

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

Writ Petition No.7362 of 2018

Lokesh s/o Narayan Chore and anr. Vs. Additional Commissioner Amravati and
others.

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

Court's or Judge's Order

Ms Shreya Jain, Adv. h/f Shri S.S. Dhegale, Advocate for the Petitioner/s
Ms Shamsi Haidar, AGP for the Respondent Nos.1 and 2/State
Shri S.P. Kshirsagar, Advocate for the respondent Nos.4 and 5
Shri K.N. Jain, Advocate for the intervenor

CORAM : ANIL S. KILOR, J.

DATED : 26.06.2023

1. Heard.
2. This petition arises out of the order dated 21.05.2018 passed by the Divisional Commissioner, Amravati, directing the Additional Collector, Amravati for removal of encroachment of the petitioners.
3. In the present matter, a proceeding under Section 53 of the Maharashtra Village Panchayats Act (in short the Village Panchayat Act") was initiated by the Additional Collector, Amravati at the instance of respondent Nos.4 and 5 for removal of encroachment alleged to have been done by the petitioners on the government land.

4. The Additional Collector, after considering the report in respect of encroachment, rejected the application preferred by the respondent Nos.4 and 5 on the ground that since the village panchayat has initiated the proceeding as regards removal of encroachment by the petitioners, there is no need to entertain the application. The respondent Nos.4 and 5, feeling aggrieved by the same, approached to the Divisional Commissioner, who has set aside the order of the Additional Collector, Amravati dated 23.02.2017 and directed the Additional Collector to initiate an action for removal of encroachment vide impugned order dated 21.05.2018.

5. The learned counsel for the petitioners submits that before the Additional Collector, one Mukesh Narayan Chore was made party as an encroacher, whereas, the house stands in the name of the petitioner No.1 Lokesh Narayan Chore. She therefore, submits that there was no notice of removal of encroachment by the Collector to the petitioner No.1. She further submits that there is a sale deed in favour of the petitioner No.1 and therefore, it cannot be said that the petitioner No.1 has encroached over the government land. She further submits that the petitioner No.2 is a tenant and therefore, the proceeding against the petitioner No.2 is unwarranted.

6. The learned counsel for the petitioners submits that the respondent Nos.4 and 5 have made encroachment upon the government land and they are the encroachers and therefore, at the instance of respondent Nos.4 and 5, the application is not maintainable.

7. On the other hand, the learned AGP for the respondent Nos.1 and 2, strongly opposes the present petition and submits that despite the fact that the report of the Tahsildar, Warud clearly shows that the petitioners have made encroachment over the government land, the Additional Collector rejected the application preferred by the respondent Nos.4 and 5 on the ground that village panchayat has initiated action of removal of encroachment and there is no need to entertain the application at the behest of the respondent Nos.4 and 5.

8. It is further submitted that the Divisional Commissioner has, therefore, rightly directed the Additional Collector to initiate action for removal of encroachment vide impugned order. He accordingly prays for dismissal of the present petition.

9. The learned counsel for the respondent Nos.4 and 5 supports the impugned order passed by the Divisional Commissioner and prays for dismissal of the present petition.

10. Shri Jain, learned counsel, who is seeking audience in the present matter as an intervenor, supports the case of the petitioners.

11. In light of rival contentions of the parties, I have perused the record and the impugned order.

12. In this case, the Additional Collector while rejecting the application moved by the respondent Nos. 4 and 5 under Section 53 of the Village Panchayat Act, has given all the findings in

favour of the encroachment made by the petitioners. However, in the operative part of the order, it has been held that since the Village Panchayat has initiated the action of removal of encroachment, there is no need to pass any order and accordingly, the application was rejected. Thus, it is evident that on the basis of report prepared by the Tahsildar and the other material, the Collector has got satisfied as regards the encroachment made by the petitioners.

13. The Divisional Commissioner, accordingly, considering the report of the Tahsildar, who has categorically stated in his report about the encroachment made by the petitioners on the government land, has directed the Additional Collector to initiate the action for removal of encroachment.

14. It is the case of the petitioner No.1 that he was not made party before the Collector. However, from the order of the Divisional Commissioner, it is apparent that the petitioner No.1 was heard. The Additional Collector has not passed any adverse order against the petitioner No.1 and therefore, it is not relevant whether the petitioner No.1 was heard before the Collector or not. The adverse order was passed against the petitioner No.1 by the Divisional Commissioner and before the Divisional Commissioner, the petitioner No.1 Lokesh Narayan Chore was heard and accordingly, on page 22 of the record book, in the first paragraph, such reference is made by the Divisional Commissioner. In the circumstances, the ground raised by the petitioner No.1 that he was not heard, does not survive.

15. As far as a sale deed in favour of the petitioner No.1 is concerned, once the Tahsildar has observed that the petitioners have encroached over the government land, there cannot be any sale deed of the government land in favour of the petitioners. Thus, such sale deed of a structure will not help the petitioners to say that they have not made any encroachment.

16. At this stage, the learned counsel for the petitioners submits that as per the Government Resolution (GR) dated 16.02.2018, the Government has issued instructions, not to remove encroachment which is on the government land for many years, but to take steps to regularize the same. The said GR will not help to the petitioners in this matter, as the petitioners have not approached to any of the authorities for regularization as per the above referred GR or under the provisions of Maharashtra Land Revenue Code (MLR Code).

17. In the above referred backdrop, I do not find any error committed by Divisional Commissioner, Amravati in directing Additional Collector, Amravati to take steps as regards removal of encroachment. Accordingly, the writ petition is **dismissed**.

18. It is needless to mention that this Court has not gone into the issue of rights of the petitioners to get their encroachment regularized under the GR dated 16.02.2018 or under the provisions of the MLR Code. The petitioners are at liberty to pursue their rights, if any, in respect of the regularization before

the appropriate forum by filing a proceeding, as permissible under the law, if the petitioners so desire.

[ANIL S. KILOR, J.]