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

WRIT PETITION NO.1868/2025

PETITIONER : Madhorao Soma Walke,
Aged about 50, Occ. Agriculture,
R/o Pitejari, Post Ghanod Aamgaon,
Tq. Sakoli, Dist. Bhandara.

...VERSUS...

RESPONDENTS :

1. The State of Maharashtra, through its Principal Secretary, Revenue and Forest Department, Mantralaya, Mumbai.
2. The Collector, Bhandara District, Office at Bhandara, Maharashtra.
3. The Tehsildar, Sakoli Taluka, Office at Sakoli, District Bhandara, Maharashtra.
4. The Deputy Director, Navegaon Nagzira Tiger Reserve, Sakoli, District Bhandara Maharashtra.
5. The Assistant Conservator of Forests, Bhandara Forest Division, District Bhandara, Maharashtra.
6. The Deputy Conservator of Forest, Bhandara Forest Division, District Bhandara, Maharashtra.
7. The Forest Range Officer, Lakhni Range, Bhandara Forest Division, District Bhandara, Maharashtra.
8. The Talathi, Village Pindkepar, Taluka Sakoli, District Bhandara, Maharashtra.

9. The Sarpanch, Village Pitezari
Taluka Sakoli, District Bhandara,
Maharashtra.

Mr. S.P. Bhandarkar, Advocate for petitioner
Mr. N.R. Patil, AGP for respondent Nos.1 to 4

CORAM : NITIN W. SAMBRE AND SACHIN S. DESHMUKH, JJ.
DATE : 02/07/2025

ORAL JUDGMENT : (PER : SACHIN S. DESHMUKH, J.)

1. Heard. Rule. Rule made returnable forthwith. Assistant Government Pleader Mr. N.R. Patil waives service of notice for the respondents Nos.1 to 4. By consent of the parties the petition is heard finally.

2. The petitioner has approached this Court invoking extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India raising an exception to the order dated 25/06/2024 rendered by the competent authority/Assistant Conservator of Forests. It is the contention that the petitioner has lawfully occupied the land bearing Gat Nos.57 and 62 situated at Pitezari Taluka Sakoli, District Bhandara, which was allotted to the petitioner by the Government and has also paid the taxes towards the said use to the revenue department. In order to support the said contention, our attention is invited to Chalan **(Annexure – A)** which is issued by the revenue department. Further contention on behalf of the petitioner is

that the issuance of notice and the eventual order is without authority of law, as such the same is unsustainable in law, therefore, the same is liable to be quashed and set aside.

3. As against the same, learned Assistant Government Pleader for the respondent Nos.1 to 4, so as to substantiate that the petitioner is an encroacher, has invited our attention to Chalan (Annexure -A) issued by the revenue department, which is payment of penalty towards encroachment committed by the petitioner herein. The learned Assistant Government Pleader further submitted that there is no document on record indicating and establishing that there was atlloment in favour of the petitioner or the encroachment of the petitioner was ever regularized.

4. Having considered the rival contentions put forth by the litigating side, it appears that admittedly the petitioner is encroacher over the land bearing Gat No.57 and 62. The notice was issued, calling upon the petitioner to establish claim of ownership over the land. Although the said notice was served upon the petitioner, no explanation was ever submitted nor any document in that regard was presented before the authority, justifying the possession over the land belonging to the Government. The petitioner having chosen not to appear before the authority, in response to the show-cause-notice, the authorities

proceeded to pass an order, which is the subject matter of challenge in the present petition.

5. The contention put forth on behalf of the petitioner that the respondents herein do not have any authority in law to issue the notice so also pass the eventual order deserves no consideration for the reason that there is no document placed on record to substantiate the contention that the possession of the petitioner was permissive one and same was regularized by the respondents herein. Further the conduct of the petitioner can be gathered from the fact that after encroaching the land in question, the petitioner committed the act of felling of trees, resulting into infraction of Section 33 (1) (a), 33 (1) (b) and 63 (c) of the Indian Forest Act vis-a-vis the Forest (Conservation) Act, 1980, which entails penal consequences. Although the show-cause-notice was served upon the petitioner, it was expected from the petitioner to put forth a detailed response before the authorities, however, the petitioner has chosen not to respond in any manner to the said notice nor has the petitioner bothered to substantiate claim of regularization of possession over the said land even in the present petition.

6. The attempt appears to assert that the penalty which is imposed by the authorities towards encroachment by the petitioner is towards payment of taxes which is stated on oath in the memo of petition more particularly in paragraph No.1. A minute perusal of the

receipt shows that the same is not towards the tax rather, it is towards payment of fine imposed by the officials towards encroachment committed by the petitioner, same has been misinterpreted and misread. Thus, the petitioner is not able to demonstrate that the possession over Gat Nos.57 and 62 is either permissive or same is ever regularized. Apart from the aforestated failure, the further act of felling of trees, as contemplated under Section 33 (1) (a), 33 (1) (b) and 63 (c) of the Indian Forest Act, entails penal consequences. Therefore, considering the abovestated aspects, the petitioner is not entitled for the reliefs, much less, the reliefs claimed in the petition in extraordinary writ jurisdiction of this Court.

7. Accordingly, the writ petition is dismissed. Rule stands discharged. No order as to costs.

(SACHIN S. DESHMUKH, J.) **(NITIN W. SAMBRE, J.)**

Wadkar