



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

WRIT PETITION NO. 5772 OF 2024

1. Yashodabai Wd/o Nago Lilhare,
Aged about 70 years, Occu: Household.
2. Mukesh Nago Lilhare, Aged about 44 years,
Occu: Agriculturist.

Both R/o Murdada, Tah. & Distt. Gondia.

PETITIONERS

VERSUS

1. Gram Panchayat, Murdada, Panchayat
Samiti Zilla Parishad Gondia.
Through its Sarpanch and Gramsevak.
2. Divisional Commissioner, Nagpur Division, Nagpur.

RESPONDENTS

Shri M.R. Joharapurkar, Counsel for the petitioners.
Shri S.K. Tambde, Counsel for the respondent no.1.
Shri H.R. Dhumale, Assistant Government Pleader for the respondent no.2.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : SEPTEMBER 10, 2025

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

2. By the instant writ petition, the petitioners have challenged the order dated 01.08.2024 passed by the Divisional Commissioner, Nagpur Division, Nagpur thereby rejecting the appeal filed by the petitioners. The petitioners have also raised a challenge the notice dated 06.05.2024 and also the corrigenda issued in this regard by the Divisional Commissioner.

3. Shri M.R. Joharapurkar, learned counsel for the petitioners raised several grounds for challenging the impugned order and primarily submitted that the impugned order is unsustainable in law since respondent no.2-Divisional Commissioner has failed to consider the application for amendment filed by the petitioners and the events which occurred during the pendency of the appeal. He submitted that by way of amendment, the petitioners have brought on record the gross illegalities committed by the Gram Panchayat and have also placed on record relevant documents which had bearing on the appeal. He submitted that the seizure of articles is without any power and authority and it is illegal. The learned counsel therefore submitted that since the appeal came to be decided without considering the amendment application and the documents filed therewith, the impugned order is unsustainable on that count only and the matter deserves to be remanded to the respondent no.2 for fresh consideration.

4. Shri S.K. Tambde, learned counsel for the respondent no.1-Gram Panchayat has submitted his arguments in response to the contentions for remand canvassed by the learned counsel for the petitioners. He submitted that the articles seized by the Gram Panchayat are already returned to the petitioners, and therefore, there is no necessity for remand of the matter to the respondent no.2. He also vehemently submitted that the petitioners had made encroachment on the Government land and they cannot claim any right over the encroached portion of land. He submitted that the Gram Panchayat acted well in its authority to get the land cleared and there is no perversity in the impugned order.

5. Shri H.R. Dhumale, learned Assistant Government Pleader also supported the impugned order and submitted that the respondent no.2 has duly considered all the relevant aspects raised in the memorandum of appeal and the challenge to the impugned order is unsustainable

6. Since the learned counsel for the petitioners has advanced his submissions for seeking remand of the matter, the respondents had also made their submissions on this limited issue. The arguments are accordingly considered.

7. The controversy involved in the writ petition is with respect to the action initiated by the Gram Panchayat against petitioners under Section 53 of the Maharashtra Village Panchayats Act, 1959 and consequent seizure of movable articles belonging to the petitioners which were kept on the alleged encroached portion of land. The controversy started in view of the notice dated 06.05.2024 issued by the Gram Panchayat to the petitioner no.2 thereby calling upon him to clear the encroached land by removing the articles which were kept there. The petitioners challenged this notice by filing an appeal under Section 53(3-A) of the Act of 1959, which was filed on 13.06.2024 before the respondent no.2. Even before the appeal could proceed further, on the next day i.e. on 14.06.2024 the Gram Panchayat took drastic action of seizure of Cow Dung Manure, Rotavator Machine, Thresher Machine, Submersible Pump and Pipes lying on the said portion of the land which were belonging to the petitioners. The Gram Panchayat also got prepared a panchnama about the seizure.

8. The petitioners therefore submitted an application on 18.06.2024 for amendment of the appeal memo to bring on record above development about seizure during the pendency of the appeal and also raised a challenge to the decision of seizure of articles belonging to the petitioners. In this background, the subsequent events were sought to be brought to the notice of the respondent no.2, however without considering the amendment application, the respondent no.2 considered the appeal and passed final order on 01.08.2024 thereby dismissing the appeal filed by the petitioners. The petitioners being aggrieved by the said order have raised challenge to the same by way of the instant writ petition.

9. While considering the rival contentions, it has to be noted that the impugned order is passed by the respondent no.2 before deciding the application for amendment which was filed by the petitioners. A perusal of the amendment application shows that the petitioners attempted to bring on record the subsequent events occurred during the pendency of the appeal and therefore decision on the amendment application was necessary. It has to be noted that on the basis of notice issued by the Gram Panchayat, the articles belonging to the petitioners were seized. By virtue of order dated 05.05.2025 passed by this Court in the instant writ petition, the Gram Panchayat was directed to release the articles mentioned in the panchnama dated 14.06.2024 to the petitioners on collecting the charges for its removal. Accordingly, the petitioners have paid the charges.

10. In the instant writ petition, the petitioners have filed a separate application *vide* Civil Application (W) No.2153 of 2025 praying thereby to restrain the Gram Panchayat from erecting permanent brick compound wall around plot no.204, which belongs to the petitioners.

11. Having regard to the controversy about irregularity in deciding the appeal before deciding the application for amendment, I am of the view that the petitioners have made out a case for remand of the matter to the respondent no.2 for a fresh decision. Since the parties have addressed this Court mainly on the point of remand, their contentions raised on merits are not being dealt with.

12. After considering the rival contentions, the following order is passed:-

- I. The impugned order dated 01.08.2024 passed by the respondent no.2-Divisional Commissioner, Nagpur Division, Nagpur is quashed and set aside.
- II. The matter is remanded to the respondent no.2-Divisional Commissioner for deciding the appeal filed by the petitioners afresh, after deciding the application for amendment of appeal filed by the petitioners.
- III. The parties are directed to maintain status quo for a period of one week from today as the petitioners are entitled to submit an application for stay/interim relief before the respondent no.2-Divisional Commissioner in the pending appeal. In case, any such application is submitted, the respondent no.2-Divisional Commissioner is at liberty to decide it independently.
- IV. The respondent no.2-Divisional Commissioner, Nagpur Division, Nagpur is requested to decide the appeal finally within a period of one month from the date on which this order will be uploaded.

13. The writ petition is accordingly disposed of in aforesaid terms.
Pending civil applications also stand disposed of. No costs.

(PRAFULLA S. KHUBALKAR, J.)

APTE