

PVR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2661 OF 2024

Ramchandra Posha Kadu & Ors.

... Petitioners

Versus

The Kokan Commissioner, Mumbai & Ors.

... Respondents

Ms. Priyanka Thakur, for Petitioners.

Ms. Shruti D. Vyas, Addl. Govt. Pleader with Mr. S. H. Kankal, AGP for the State-Respondents.

Ms. Priyanka Patil, for Respondent Nos. 5 and 6.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 1 March 2024

P.C.

1. Rule, returnable forthwith. Heard finally by consent of the parties.
2. This petition under Article 226 of the Constitution is filed praying for the following reliefs:

“A) This Honourable High Court be pleased to peruse the file and proceedings of Appeal along with the Impugned Order dated 12/12/2023 passed by the Respondent No.4 under the provisions of Section 53(2) Maharashtra Village Panchayat Act, 1959 and after peruse thereof;

B) This Honourable High Court be pleased to direct Respondent No.2 or the Respondent No.3 to accept and decide the Appeal preferred by the Petitioners maintainable under the provisions of Section 53(3A) or Section 53(3B) of Maharashtra Village Panchayat Act, 1959.

C) Pending the hearing final and disposal of this Petition its merits, this Honourable High Court may be pleased to direct the Respondent No.1 to 8 or any of its officers acting upon the instructions of the Respondent No.1 to 6 to not to demolish the House

No.280 A/B situated at Village Sonari, Taluka Uran, District Raigad belonging to the Petitioners.

D) This Honourable High Court be pleased to Grant Ad-interim reliefs in terms of prayer clause (C).

E) Any other reliefs as this Honourable High Court deems fit on the facts and of the case.”

3. The grievance of the petitioners is to the effect that the impugned order dated 12 December 2023 passed by respondent No.4 - Sub-Divisional Officer, Panvel, under Section 53(2) of the Maharashtra Village Panchayat Act, 1959 (for short ‘**the Act**’), has directed the petitioners to remove the encroachment and/or construction as undertaken by the petitioners. It is the petitioners contention that under the provisions of Section 53(3A) of the Act any person aggrieved by an order passed under sub-section (2) of Section 53 can maintain an appeal before the Commissioner. It is the petitioners’ contention that the Office of the Commissioner, however, is not accepting the appeal for the reason that the impugned order has been passed under the directions of the Collector.

4. Having heard learned Counsel for the parties and having perused the impugned order as also the record, we are of the opinion that there is much substance in the contention as urged on behalf of the petitioners.

5. As the impugned order has been passed under sub-section (2) of Section 53 of the Act, a remedy to assail the same by an appeal is provided under the provisions of sub-section (3A) of Section 53. It would be appropriate to note the said provision which reads this:-

53. Obstructions and encroachments upon public streets and open sites. - (1)

Whoever, within the limits of the gaonthan area of the village:-

- (a) builds or sets up any wall, or any fence, rail, post, stall, verandah, platform, plinth, step or structure or thing or any other encroachment or obstruction, or
- (b) deposits, or causes to be placed or deposited, any box, bale, package or merchandise or any other thing, or
- (c) without written permission given to the owner or occupier of a building by a Panchayat, puts up, so as to protect from an upper storey thereof, any verandah, balcony, room or other structure or thing.

in or over any public street or place, or in or over or upon any open drains, gutter, sewer or aqueduct in such street or place, or contravenes any conditions, subject to which any permission as aforesaid is given or the provisions of any by-law made in relation to any such projections or cultivates or makes any unauthorised use of any grazing land, not being private property, shall, on conviction, be punished with fine, which may extend to fifty rupees, and with further fine which may extend to five rupees for every day on which such obstruction, deposit, projection, cultivation or unauthorized use continues after the date of first conviction for such offence.

(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 unauthorized 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 authorized by him in this behalf shall have first been obtained. The expense of such removal shall be paid by the person who has caused the said obstruction or encroachment and shall be recovered in the same manner as an amount claimed on account of any tax recoverable under Chapter IX

[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 [* * *], the Collector *suo motu* or on an application made in this behalf, may take action as [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 [sub-section (2) or sub-section (2A)] may be exercised in

respect of any obstruction, encroachment or [unauthorised cultivation of any crop] referred to therein whether or not such obstruction, encroachment or [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*.

[(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, [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.]

(4) Whoever, not being duly authorised in that behalf removes earth, sand or other material from, or makes any encroachment in or upon an open site which is not private property, shall, on conviction, be punished with fine which may extend to fifty rupees, and in the case of an encroachment, with further fine, which may extend to five rupees for every day on which the encroachment continues after the date of first conviction.

(5) Nothing contained in this section shall prevent the *panchayat*, from allowing any temporary occupation of, or erection in, any public street on occasions of festivals and ceremonies, or the piling of fuel in by-lanes and sites for not more than seven days, and in such manner as not to inconvenience the public or any individual or from allowing any temporary erection on, or putting projection over, or temporary occupation of, any such public street or place for any other purpose in accordance with the by-laws made under this Act.”

(emphasis supplied)

6. Section 53 of the Act is a provision dealing with the obstructions and encroachments upon the public streets and open sites. Sub-section (2) *interalia* confers power on the Panchayat to remove any such obstruction and encroachment in the manner the provision would set out. Sub-section (3A) provides for an appeal before the Commissioner to be filed within thirty days from the date of the decision under sub-sections (2) or (3) as the case may be.

In our opinion, sub-section (3A) of Section 53 clearly provides for a remedy of an appeal in the event a person is aggrieved by any order passed under sub-section (2) or (3) of Section 53. Thus, merely on the ground that the Collector had issued a direction to the Sub-Divisional Officer to proceed to take an action under Section 53, cannot be a reason for the Office of the Commissioner not to accept the petitioners' appeal, as sub-section (3A) of Section 53 cannot be defeated and/or a statutory remedy so available to the petitioners cannot be denied.

7. We accordingly allow this petition permitting the petitioners to file an appeal before the Commissioner.

8. Let such an appeal be filed within two weeks from today and if the same is accordingly filed it be decided by the Commissioner on its own merits and without any objection as to the limitation, considering the facts we have set out hereinabove.

9. To enable the petitioners to avail of the remedy of appeal and any stay application to be filed in such appeal, we direct that the impugned order ought not to be given effect, for two weeks from today. However, such limited protection be not construed as any observation on the merits of the matter. The Appellate Authority shall consider the petitioners' stay application and/or the appeal, as the case may be, and pass appropriate orders thereon. All contentions of the parties on the proposed appeal are expressly kept open.

10. Needless to observe that within a period of two weeks as made available to the parties, if an appeal is not filed, the protection as granted by us shall cease to be available to the petitioners.

11. Rule is made absolute in the aforesaid terms. No costs.

12. Parties to act on the authenticated copy of this order.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)