

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

WRIT PETITION NO. 939 OF 2018

Narayan Pandhari Narkhede and others -- Petitioners

Vs.

Divisional Commissioner, Amravati & Others -- Respondents

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

Court's or Judge's orders

Mr. Rahul Tajne, Advocate for Petitioners
Mrs. S.S. Jachak, AGP for Respondent Nos.1 & 5
Mr. S.O. Ahmed, Advocate for Respondent Nos.2 & 3
Mr. M.P. Khajanchi, Advocate for Respondent No.4

CORAM : MANISH PITALE, J.

DATE : 19th JULY, 2022

By this writ petition, the petitioners have challenged order dated 06/02/2018, passed by the respondent – Divisional Commissioner, whereby an appeal filed by the petitioners challenging notice issued by the respondent – Grampanchayat for removing encroachment, was rejected and the Grampanchayat was directed to immediately remove the encroachment in terms of the order dated 21/09/2017, passed by the respondent – Collector.

2. It is brought to the notice of this Court that the impugned order passed by the Commissioner covers the case of all the petitioners before this Court and that the subject matter of challenge before the Commissioner were the seven notices issued by the Grampanchayat to the seven petitioners

before this Court. The contentions raised on behalf of the petitioners are common and hence, they are dealt with in that manner by this Court.

3. The facts in brief leading up to filing of the present writ petition are that there was a Public Interest Litigation bearing No.108/2015, filed before this Court for removal of encroachment, in respect of which, by an order dated 26/07/2017, leave was granted to the petitioner therein (who is respondent No.4 herein), to make a representation before the Collector, who would pass suitable order as per law. It seems that the examination of the issue as to whether there was at all any encroachment was initiated in this manner, which ultimately led to order dated 21/09/2017, passed by the respondent – Collector.

4. The respondent – Collector took into consideration the material available on record, in the context of allegations of encroachment made against the petitioners and others. After taking into consideration such material, it was directed that a measurement be carried out through the office of the Inspector of Land Records for ascertaining the boundaries of the plots in the concerned lay out, so that the exact position on record and the ground reality could be ascertained.

5. In pursuance thereof, the office of the Inspector of Land Records prepared a report after conducting measurement during which the petitioners were also put to notice. In pursuance of such measurement, report dated 13/10/2017,

came on record, which did indicate that the structures of the petitioners partly encroached upon a public road within the layout.

6. On the basis of said order of the Collector and the report that had come on record, the respondent – Grampanchayat issued notices to the petitioners on 04/12/2017, for removal of encroachments. The petitioners filed an appeal before the respondent – Commissioner, challenging such notices. By the impugned order the challenge raised on behalf of the petitioners was rejected and directions were given to the Grampanchayat to proceed on the basis of the notices and to remove the encroachments immediately.

7. Aggrieved by the said order of the respondent – Divisional Commissioner, the petitioners approached this Court by filing the present writ petition. Notice was issued on 16/02/2018 and ad-interim stay was granted in favour of the petitioners.

8. During the pendency of the writ petition, the petitioners challenged the aforesaid report pursuant to the measurement undertaken by the office of the Inspector of Land Records, before the Deputy Superintendent of Land Records. Admittedly, the challenge failed, which led to the petitioners filing an appeal before the Deputy Director of Land Records. The record shows that the petitioners repeatedly failed to appear before the Deputy Director of Land Records, as a consequence of which, the appeal was dismissed in default.

When this fact was brought to the notice of this Court, the respondents conceded that the appeal could be restored so that the challenge raised by the petitioners before the Deputy Director of Land Records could be decided on merits. It is an admitted position that on 15/11/2021, the Deputy Director of Land Records rejected the appeal, thereby confirming the measurement and aforesaid report on the basis of which the Grampanchayat had issued notices to the petitioners for removal of encroachments.

9. Mr. Rahul Tajne, learned counsel appearing for the petitioners vehemently submitted in support of the present writ petition that firstly, the entire action undertaken by the Collector, the office of Inspector of Land Records and the Grampanchayat, was vitiated because the lay out map taken into consideration was not the approved map of the lay out and that an earlier cancelled map was the basis for such action. Secondly, it was submitted that there was a proceeding arising out of mutation entries on the basis of sale deed executed in favour of father of petitioner No.4, wherein favourable order was passed by the revisional authority and that the same had a bearing on the present case. It was further submitted that the notices issued by the Grampanchayat were vague and that under the garb of removing alleged encroachment, the Grampanchayat was pressing for removal of entire structures of the petitioners and that this action was being taken malafide, at the behest of respondent No.4, who had a running private dispute with the petitioners.

10. On the other hand, Mr. S.O. Ahmed, learned counsel appearing for respondent Nos.2 and 3 i.e. Sarpancha and Secretary of Grampanchayat submitted that there was no substance in the contentions raised on behalf of the petitioners and that the contention pertaining to the action having been initiated on the erroneous map, was also taken into consideration by the Deputy Director of Land Records and yet, the measurement and map prepared by the office of the Inspector of Land Records was confirmed. It was submitted that the Grampanchayat had proceeded on the basis of the order passed by the Collector and the aforesaid measurement and report, which clearly indicated that the structures of the petitioners had indeed encroached upon a public road within the concerned lay out. It is submitted that there was no question of any malafide on the part of the Grampanchayat for the reason that in terms of the relevant provisions of law, particularly Section 53 of the Maharashtra Village Panchayat Act, 1959, the Grampanchayat was mandated to take appropriate steps for removal of such encroachments on public land.

11. Mr. Khajanchi, learned counsel appearing for respondent No.4, submitted that the petitioners were not justified in giving a colour of private dispute between the said respondent and the petitioners to the present case, for the reason that the action initiated by the Grampanchayat was based on an order passed by the respondent No.5 – Collector and that the respondent No.1 – Divisional Commissioner, on the basis of the material on record, had come to a considered

conclusion that there was indeed encroachment at the behest of the petitioners, which was required to be removed at the earliest.

12. Mrs. S.S. Jachak, learned Assistant Government Pleader appeared on behalf of respondents No.1 and 5 and defended the orders passed by the said authorities.

13. Heard learned counsel for the parties and perused the documents on record.

14. A perusal of the documents placed on record indicates that the respondent – Grampanchayat proceeded on the basis of a specific order passed by the Collector dated 21/09/2017 and a measurement report dated 13/10/2017, prepared by the office of the Inspector of Land Records, so as to issue notices to the petitioners for removal of encroachments. There is no material on record to indicate any malafide on the part of the Grampanchayat in issuing notices to the petitioners and this Court is unable to appreciate as to how the petitioners can allege that the Collector, the Divisional Commissioner, the office of the Inspector of Land Records and the Grampanchayat were all acting at the behest of the respondent No.4, who is a private party. Therefore, there is substance in the contention raised on behalf of respondent No.4, that the petitioners cannot allege that a private property dispute has led to Grampanchayat issuing notices to the petitioners.

15. Insofar as the contention pertaining to the basis of the measurement being a map, which was already cancelled and that a subsequent map and approved lay out was not taken into consideration, this Court has perused the documents on record, as also the order passed by the Deputy Director of Land Records, whereby the appeals filed by the petitioners were dismissed on 15/11/2021. The said specific contention was referred to in the said order and after taking into consideration the registered sale deed on which the petitioners themselves placed reliance, it was found that the said document could in no manner support the contentions raised on behalf of the petitioners. Therefore, it became necessary for this Court also to peruse the aforesaid sale deed dated 18/12/1973, executed in favour of father of petitioner No.4. In the said sale deed, there is no reference to any specific plots being sold. Only area of the property being sold is mentioned and certain boundaries are also stated. There is nothing in the said document to support the contention of the petitioners that the encroachment alleged against them is demonstrated to be false or unsustainable and that the material upon which the authorities have relied, is not supported by the documents on record.

16. The report of the office of the Inspector of Land Records clearly indicates as to the manner in which the measurement was carried out in the presence of the petitioners and to what extent it was found that there was indeed encroachment on part of the public road within the concerned layout. This Court is not able to appreciate as to how the petitioners can

take advantage of a purported subsequent approved layout to demonstrate that the theory of encroachment of structures of the petitioners cannot be supported by the material on record. The map on which the petitioners have placed reliance, even if it were to be considered, is unable to dislodge the report specifically prepared by the office of the Inspector of Land Records on the order passed by the Collector on 21/09/2017.

17. Insofar as the notices issued by the Grampanchayat are concerned, they are obviously based on the aforesaid order of the Collector and the measurement report dated 13/10/2017, which came on record. The notices indicate that the petitioners are expected to remove encroachments on public road as found on the basis of the aforesaid material. The allegation that the notices are vague and that there is a real danger of the entire structures of the petitioners being removed, is also misplaced and if need be, a clarification can certainly be given by this Court.

18. This Court is of the opinion that the material on record does not support the contentions raised on behalf of the petitioners and that the conduct of the petitioners is obvious from the manner in which they proceeded to keep challenges raised to the aforesaid measurement / report of the office of the Inspector of Land Records, pending before the appellate authority.

19. It is a matter of record that after filing the appeal before the Deputy Director of Land Records, the petitioners

repeatedly failed to appear before the said authority, as a consequence of which the appeal was dismissed in default. This was by an order dated 05/03/2020. Thereafter, when the said aspect was brought to the notice of this Court, only by way of indulgence, this Court set aside the said order dismissing the appeal of the petitioners in default and restored the appeal before the Deputy Director of Land Records, with a further direction for disposal of the appeal on merits. It is an admitted position that on 15/11/2021, the Deputy Director of Land Records dismissed the appeal and confirmed the orders passed by the authorities below, as a consequence of which the measurement and the report prepared by the office of the Inspector of Land Records dated 13/10/2017, was confirmed and attained finality. The conduct of the petitioners indicates that they have been taking advantage of the ad-interim order passed by this Court, as far back as on 16/02/2018 and all efforts were made on their behalf to keep the litigation festering and to avoid the logical consequence of the notices of removal of encroachments issued by the Grampanchayat.

20. On merits, this Court is not with the petitioners and, therefore, the writ petition deserves to be dismissed. It is relevant that even in the order passed by the Deputy Director of Land Records dated 15/11/2021, it is observed that if at all the petitioners claim any right on the basis of the aforementioned sale deed or other such documents, they need to obtain appropriate orders from the competent Civil Court, particularly in respect of the allegations made against respondent No.4, who is a private individual.

21. In the light of the above, the writ petition is dismissed. The interim order stands vacated.

22. Needless to say, the petitioners would be at liberty to move the competent Civil Court for redressal of their grievances, if any.

JUDGE