



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

WRIT PETITION NO.47/2024

Ramchand s/o Radheshyam Sulakhe and another

...Versus...

The Additional Divisional Commissioner, Nagpur Division, District Nagpur and others

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

Court's or Judge's orders

Mr. Virat Mishra, Advocate for petitioners
Mr. B.M. Lonare, AGP for respondent Nos.1, 3 to 6
Mr. S.K. Tambde, Advocate for respondent No.2

CORAM : SACHIN S. DESHMUKH, J.

DATE : 04/08/2025

1. The petitioners were served with the notice for removal of encroachment under Section 53 of the Maharashtra Village Panchayats Act, 1959 (for short hereinafter MVP Act, 1959”), which was responded by the petitioners.
2. Preceded by the initial notice, a subsequent notice was served upon the petitioners. Raising an exception to the same a substantive Regular Civil Suit No.108/2023 is presented by the petitioners before the competent Court of civil jurisdiction, wherein the Grampanchayat has raised preliminary objection about maintainability of the same. Admittedly, when a substantial civil suit is pending, in clandestine manner, the petitioners have presented appeal under Section 53 (3-A) of the MVP Act, 1959, raising challenge to the selfsame notices before the Divisional Commissioner, Nagpur Division.

3. Although the petitioners, as stated hereinabove, have presented the substantial civil suit, however, without making a candid disclosure of the same, appeal is presented before the Divisional Commissioner. Since the same was delayed, as such, application for seeking condonation of delay was also presented. The respondent – Grampanchayat, while resisting the said application, has pointed out the suppression on the part of the petitioners of presenting the substantial suit.

4. The Divisional Commissioner, recording the suppression on the part of the petitioners and taking note of the fallacy in the claim by the petitioners that they were not aware of the issuance of notice although a comprehensive reply to the first notice is offered, still the plea of ignorance is put forth. Taking into account the said conduct and eventual conduct of withholding the facts those are within the knowledge of the petitioners the Divisional Commissioner has rejected the application for condonation of delay.

5. Obligation of the litigating sides to state and unfold the facts may be in its favour or against is undisputed. However, the petitioners herein have made serious departure from the said obligation withholding of the fact which amounts to fraud not only upon the authority but also on the other side, as has been laid down by the Hon'ble Apex Court in case of *K.D. Sharma Vs. Steel Authority of India Limited and others (2008) 12 SCC 481*, wherein obligation of a party to make candid disclosure has been restated, as such, following the same, the Commissioner has dismissed the application, seeking condonation of delay.

6. Having heard the litigating sides, it is a matter of record that the petitioners were in receipt of notice to which the response has been offered. Preceded by service of initial notice for removal of encroachment, a subsequent notice was also served upon the petitioner. Raising challenge to the same, a substantial civil suit is presented. Still without disclosing same, the petitioners have filed an appeal under Section 53 (3-A) of the Act of 1959. While presenting the said appeal, it was obligatory for the petitioners to make candid disclosure of the events those have taken place. However, having indulged in withholding of the facts those were well within the knowledge of the petitioners, still have chosen to withhold the same which leads to suppression and eventual fraud on the authority vis-a-vis litigating sides. Said conduct disentitles the litigant to claim equitable relief. Thus, the Divisional Commissioner has taken into account the conduct of the petitioners of suppression of facts, which is rather deliberate, the same amounts to eventual fraud. Therefore, no error could be noted in the order of the Commissioner. As such no interference is warranted. The writ petition is liable to be dismissed and the same is accordingly dismissed. No order as to costs.

(SACHIN S. DESHMUKH, J.)