

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

Writ Petition No.614 of 2018

Devanand Krishnaji Sonwane Vs Additional Commissioner, Nagpur Division, Nagpur And Others

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

Court's or Judge's Order

Shri N.B. Bargat, Advocate for the Petitioner
Shri D.P. Thakare, Addl.G.P. for the Respondent Nos.1 to 3/State
Shri U.K. Bisen, Advocate for the respondent Nos.4 and 5

**CORAM : ANIL S. KILOR, J.
DATED : 15th March 2023**

1. Heard.
2. In this petition, a challenge is raised to the order dated 16.08.2017 passed by the Additional Commissioner, Nagpur, dismissing appeal, under Section 53 (3A) of the Maharashtra Village Panchayats Act (for short "the Village Panchayat Act"), against the notice of removal of encroachment dated 12.04.2017 issued by the respondent Nos.4 and 5 Secretary and Sarpanch, respectively of village Dhamangaon, Post Marodi, Tah. Mouda, Distt. Nagpur.
3. After going through the record it is evident that from 1981, the petitioner is in possession of the land in question and as per the case of the petitioner, he is regularly paying taxes to the Gram Panchayat and has availed electricity supply.
4. It is further case of the petitioner that in the year 2007, he applied for regularization of his encroachment and the said application is pending with the Tahsildar, despite the fact that the

concerned Talathi has submitted his report in the year 2007 itself.

5. However, during the pendency of the said proceeding, the respondent Nos.4 and 5 issued notice dated 12.04.2017 under Section 53(2) of the Village Panchayat Act. Thereupon, Regular Civil Suit No.356 of 2017 was filed, which came to be rejected on the ground of jurisdiction.

6. Accordingly, an appeal was filed under Section 53 (3A) of the Village Panchayat Act before the respondent No.1/Additional Commissioner, Nagpur, challenging the notice dated 12.04.2017. The said appeal came to be dismissed by the impugned order dated 16/08/2017. Hence, this petition.

7. Admittedly, till date, there is no decision on the proceedings filed before the Tahsildar by the petitioner for regularization of his encroachment under the provision of the Maharashtra Land Revenue Code, 1966 (for short “the MLR Code”) and on the other hand, ignoring the said fact, the Gram Panchayat issued notice for removal of encroachment under Section 53(2) of the Village Panchayat Act.

8. In this writ petition, the petitioner has filed an undertaking on affidavit dated 01.03.2023 to the effect that he is ready to pay the rent as per the Government rate to the Gram Panchayat, if he fails in the application for regularization pending before the Tahsildar and also he undertakes to remove encroachment if no appeal is filed within stipulated period.

9. The learned counsel for the respondent Nos.4 and 5/Gram Panchayat, points out that under the MLR Code, the application for regularization of encroachment ought to have been submitted to the Collector, who is the Authority and not to the Tahsildar.

10. Thereupon, the learned counsel for the petitioner submits that an opportunity may be granted to the petitioner to make an application before the Collector, Nagpur and direction be given to the Collector, Nagpur to decide the same in a time bound manner.

11. He further submits that as the undertaking recorded herein above is given, no prejudice would be caused to any of the parties.

12. In the above referred backdrop, I am of the opinion that to strike a balance, the writ petition can be disposed of, without going into the merits of the matter.

13. Permission is granted to the petitioner to apply under the provisions of the MLR Code for regularization of his encroachment over the land to the Collector, Nagpur, within a period of two weeks from today and if such application is made, the Collector, Nagpur shall decide the same, after giving sufficient opportunity to both the parties, within six months from the date of filing of such application.

14. If the petitioner fails in the said proceeding or in the appeal filed, if any, he shall pay 25 % of the land cost as occupation charges to the Gram Panchayat, and he shall remove

encroachment on his own within six months. Accordingly, the writ petition is **disposed of** in the above terms.

[ANIL S. KILOR, J.]