

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 16693 OF 2023

Uttam Tukaram Powar

..Petitioner

Versus

State of Maharashtra & Ors.

...Respondent

Mr. Rakesh Patil, for the Petitioner.

Mr. S. D. Rayrikar, Asst. Govt. Pleader for the Respondent No. 1-State.

Mr. Drupad S. Patil a/w. Mr. Rugwed Kinkar & Mr. Dheeraj D. Patil for the
Respondent Nos. 4 & 5

CORAM : M. M. SATHAYE, J.

DATED : 14th FEBRUARY, 2025

P.C.:

1. Heard learned Counsel for the Petitioner, learned AGP for the State and learned Counsel for the Respondent Nos 4 & 5 (Gramsevak and Sarpanch of Grampanchayat Adur, Tal. Karveer, Dist. Kolhapur)

2. The Petitioner is the Original Plaintiff who has filed the R.C.S. No. 954 of 2022 challenging the notice dated 07/04/2022 issued by the Respondent No. 5-Gram Panchayat calling upon the Petitioner to remove the encroachment in Gut No. 36 which is a Gairan land. According to the notice, the encroachment is in the form of R.C.C. house. Perpetual injunction is also sought not to disturb Petitioner's possession. In the said suit, the Petitioner filed an Application below Exhibit-5, seeking interim injunction restraining

the Respondents from giving effect to the impugned notice.

3. The Trial Court by order dated 18/01/2023 rejected the said application by reasoned order. The Petitioner challenged the said order by filing Misc. Civil Appeal No. 80 of 2023 in the District Court. The District Judge-3, Kolhapur, by the impugned order dated 20/12/2023 has dismissed the Appeal thereby confirming the order of the Trial Court.

4. The learned Counsel for the Petitioner relying upon a communication issued by the Respondent-State to the Zilla Parishad dated 01/12/2022, submitted that there are directions issued for regularizing the residential encroachments on the government land. He submitted that the suit property is in his possession since long time and the structure thereon can be regularized. He further submits that the Petitioner has been singled out and there are other such encroachments, for which no action is being taken.

5. The learned Counsel for the Respondent Nos. 4 & 5, on the other hand opposed the Petition. It is submitted that the subject matter land Gut No. 36 is Gairan land and the Petitioner's structure thereon is not authorized. He submitted that there is nothing on record to show that the structure is regularized. He further submitted that the Gram Panchayat is well empowered under section 53 of the Maharashtra Village Panchayats Act, 1959 ("the said Act" for short) to issue the impugned notice for removal of

the encroachment. He submitted that equality can not be claimed in alleged illegality by others. He prayed for dismissal of the petition.

6. I have considered the rival submissions and perused the records.

7. Perusal of the impugned order shows that it is not in dispute that the subject matter land Gut No. 36 is the Gram Panchayat land, which is shown in the record in the name of “Sarpanch Gram Panchayat Adur Masanvat”. This fact is not disputed by the Petitioner. The only contention is on some part of the said land of the Petitioner has his structure, which can be regularised either under some policy or otherwise. It is neither shown to the Courts below nor to this Court that the Petitioner’s structure on the said land is either authorized or regularized, even as on today. Notice dated 07/04/2022 itself was challenged after about 7 months by filing suit in November 2022, which shows that sufficient time had passed in which the Petitioner could have taken steps for regularisation, if so permitted.

8. In such circumstances, when the action taken by the Respondent–Gram Panchayat is well within its power under the provision of the said Act, no fault can be found with the said action. Both the Courts below have concurrently held that there is no *prima facie* case in favour of the Petitioner and therefore the Application below Exhibit-5 was rejected, which is confirmed in the Misc. Civil Appeal.

9. In the light of the aforesaid facts and circumstance, no case is made out for interfering with the concurrent findings of the facts. The impugned order is not perverse. The conclusion drawn by the Courts below is based on the material evidence.

10. In that view of the matter, there is no merit in the petition and same is dismissed. No order as to costs.

(M. M. SATHAYE, J.)