

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1431 OF 2015

Shaikh Hasnoddin Shaikh Kamaloddin,
Age : 55 yrs, Occ Business,
R/o: Buddhi Line Chimna Raja Haveli,
Aurangabad.

...PETITIONER

versus

1. The Municipal Corporation,
Aurangabad, Ta. and Dist. Aurangabad
Through its Commissioner.
2. The Deputy Director,
Town Planning,
The Municipal Corporation,
Aurangabad, Tq. and Dist. Aurangabad.
3. A.S. Ajanta Construction Pvt. Ltd.
Through its Director,
Office at Sillod, Tq. Sillod, Dist.
Aurangabad.
4. Abdul Samir Abdul Sattar,
Age: 20 years, Occu. Business,
R/o Sillod, Ta. Sillod, Dist. Aurangabad.
5. Abdul Sattar Abdul Nabi,
Age 47 yrs, occ. Business,
R/o Sillod, Ta. Sillod, Dist. Aurangabad.

...RESPONDENTS

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Mr. Patel Shaikh Ashpak Taher, Advocate for Petitioner
Mr. A.M. Karad, Advocate for respondent No. 1
Mr. A.D. Kasliwal, Advocate for respondents No. 4 and 5.

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 12th AUGUST, 2015

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard the learned counsel
for parties finally, with consent.

2. This is petition by original plaintiff questioning propriety and legality of order dated 05-01-2015 in Miscellaneous Civil Appeal No. 15 of 2014, passed by District Judge, Aurangabad, confirming order dated 09-01-2014 on Exhibit-5 in Regular Civil Suit No. 21 of 2013 passed by Civil Judge, Senior Division (Corporation Court), Aurangabad, whereunder his application Exhibit-5 for temporary injunction stands dismissed.

3. Regular Civil Suit No. 21 of 2013 has been filed by petitioner-original plaintiff seeking permanent restraint on the defendants viz; Municipal Corporation, Aurangabad [hereinafter referred to as " Corporation "] and its authorities from granting permission for construction over suit property. It is the claim of the plaintiff that he is entitled to suit property under an agreement with original owners and suit for specific performance of contract in respect of the same had been pending since 2012. During pendency of said suit, present respondents No. 3 to 5 purported to move Corporation seeking permission, and as such, petitioner-plaintiff had intervened in the matter of permission before the Corporation. However, without going into due objection from the petitioner, the Corporation purported to proceed with the process for granting permission and as such present suit has been filed seeking permanent injunction. Along with the plaint, aforesaid application for temporary injunction for putting restraint on the Corporation from granting construction permission to respondents No. 3 to 5 had been moved referred to in paragraph no. 2 above.

4. Mr. Patel, learned counsel appearing for petitioner submits that along with Miscellaneous Civil Appeal No. 15 of 2014, an application for temporary injunction had also been filed and the application was expected to be heard and was so addressed.

5. However, while doing so learned Judge went on to decide the appeal itself. Learned counsel for the petitioner submits that there is surely breach of principles of natural justice.

6. He submits that as a matter of fact, having regard to the dispute in respect of property and objection by the petitioner before the Corporation, the Corporation ought to have stayed its hands in respect of construction permission, however, the Corporation along with other defendants in the suit had been acting in collusion and put in peril the rights of the petitioner in the property.

7. He submits that, therefore, this court while passing order on 17-02-2015 had directed the parties to maintain *status-quo* which is hitherto continued. He further submits that there is slight error while said order was being recorded as the suit pertains to restraint on granting permission, however, observation appearing in paragraph No. 3 of the order is "*no construction was made*". In fact, it ought to have '*no construction permission has been granted*.'" He, therefore, submits that taking into account aforesaid error, he has already moved a civil application for suitable modification in said order.

8. Mr. Kasliwal, learned counsel for respondents No. 3 to 5 and Mr. Karad, learned counsel for respondent No. 1 submit that factually

speaking whole purpose of the suit can be said to have been extinguished by subsequent events and suit is not going to serve purpose for which it has been filed. It is submitted that after temporary injunction application had been rejected, the Corporation granted permission to respondents No. 3 to 5 for construction over the suit property.

9. Learned counsel further submit that restraint as has been sought under the suit is hardly possible under prevailing position of the law particularly looking at section 41(h) of the Specific Relief Act, 1963. It is being contended that against grant of permission the petitioner may have avenues open for challenge. Since the main relief is now not possible and on merits the trial as well as appellate courts have rejected interim relief, nothing survives in present petition. Situation is unlikely to be retrieved by orders in writ petition.

10. Learned counsel for petitioner though had advanced several submissions mainly with respect to prosecution of proceedings in respect of granting permission, having regard to subsequent events and further that several avenues are said to be open for the petitioner to pose challenge in respect of the same and that having regard to, construction permission having been granted, whole purpose underlying the petition appears to be attenuated, obscured and evaporated.

11. Construction permission is not a matter of challenge in present petition. In such a case, purpose for which injunction application had

been moved, under subsequent events, the same has been rendered infructuous.

12. In the present scenario writ petition may not have any efficacy. In view of the same, I am not inclined to entertain the writ petition.

13. As such, writ petition stands dismissed. Rule is discharged. So far as modification in order dated 17-02-2015 is concerned, it would be appropriate to move the same court, which had passed said order.

Sd/-

(SUNIL P. DESHMUKH, J.)

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