



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

**WRIT PETITION NO.604 OF 2022**

Bharat Sanchar Nigam Limited, through General Manager, Amravati and another  
**.Vs. The Collector, Akola 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 Amol Deshpande, Advocate for petitioners.  
Ms Sangita Jachak, Addl.G.P. for respondent Nos.1 to 3/State.  
Shri V.A. Kothale, Advocate for respondent No.4.

**CORAM : ANIL S. KILOR, J.**

**DATED : 17/04/2024**

1. Heard.
2. This writ petition takes exception to the order dated 20.10.2021 passed by the Collector, Akola, directing the petitioners to remove the tower erected by the petitioners on the land of the respondent No.4. The said order was the subject matter of the challenge before the Divisional Commissioner who has confirmed the order of the Collector vide order dated 17.01.2022. Hence, this petition.
3. The petitioners with an intention to set up a Mobile Tower approached the Tahsildar, Balapur for allotment of Government land. In pursuance of the same, the Tahsildar vide communication dated 07.03.2008, informed the petitioner about availability of government land situated at Mouza Hatrun, Tq. Balapur and also the

cost of such land as per valuation provided by the Sub-Registrar, Balapur.

4. The petitioner No.3 accordingly, paid the consideration of Rs.1,40,000/- by demand draft dated 24.03.2008. Accordingly, the land was allotted to the petitioners.

5. It is the case of the petitioner that, during the enquiry a notice was published to which no one raised objection or any right was claimed over the land in question by any individual. Thereafter, on receiving the possession of a land and after a Mobile Tower was erected, respondent No.4 vide communication dated 23.06.2021, informed the office of the Executing Engineer, Akola that the land on which the tower was erected is his private land and not a government land. On measurement, it was found that the petitioners have encroached upon his land.

6. The Tahsildar vide communication dated 10.08.2021 address to the petitioner No.3 informed that he carried out measurement of land in Gut No.623 and was found that the Gram Panchayat had wrongly allotted plot No.484 instead of land in Gut No.623 to the petitioners.

7. Thereafter, a report was called from Block Officer, Hatrun and as per its report, it was found that the tower erected on the land was not in accordance with the possession receipt issued by the Collector but the same was erected on the private land admeasuring about 280 sq.mtr. out of plot No.484. Accordingly, the matter was reported by the Tahsildar to the Collector and the Collector after hearing both the parties passed the order on 20.10.2021 directing the petitioners to remove the tower erected by the petitioners on the land of the respondent No.4.

8. Feeling aggrieved by the same the petitioners approached to the Divisional Commissioner by filing an appeal which came to be rejected vide order dated 17.01.2022.

9. I have heard the learned counsel for the respective parties.

10. Shri Deshpande, learned counsel for the petitioners submits that, the Collector has no authority to direct to remove the encroachment. It is submitted that, the only remedy available to the respondent No.4 is by way of suit for removal of encroachment. He submits that, the Collector as well as the Divisional Commissioner have

exceeded their jurisdiction and issued order of removal of encroachment.

11. It is further submitted that, the petitioners are not at fault and they have spent about Rs.10 Lac to Rs.15 lac for erection of the tower and therefore, they cannot ask to remove the tower without following due process.

12. The petitioners further submits that, the Tahsildar unilaterally measured the land and on the basis of the same, it has been held that it is an encroachment.

13. On the other hand, Shri Kothale, learned counsel for the respondent No.4 submits that, by erection of tower, they are causing huge losses to the poor agriculturist who is not able to cultivate the land occupied by the petitioners.

14. Ms. Jachak, learned Additional Government Pleader argues that, the petitioners cannot claim any right over the private land and it was the mistake committed by the Gram Panchayat in identifying the land.

15. It is further submitted that, the land which was allotted to the petitioners was allotted as a Government land

and on finding that, it was not a government land which was allotted to the petitioners, the mistake was corrected.

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

17. It is evident that the petitioners demanded a Government land for erection of the tower.

18. It is evident from the record further that, after noticing the fact that, the tower was erected on a private land i.e. on the land of the respondent No.4, he made a complaint to the Revenue Authorities. Thereupon, the measurement was carried out by the Tahsildar, which supports the case of the respondent No.4 that, the land in question is owned by him and it is not a Government land.

19. Moreover, the report of the Block Officer, Hatrun also supports the case of the respondent No.4 that, it was the mistake committed either by the Gram Panchayat or the Revenue Officers in identifying the land while allotting it to the petitioners.

20. It is evident from the report of the Block Officer and the measurement carried out by the Naib Tahsildar that, the land in question is owned by the

respondent No.4 and not by the government. When the Revenue Authorities themselves have held that the land in question is not a Government land after verifying the revenue record, I do not find any substance in the submission of the petitioners that, the exercise carried out by the Revenue Authority to identify the land, is unilateral.

21. It is to be noted that, it is not the case of the petitioners that the said report is erroneous and not based on revenue record.

22. As far as the jurisdiction of the Collector is concerned, the Collector has corrected its mistake. The record does not show that the land on which the tower was erected by the petitioners, was allotted to the petitioners. Thus, if the mistake is of identification of the land committed either by the Revenue Officer or Gram Panchayat, it can be corrected as rightly done by the Collector in this case.

23. As far as the contention of the petitioners that, the petitioners have spent huge amount of Rs.10 Lac to Rs.15 Lac for erection of tower, the petitioners have remedy to claim damages. But, in any case, it cannot be a ground to allow an illegality to continue in perpetuity and thereby

further allow the respondent No.4 – a poor agriculturist to suffer financially for no fault of him.

24. The mere fact that the petitioners have set up a mobile tower in the land in question does not mean that the petitioners can be allowed to retain the land which could not be at all allotted to them. In the circumstances, mistake committed by the respondent revenue authorities in allotting the aforesaid land which was not allottable at all, could be corrected.

25. Admittedly, the activity of the petitioners is a commercial activity. In the circumstances, the conduct of the petitioners need to be noted that despite knowing the fact that, on a private land of a poor agriculturist, the tower was erected the petitioners are not ready to remove it by citing frivolous grounds and by ignoring the loss caused to the agriculturist who could not cultivate his land for such a long period.

26. The petitioners have placed reliance on the judgment of the Coordinate Bench of this Court in the case of *Babamiya Ahmed Shah ..vs.. Tahsildar, Beed*, reported in **2002 LawSuit (Bom) 207**, but it is of no help as the facts of the present case are distinguishable from the facts of the said case.

27. Similarly, the judgment of the Coordinate Bench of this Court in the case of *Ganesh Shankar Landge ..vs.. Additional Commissioner, Amravati & Ors*, reported in **2011(5) ALL MR 666**, is of no help to the petitioners since the said matter pertains to disqualification under Section 14(1)(j-3) of the Bombay Village Panchayats Act, 1958.

28. Hence, the writ petition is **dismissed** with costs of Rs.25,000/- to be paid to the respondent No.4 by the petitioners within eight weeks from today and file a compliance pursis within eight weeks.

29. Liberty is granted to the respondent No.4 to file a suit for damages against the petitioners from the date of complaint made by the respondent No.4 to the authorities, if he so desires.

30. Place the petition for compliance report on 24.06.2024.

31. At this stage, the learned counsel for the petitioners prays for keeping the judgment in abeyance for four weeks. The request is rejected in view of the observation made in the judgment.

**JUDGE**