

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

Writ Petition No.5593 of 2018

Vishwanath S/o Chandrikaprasad Gupta ... Petitioner

Versus

State of Maharashtra and others ... Respondents

Mr. Chandiram F. Bhagwani, Advocate for Petitioner.

Mr. N.S. Rao, Assistant Government Pleader for Respondent Nos.1 and 2.

Mr. Girish A. Kunte, Advocate for Respondent No.4.

Mr. N.B. Rathod, Advocate for Intervenor.

Advocate Atul Pande for Intervenor.

CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.

DATE : 14 MARCH 2022

P.C.:

Heard the learned Counsel for the parties.

2. This Petition is filed for the following prayer.

“(i) direct the respondents to remove the encroachment on the Pandhan area as well as on the hills in Mouza Isasani, PHN No.46, Survey No.6 on 2 Hectares out of 45 H 61 R land and on the land of zudpi jungle situated on Mouza Wagdhara, PHN No.46 admeasuring 126 H 14 R”.

3. The Respondents have challenged the locus of the Petitioner and have argued that the Petitioner himself is an encroacher.

4. Since what is filed before us is a Writ Petition by the Petitioner in his personal capacity, a query was put to the Petitioner as to what is his legal right *qua* to his property and the legal injury. The learned Counsel for the Petitioner submitted that the Petitioner does not claim to be the owner of this property but states that because of the encroachment over the property in question, his easementary right of way is being affected.

5. Ascertaining whether the Petitioner has acquired any easementary right either by necessity or by prescription, it would be a matter of evidence, suitable for a trial in Civil Court. The Petitioner has a remedy of asserting his easementary right, if any, by approaching the Civil Court.

6. The Petition is not moved in public interest after following the rules framed by this Court which require details to be given and undertaking to be supplied.

7. In light of above, we decline to proceed further in this Petition. The Writ Petition is disposed of.

8. The Petitioner is at liberty to move the Civil Court.
All contentions of the parties are kept open.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)