

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

WRIT PETITION 749 OF 2022

Shrikrishna Panjabrao Wayal,
Aged 44 years, R/o. Chichkhed,
Tahsil Deulgaon Raja,
District Buldhana

.....PETITIONER

...V E R S U S...

1.The Divisional Commissioner,
Amravati Division, Amravati

2. The Collector, Buldhana

3. Sub Divisional Officer,
Panchayat Samity, Deulgaon Raja,
District Buldhana

4. Tahsildar, Deulgaon Raja,
District Buldhana

5. Zilla Parishad, Buldhana
through its Chief Executive Officer,

6. Gram Panchayat, Chichkhed,
Th Deulgaon Raja,
District Buldhana, through
its Secretary.

..RESPONDENTS

Mr. N.R. Saboo, counsel for petitioner.
Mrs. K.R. Deshpande, AGP for respondents 1 to 4/State.
Mr. A.P. Sadavarte, counsel for respondent 5.
Mr. B.K. Suchak, counsel for respondent 6.

CORAM:- ROHIT B. DEO & M.W. CHANDWANI, JJ.
DATE : 22.06.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. The petitioner is invoking writ jurisdiction and the cause of action is the inaction on the part of respondents 1 to 6 to remove the encroachment on land Gat 225, 226, 236 and 237 of Mouza Chichkhed within the jurisdiction of Chichkhed Gram Panchayat. The petitioner submits that land Gat 225 is E-class land which is to be used as Gayran. Portion of Gat 226 and 236 is also E-class land. The petitioner refers to the judgment of the Apex Court in ***Jaspal Singh Vs. State of Punjab, (2011)11 SCC 39*** and the Circular/Government Resolution issued by the Government of Maharashtra dated 7.9.2010 and 12.7.2011.

3. The petitioner submits that the subject land was measured on 23.2.2016 in the presence of the Circle Officer, Sarpanch, representative of the Gram Panchayat and Chairman of the Tantamukti Samiti which included the villagers. The petitioner approached the Tahsildar vide complaints-cum-representations dated 16.1.2018 and 26.9.2018 seeking removal of the encroachment. The Tahsildar took cognizance of the complaint and on

27.11.2018, directed the Block Development Officer, Panchayat Samiti, Deulgaon Raja to initiate immediate action of removal of encroachment. Petitioner also lodged complaint dated 20.4.2020 with the Gram Panchayat and followed up the issue by addressing complaints dated 23.5.2020, 26.5.2020 and 27.5.2020 addressed to the Collector, the Sub-Divisional Officer, Block Development Officer and the Zilla Parishad.

4. The petitioner asserts that despite the judgment of the Apex Court and the policy decision of the State Government, respondents 1 to 6 have not taken any concrete action for removal of the encroachments. Even the complaint lodged by the petitioner with the Divisional Commissioner did not yield the expected result, although the Commissioner did address communication dated 31.12.2020 asking the Collector, Buldhana to initiate necessary action.

5. These are the broad facts on the basis of which the petition is filed. During the pendency of the petition, the

petitioner is elected as the Up-Sarpanch of the Gram Panchayat. The petitioner submits that he is in hopeless minority and can do precious little to persuade the majority of the Gram Panchayat to discharge the statutory duty. The Secretary of the Gram Panchayat has filed affidavit in response dated 14.3.2023.

6. The Secretary has given several reasons and according to him, he could not initiate necessary action. Illustratively, the Secretary states that since past few months, his father was ill and he was busy taking care of his ailing father. The Secretary then states that he himself suffered from shoulder pain and some family issues. We find that the excuses are absolutely flimsy. However, we are not making any further observation since it has come on record that presently the post of Secretary is occupied by Mr. Gajendra Pandit.

7. The officers of the State Government have not rebutted the averments in the petition inasmuch as there is

no affidavit in response. However, the instructions which the learned AGP Mrs. K.R. Deshpande has received from the Tahsildar is that if the Gram Panchayat initiates action, every cooperation including police aid shall be extended to facilitate the removal of encroachment. We accept the statement as an undertaking to the Court.

8. It can not be gainsaid that removal of encroachments is the statutory duty of the Gram Panchayat. We are satisfied that since last several years, for reasons which are not far to seek, indulgence is shown to encroachers. In this situation, we direct Gram Panchayat, Chichkhed to seek police aid within the next seven days. We further direct the Superintendent of Police, Buldhana to ensure that the police aid is provided within seven days of the request to that effect from the Gram panchayat. We further direct every Revenue Officer including the Tahsildar, Deulgaon Raja and Collector, Buldhana to ensure that there is no impediment in removal of the encroachment and to provide every assistance to the Gram Panchayat, Chichkhed

to facilitate the Gram Panchayat to discharge its statutory duty.

9. The petition is disposed of in the aforestated terms.

(M.W. Chandwani, J.)

(Rohit B. Deo, J.)

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