the year 2018-19 and has been transformed into a Municipal Council. The respondent no. 4 had filed a complaint in the year 2018 when it was a Gram Panchayat and he was seeking the respondent no. 2 – Collector to take steps in accordance with section 53 of the Village Panchayats Act which empowers a Collector to remove encroachment *inter alia* from the streets. Before the impugned order was passed, operation of the provisions of the Village Panchayats Act had ceased. Unlike the powers conferred on a Collector under the Village Panchayats Act, the Municipal Councils Act

does not contain any such power in him for the simple reason that all the streets vest in a Municipal Council. As a logical and legal corollary, once the *Gram Panchayat* was transformed into a Municipal Council, even if the complaint of the respondent no. 4 was pending decision, the respondent no. 2 – Collector had ceased to have any power over the disputed portion of land which is being claimed by the respondents as a way.

7. As far as Government circular dated 10-10-2013 is concerned, though *prima facie*, it confers powers on the Collector to take appropriate steps for removal of encroachments over open and public places, not only in respect of the lands in the rural but even urban areas, conspicuously, nothing has been spoken about such power to be exercised even in respect of an encroachment over the streets which vest in the Municipal Council.

8. Besides, going by the wordings used in this Government resolution, we are of the considered view that the power has been conferred for removing encroachment over the open spaces which vest in the Government or the *gairan* lands or other public premises which has nothing to do with a public street.

9. The impugned order does not conclude that it is a public street over which the petitioner has allegedly made the encroachment.

On the contrary, the respondent no. 2 – Collector does not emphatically conclude as to if the disputed 5 feet wide portion is, in-fact, a public way or a street. He also describes it as public road but observes that it is for the use of the respondent no. 4 herein, which is a self-contradictory observation.

10. Again, the Collector has proceeded to observe that the respondent no. 4 was not a party to the suit before the civil court when it is apparent that as is observed above, in respect of the selfsame dispute, the respondent no. 4 along with the third person had filed another suit against the petitioner but even it was dismissed.

11. Regular Civil Suit no. 217 of 1998 was filed by the petitioner against the Gram Panchayat, Jalkot through its *Sarpanch* and the *Gramsevak*. The specific stand of theirs regarding existence of the disputed way was refuted by the civil court and which decision has reached finality. If such was the state-of-affairs, the Collector ought to have borne in mind that there was no scope for him to reach any conclusion or draw any inference which would run contrary to the findings of the civil Court.

12. In view of the above state-of-affairs, the Collector had no jurisdiction or power to pass the impugned order which is clearly illegal and is liable to be quashed and set aside.

13. During pendency of the present petition, pursuant to the order under challenge, a measurement has been carried out. However, as has been laid down in the matter of *Kalabharati Advertising Vs. Hemant Vimalnath Narichania and others*; (2010) 9 SCC 437, in view of the principles of restitution, such a measurement and its effect would stand nullified since the very foundation of such measurement in the form of the order under challenge has been found to be illegal.

14. The writ petition is allowed.

15. The impugned order of the respondent no. 2 – Collector dated 03-02-2020 is quashed and set aside.

16. Rule is made absolute.

[SANDEEP V. MARNE]
JUDGE

arp/

[MANGESH S. PATIL]
JUDGE