



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 WRIT PETITION NO. 11406 OF 2023

CHANDRAKANT GANGARAM RAHANE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

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Mr. Narendra D. Sonavane – Advocate for Petitioners
Ms. N.B. Kamble – AGP for Respondent Nos.1 to 5, State
Mr. K.N. Shermale – Advocate for Respondent No.6

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CORAM : MANISH PITALE &
Y. G. KHOBRAGADE, JJ.
DATE : 22.08.2025

PER COURT :

1. This petition pertains to a controversy regarding removing of an alleged encroachment on a village road (*Paulwat*).
2. In this petition, when notice was issued, a statement was made on behalf of respondent No.2 – Tahsildar that no precipitative action would be taken against the petitioners.
3. The whole controversy has arisen out of certain applications made by villagers for clearing the alleged encroachment on the said village road. The reply placed on record shows that, according to the respondent No.2 – Tahsildar, powers were being exercised pursuant to a circular dated 04.11.1987, which mandates that the Tahsildar shall take necessary

steps for removal of such encroachments on various village roads, including *Paulwat*.

4. In the process, the respondent No.2 – Tahsildar sent a communication dated 18.07.2023 to the respondent No. 3 – Deputy Superintendent of Land Record, stating that measurement of Gat Nos.180 and 181 be carried out and that immediate action be taken for removal of the encroachment.

5. In pursuance thereof, the impugned notice 04.11.1987 was issued by respondent No.4 – Circle Officer to the petitioners. The notice records that, in pursuance of the complaints regarding encroachments made by certain villagers, the Circle Officer and the Talathi had surveyed the village road in the presence of Panchas, and that the owners of Gat Nos.180 and 181, with which the petitioners are concerned, had opposed the removal of encroachment. In that light, the petitioners were called upon to remove the encroachment.

6. We find that even if the power under the said circular dated 04.11.1987 is to be exercised by the Tahsildar, particularly in terms of Clauses 4 and 8, which are relevant to the present case, such exercise necessarily has to be carried out in accordance with law by adhering to the principles of natural justice.

7. Although the reply affidavit filed on behalf of respondent No.2 –

Tahsildar in paragraph No.4 asserts that notices were issued to the petitioners when the said village road was surveyed or inspected, the notice itself bears the date 06.09.2023, and the impugned notice issued by the Circle Officer, calling upon the petitioners to remove the encroachment is also of the same date. There is nothing on record to show that any report based upon proper measurement was prepared in consonance with the communication dated 18.07.2023, addressed by the respondent No.2 – Tahsildar to the respondent No.3 – Deputy Superintendent of Land Record.

8. We are of the opinion that if necessary action for removal of encroachment is to be taken in accordance with law, an opportunity ought to be granted to the petitioners to remain present at the time when the measurement is proposed to be carried out.

9. In view of the above, we dispose of this petition in the following terms :

(a) The impugned notice dated 06.09.2023 issued by the Circle Officer is quashed and set aside.

(b) The respondent No.3 – Deputy Superintendent of Land Record is directed to carry out the measurement of the village road concerning Gat Nos.180 and 181, within two weeks from today, in accordance with law. Necessary notices shall be issued

to all the concerned, including the petitioners. The petitioners shall not avoid the notices and they shall remain present at the time of measurement.

(c) The report of the aforesaid measurement exercise shall be submitted to the Tahsildar within four (4) weeks from today. It is made clear that, the measurement shall be carried out on basis of the village map.

(d) The Tahsildar shall take further action in accordance with law and in terms of circular dated 04.11.1987, including by issuing notices to all concerned before passing an order.

(e) The Tahsildar shall pass an appropriate order within four weeks of receiving the report from respondent No.3 – Deputy Superintendent of Land Record.

10. Pending applications, if any, also stand disposed of.

(Y. G. KHOBRAGADE, J.)

(MANISH PITALE, J.)