

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

WRIT PETITION (WP) NO. 5348/2019

Shri Deochand Danduji Karemore

..VS..

Divisional Commissioner, Nagpur and ors.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.S. Sitani, Advocate for the petitioner

Shri D.P. Thakare, Additional Government Pleader for respondent nos. 1 and 2

Shri K.B. Ambilwade, Advocate for the respondent no. 4

None for respondent no. 3

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, J.J.

DATED : 26/07/2022

The petitioner seeks a direction to be issued to the Collector to decide an application that has been preferred under Section 53(2-A) of the Maharashtra Village Panchayats Act, 1959 (for short the "Act of 1959") pertaining to removal of encroachment from Kh. No. 88 at Mauza Tarodi (Bu) admeasuring 1 Hectare 64 Are. Initially, the Gram Panchayat had moved the Sub-Divisional Officer under Section 53 of the Act of 1959 seeking permission to remove the encroachment. The Sub-Divisional Officer on 27.02.2018 rejected the same. The petitioner then filed an Appeal before the Additional Commissioner who allowed the same on 03.04.2019 and set aside the order passed by the Sub-Divisional Officer. In view of the said order, the petitioner has moved the application under Section 53(2-A) of the Act of 1959 requesting the Collector to remove the encroachment.

In the reply filed by the respondent no. 4, it has been stated that Regular Civil Suit No. 45/2016 has been filed by the respondent no. 4 claiming ownership of Kh. No. 88 and injunction

has been sought to protect the plaintiff's possession. It is pointed out that on 04.03.2021 the Civil Court has passed an order of status quo with regard to the same suit property. The present petitioner has moved an application under Order I Rule 10 of the Code of Civil Procedure, 1908 seeking his impleadment in that suit.

Be that as it may, since the application preferred by the petitioner is pending, the Collector is directed to consider the application moved by the petitioner under Section 53(2-A) of the Act of 1959 in accordance with law and after hearing the petitioner as well as respondent no. 4. If there is no impediment in issuing any appropriate direction, the Collector is free to take necessary decision. The decision may be taken within a period of three months from the next date of the said proceedings.

With these directions, the writ petition is disposed of. No costs.

Civil Application (CAW) No 2742/2019 is also disposed of.

JUDGE

JUDGE

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