



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

SECOND APPEAL NO.103 OF 2023

Vithoba Ganpatrao Wankhade and others

Vs.

The State of Maharashtra, through the District Collector, Amravati and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri S.R. Wankhade, Advocate for appellants.

Mrs. H.S. Dhande, AGP for respondents.

CORAM : M.W. CHANDWANI, J.

DATE : 11.08.2025.

1. Heard.

2. The following substantial question of law came to be framed by the order dated 06.04.2023:

“Whether the learned Courts below have rightly considered the law in respect of Sections 50 and 51 of the Maharashtra Land Revenue Code, 1966 while dismissing the suit filed by the plaintiff?”

3. The appellants (original plaintiff) filed the suit for declaration and permanent injunction claiming that they are entitled for regularization of the suit land which they are in possession since the year 1987 on the basis of Government Resolution dated 28.11.1991. The trial Court as well as the first appellate Court gave concurrent findings that the plaintiffs failed to prove that they are in possession of the suit land since the year 1987. It has also been observed that

the said Government Resolution is applicable to the persons who are in possession of the land as an encroacher from 1978 to 1991, which is not the case of the appellants. The appellants also claimed before the trial Court that they are entitled for allotment of their land in view of the Government Resolution dated 31.12.2011 since they belong to 'Matang' community; that request of the appellants was also turned down by both the Courts below.

4. Mr. Wankhade, learned counsel appearing on behalf of the appellants vehemently submitted that Exhibit-48 i.e. the application which was filed by the appellants before the Tahsildar for regularization of the land in the year 1987 has not been duly considered. According to him, they had also made a prayer in the said application regarding allotment of land on the ground that they belong to 'Matang' community. In the year 2018, again an application was filed on the basis of Government Resolution dated 31.12.2011. The said application came to be rejected by the Tahsildar on the ground that on one hand appellants are claiming to be encroachers and on the other, they are seeking allotment of land.

5. The learned counsel for the appellants further submits that the application (Exhibit-48) itself is enough to infer that the appellants are in possession of the suit property from the year 1987. This aspect has not been considered by the trial Court as well as the first appellate

Court. The trial Court and the first appellate Court were of the opinion that apart from this application which is submitted by the appellants, nothing has been brought on record to suggest that the appellants are in possession. The appellants should have at least brought the Government record to show that they are encroachers of the suit land since the year 1987. These findings of facts are assailed.

6. It is a settled position of law that re-appreciation of evidence is not allowed in second appeal unless perversity is shown. There is no official record to suggest that the appellants are encroachers of the suit property since 1987. That apart, the trial Court as well as the first appellate Court have also opined that the Government Resolution of the year 1991 speaks about continuous possession of the encroachers from 1978 to 1991; whereas, the appellants are claiming to be in possession from the year 1987. Therefore, both the Courts below have rightly observed that the claim of the appellants on the basis of the Government Resolution is not available to them, since as per the contentions and even as per their application (Exh.48), the appellants are claiming to be in possession from the year 1987. Therefore, nothing has been placed on record to show that the findings recorded by the trial Court or the first appellate Court are perverse with regard to the proof of possession of the appellants over the suit land since 1987.

7. Learned counsel appearing for the appellants

vehemently submitted that the first appellate Court has given a finding that implementation of the Government Resolution cannot be effected through civil Court by keeping the procedure established by the law under Maharashtra Land Revenue Code aside. He took me to Section 50 of the Maharashtra Land Revenue Code which speaks about removal of encroachment. He emphasised on Section 50 (6), which reads as under :-

“50. Removal of encroachments on land vesting in Government; provisions for penalty and other incidental matters.

(1) In the event of any encroachment being made on any land or fore-shore vested in the State Government (whether or not in charge of any local authority) or any such land being used for the purpose of hawking or selling articles without the sanction of the competent authority, it shall be lawful for the Collector to summarily abate or remove any such encroachment or cause any article whatsoever hawked or exposed for sale to be removed; and the expenses incurred therefor shall be leviable from the person in occupation of the land encroached upon or used as aforesaid,

(2) The person who made such encroachment or who is in unauthorised occupation of the and so encroached upon shall pay, if the land encroached upon forms part of an assessed survey number, assessment for the entire number for the whole period of the encroachment, and if the land has not been assessed, such amount of assessment as would be leviable for the said period in the same village on the same extent of similar land used for the same purpose. Such person shall pay in addition [a fine which shall be one thousand rupees or such amount as may be prescribed, whichever is

higher] [Substituted 'a fine which shall be not less than five rupees but not more than one thousand rupees' by Maharashtra Act No. 21 of 2017, dated 18.1.2017.] if the land is used for an agricultural purpose, and if used for a purpose other than agriculture such fine [not exceeding two thousand rupees or such amount as may be prescribed, whichever is higher] [Substituted 'not exceeding two thousand rupees' by Maharashtra Act No. 21 of 2017, dated 18.1.2017.] The person caught hawking or selling any articles shall be liable to pay fine of a sum not exceeding [fifty rupees or such amount as may be prescribed, whichever is higher] [Substituted 'fifty rupees' by Maharashtra Act No. 21 of 2017, dated 18.1.2017.] as the Collector may determine.

(3) The Collector may, by notice duly served under the provisions of this Code, prohibit or require the abatement or removal of encroachments on any such lands, and shall fix in such notice a date, which shall be a reasonable time after such notice, on which the same shall take effect.

(4) Every person who makes, causes, permits or continues any encroachment on any land referred to in a notice issued under sub-section (3), shall in addition to the penalties specified in sub-section (2), be liable at the discretion of the Collector to a fine not exceeding [twenty-five rupees or such amount as may be prescribed, whichever is higher] [Substituted 'twenty-five rupees' by Maharashtra Act No. 21 of 2017, dated 18.1.2017.] in the case of encroachment for agricultural purposes and [fifty rupees or as may be prescribed, whichever is higher] [Substituted 'fifty rupees' by Maharashtra Act No. 21 of 2017, dated 18.1.2017.] in other cases for every day during any portion of which the encroachment continues after the date fixed for the notice to take effect.

(5) An order passed by the Collector under this Section shall be subject to appeal and revision in accordance

with the provisions of this Code.

(6) Nothing contained in sub-sections (1) to (4) shall prevent any person from establishing his rights in a civil court within a period of six months from the date of the final order under this Code.”

According to him, the civil suit is maintainable, therefore, the finding recorded by the first appellate Court is perverse.

8. Let me state state the appellants have come up with this case for regularization of the land on the basis of Government Resolutions from the years 1991 and 2011. Whereas, Section 50 is a provision by virtue of which the Collector can remove the encroachment. So the suit of the plaintiffs is not based on removal of encroachment by the Collector. Therefore, the reliance placed on Section 50(6) is misconceived.

9. I do not find any force in the argument of the learned counsel for the appellants. No substantial question of law arises in this appeal. Hence, the appeal is **dismissed**.

JUDGE

Wagh