



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 656 OF 2024

Bapurao Gopala Gaikwad
Age: 60 years, Occu: Agri.,
R/o. Chimbhale, Tq. Shrigonda,
Dist. Ahmednagar

... PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary
Rural Development/Revenue Department,
Maharashtra State, Mantralaya,
Mumbai – 32
2. The Collector, Ahmednagar,
Tq. & Dist. Ahmednagar
3. The Chief Executive Officer
Ahmednagar Zilla Parishad,
Ahmednagar
4. The Sub-Divisional Officer
Shrigonda, Dist. Ahmednagar
5. The Tahsildar
Shrigonda, Tq. Shrigonda,
Dist. Ahmednagar
6. The Block Development Officer
Shrigonda, Tq. Shrigonda,
Dist. Ahmednagar

7. Chimbhale Grampanchayat
Chimbhale, Tq. Shrigonda
Dist. Ahmednagar, Through its
Village Development Officer/Sarpanch

8. Bhausahab Sampat Gaikwad
Age: 42 years, Occ: Agri.,
R/o. Chimbhale, Tq. Shrigonda,
Dist. Ahmednagar

... RESPONDENTS

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Mr. S. P. Salgar, Advocate h/f Mr. Y. H. Lagad, Advocate for Petitioner
Mr. R. S. Wani, AGP for Respondent Nos. 1 and 2 – State
Ms Kavita Bhale, Advocate for Respondent Nos. 3 and 6
Mr. D. A. Madke, Advocate for Respondent No.8

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRADE, JJ.**

RESERVED ON : 18.01.2024

PRONOUNCED ON : 31.01.2024

JUDGMENT (Per: Y. G. Khobragade, J.) :-

1. Rule. Rule is made returnable forthwith. Heard finally by consent of the parties.

2. By the present Writ Petition under Article 226 of the Constitution of India, the Petitioner has put forth prayer clauses (B), (C) and (D) as under:-

“[B] Quash and set aside the impugned notice dated 12.01.2024 issued by the respondent No.7 Grampanchayat being illegal, arbitrary and contrary to the evidence available on record and for that purpose issue necessary orders.

[C] Issue writ of mandamus or any other appropriate writ, order or direction in the nature of writ of mandamus, directing the respondent No.5 Tahsildar, Shrigonda to decide the representation/application dated 15.02.2022 filed by the petitioner in respect of correction of 10R area from Gat No.56 situated at village Chimbhale, Tq. Shrigonda, Dist. Ahmednagar from acquisition proceeding and for that purpose issue necessary orders.

[D] Pending hearing and final disposal of this writ petition, grant stay to the operation, execution and/or implementation of impugned notice dated 12.01.2024 issued by the respondent No.7 Grampanchayat and for that purpose issue necessary orders.”

3. The learned Counsel for the Petitioner submits that, the Petitioner was the owner of Gut No. 54 admeasuring 6 H. 62 R., Gut No.55 admeasuring 6H. 3 R., and Gut No.56 admeasuring 2H. 72 R., situated at village Chimbhale, Taluka Shrigonda, District Ahmednagar. However, in the year 1974, Respondent No.3 Zilla Parishad, acquired the entire land of Gut No. 55 and acquired 3 H. 43 R. from Gut No. 54. The petitioner remained in possession of 3 H. 43 R. land Gut No. 54. Similarly, out of Gut No.56, Respondent no 3 acquired land to the extent of 2H. 62 R out of total 2 H. 72 R. Therefore, 10 R Land remained with the Petitioner. The Petitioner constructed a residential house on the said 10 R. land, which was never acquired by the

Respondents. Therefore, on 15.02.2022, the Petitioner submitted an application with Respondent No.5 Tahsildar, Shrigonda praying for correction of 7/12 extract in respect of Gut No.56 to the extent of 10 R. land and he constructed a pakka house and cattle shed thereon.

4. However, in the month of September 2023, the Respondent No.8 was trying to fetch water from the percolation tank, without obtaining necessary permission of the Respondent authorities and tried to lay down pipeline to fetch water to his land, which is situated in Gut No.106 and 107. Therefore, the Petitioner obstructed Respondent No.8 for laying of the pipeline without permission. Thereafter, Respondent No.8 assaulted him and his son, hence, the Petitioner lodged a report, but an N. C. No.873/2021 was registered on 29.09.2021 with Belwandi Police Station. Therefore, to take revenge, Respondent No. 8 lodged a false complaint against him with Respondent No.5 Tahsildar on 23.05.2022 and copy of the same forwarded to Respondent No.7 Gram Panchayat. Thereafter, on 27.06.2023, Respondent No.7 issued a notice to the Petitioner, calling upon him to remove the encroachment described in the notice, within a period of seven days.

5. The learned Counsel for the Petitioner further canvassed that, the Petitioner has already filed Special Civil Suit bearing No. 266 of 2023 before the learned Civil Judge Senior Division, Shrigonda and the same is pending. During the pendency of the suit, the Petitioner served with impugned notice dated 12.01.2024, which is illegal and bad in law hence prayed for quashing and setting aside the same.

6. Per contra, the learned Counsel appearing for the respective Respondents, commonly submitted that, the Petitioner himself admitted about acquisition of his land Gut Nos. 54, 55 and 56 for percolation tank, but the petitioner constructed pakka house and cattle shed on the Government land. Therefore, the Petitioner was served with a notice dated 27.06.2023 for removal of encroachment within a period of seven days, however, the Petitioner submitted representation to Respondent No.5 Tahsildar on 15.02.2022 and prayed for correction of 7/12 extract and regularization of encroachment. m\Meanwhile, Respondent No.8 Bhausahab Sampat Gaikwad filed Writ Petition No.13050 of 2023 before this Court and requested for decision on his representation dated 28.02.2023. On 20.10.2023, this Court passed an order thereby directed the Respondent No. 8 therein to consider the representation of the

Petitioner and to communicate the decision on the same to the Petitioner within 60 days. Thereafter, the Petitioner is served with impugned notice dated 12.01.2024, calling upon him to remove the encroachment on the land. Hence, the impugned notice is legal.

7. It would be worthwhile to mention here that, Section 53 of the Maharashtra Village Panchayat Act provides for removal of obstructions and encroachments upon public streets and open sites. Sub-Section (2) of Section 53 empowers the Panchayat for removal of encroachment and to remove any crop unauthorisedly cultivated on grazing land or any other land, not being private property. For the sake of brevity, Sub-Section (2), 2A, 3, 3A, 3B of Section 53, are reproduced as under:-

“(2) The panchayat shall have power to remove any such obstruction or encroachment and to remove any crop unauthorisedly cultivated on grazing land or any other land, not being private property, and shall have the like power to remove any unauthorised obstruction or encroachment of the like nature in any open site not being private property, whether such site is vested in the panchayat or not, provided that if the site be vested in Government the permission of the Collector or any officer authorised by him in this behalf shall have been first obtained. The expense of such removal shall be paid by the person who has caused the said obstruction or encroachment and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter IX. 1[It shall be the duty of the panchayat to remove such obstruction or encroachment immediately after it is noticed or brought to its notice, by following the procedure mentioned above.]

[(2A) If any panchayat fails to take action under sub-section (2) 3[], the Collector suo motu or on an application 13. The next question is whether adequate and efficacious remedy is provided under the Act. The answer is obviously 'yes'. As discussed earlier, there is an obligatory duty cast on the Gram Panchayat and power conferred under subSection (2) of Section 53 of the Act. But then the action cannot be taken without recourse to the principles of natural justice and without following the procedure. A clear statutory appeal as of right is provided to the Commissioner who is supposed to conduct the appeal also taking recourse to the powers and procedure for appeals under Maharashtra Land Revenue Code. Hence, alternate efficacious as of right remedy is clearly provided.made in this behalf, may take action as 4[provided in that sub-section, and submit the report thereof to the Commissioner]. The expense of such removal shall be paid by the person who has caused the said obstruction or encroachment or unauthorised cultivation of the crop and shall be recoverable from such person as an arrear of land revenue.]*

(3) The power under 1[sub-section (2) or sub-section (2A)] may be exercised in respect of any obstruction, encroachment or 2[unathorised cultivation of any crop] referred to therein whether or not such obstruction, encroachment or 2[unauthorised cultivation of any crop] has been made before or after the village is declared as such under this Act, or before or after the property is vested in the panchayat.

3[(3A) Any person aggrieved by the exercise of the powers by the panchayat under sub-section (2) or (3) may, within thirty days from the date of exercise of such powers, 4[appeal to the Commissioner and the Commissioner, after making such enquiry as he thinks necessary shall pass such orders as he deems necessary] after giving such person a reasonable opportunity of being heard.]

[(3B) Any order made by the Collector in exercise of powers conferred on him under sub-section (2A) or (3) shall be subject to appeal and revision in accordance with the provisions of the Maharashtra Land Revenue Code, 1966.]”

8. In the case of ***Village Panchayat, Antora Vs. Wasudeo Ramchandraji Mohod and another*** – (2014) 5 Mah L.J. 189, the Single Bench Judge of Bombay High Court, Nagpur Bench, has observed as under:-

“Subsection (2) of Section 53 provides for a power of the Village Panchayat to remove any encroachment in any open site not being the private property whether such a site is vested in the panchayat or nor. As found by me above, there is a total failure on the part of the non-applicants even prima facie for showing that the property is their private property. They have not been able to prove it even remotely except for showing some tax receipts and mutation made in the year 1994 in respect of Kuccha Kotha. However, whether there is an encroachment or not whether it is the private property of the non-applicants; the burden would certainly be on the non-applicants to prove that the suit property is their private property and that it is not an encroachment. That being so, in my opinion, subsection (2) of Section 53 of the said Act gives a power and duty to the applicant Village Panchayat to remove the encroachment. In fact, proviso to sub section 2 of Section 53 was added by amending Act No.38 of 2006 to provide for compulsion on the Village Panchayat to remove the encroachments. By the amendment, appellate power was conferred on the Commissioner in place of ‘Standing Committee’ of Zilla Parishad for obvious reasons. It is in this background the letter dated 17.2.2011 notice dated 26.4.2011 were issued to the non-applicants so also resolutions were passed in the Gram Sabha on 25.4.11 and 26.4.2011. Subsection (3A) above clearly shows that any person if aggrieved by the action taken under subsection (2) of Section 53, he may within thirty days from the date of exercise of such power, appeal to the Commissioner and after making such enquiry, the Commissioner may pass such orders as it deems necessary. The notices as well as resolutions made by Gram Sabha would clearly “exercise of such powers” occurring in subsection (3A) of the Act. Thus, it is clear that the remedy provided by subsection (3A) is an appellate remedy against any action taken under subsection (2) of Section 53 of the said Act. It will be also pertinent to note that the Act does not provide for any remedy thereafter i.e. after the exercise of the appellate power by the Commissioner and, in my opinion, the remedy of sub-sec.(2) of Section 53 is in order to check the menace of encroachment everywhere including the villages and that is why the power is given to the Panchayat to follow the procedure and remove the encroachment. The procedure under section 53 of the said Act clearly appears to be summary in nature but still there is remedy provided by subsection (3A) of section 53. I have perused the said notice dated dated 17.2.2011 and 26.4.2011 as well as resolutions dated 25.4.2011 and 26.4.2011. In my opinion, the notices and the resolutions clearly fall within the purview of subsection (2) of Section 53 of the said Act. It is thus clear that provisions of Section 53 (2) and (3A) are squarely attracted in the instant case and, therefore, the jurisdiction of the Civil Court stands excluded.

12. *Apropos, paragraph 10(2) in the case of Dhruv Green Field Ltd. vs. Hukam Singh and others (cited supra), I thus find from the examination of provisions of Section 53 of the Act in terms show that the Act which must be treated as 'special law' as against the 'general law' and Sec.53 of the Act as special provision to deal with the matters like notices dated 17.02.211 and 26.04.2011 so also resolutions of Gram Panchayat dated 25.04.2011 and 26.04.2011, one must conclude the exclusion of the jurisdiction of the Civil Court.*

13. *The next question is whether adequate and efficacious remedy is provided under the Act. The answer is obviously 'yes'. As discussed earlier, there is an obligatory duty cast on the Gram Panchayat and power conferred under sub-Section (2) of Section 53 of the Act. But then the action cannot be taken without recourse to the principles of natural justice and without following the procedure. A clear statutory appeal as of right is provided to the Commissioner who is supposed to conduct the appeal also taking recourse to the powers and procedure for appeals under Maharashtra Land Revenue Code. Hence, alternate efficacious as of right remedy is clearly provided."*

9. In the case in hand, it *prima-facie* appears that, the Petitioner has already filed Special Civil Suit No. 266 of 2023 before the learned Civil Judge, Senior Division, Shrigonda thereby praying for decree of declaration that, the Notice dated 14-07-2023 issued by the Defendant No. 1 (present Respondent No. 7 being illegal and to restrain the Respondent No.1 Village Development Officer i.e. present Respondent No.7, from acting and implementing the said notice. The Petitioner/plaintiff also filed Exh.5 and prayed for temporary injunction against the Respondents/Defendants from execution of notice dated 14.07.2023, but the petitioner fails to produce any order passed therein.

10. Not only this, but the Petitioner again filed an Application Exh. J, Page 81, before the learned Civil Judge, Senior Division in Special Civil Suit No.266 of 2023 and challenged the notice dated 27.06.2023, which is in the similar nature of the impugned notice. The Petitioner has a statutory efficacious remedy to challenge the impugned notice under Section 53 of the Maharashtra Village Panchayats Act. Therefore, considering the ratio laid down in the case of *Assistant Commissioner (CT) LTU, Kakinada and others Vs. Glaxo Smith Klene Consumer Health Care Limited – (2020) 19 SCC 681* and in the case of *M/s. Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-Cum-Assessing Authority and others – 2023 SCC OnLine SC 95*, as well as the petitioner has already approached before the Civil Court for the relief which he has prayed in the present petition. Under this circumstance, we do not find it fit and proper to exercise jurisdiction under Article 226 of the Constitution of India.

11. In view of above discussion, we do not deem it appropriate to exercise our Writ jurisdiction. Hence, the present **Writ Petition is dismissed**. Accordingly, Rule is discharged.

[Y. G. KHOBRADE, J.]
SMS

[RAVINDRA V. GHUGE, J.]