

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2271 OF 2015

KAUSAR BEGUM FAHIMODDIN SIDDIQUI
VERSUS
ZAHIR KHAN SHER KHAN PATHAN AND OTHERS

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Advocate for Petitioner : Shri Saeed S. Shaikh

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 04, 2015

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PER COURT :-

1. The petitioner has preferred RCS No. 54 of 2014, whereby, encroachment over a public road adjacent to the Northern side of the petitioner's house is sought to be removed. The petitioner desires that the trial Court should issue such directions as would facilitate the removal of the illegal encroachment.
2. The Municipal Council, Jintur was initially not added as a defendant. The trial Court, on deciding Exhibit 5 application for temporary injunction, has directed the petitioner in clause 5 of the operative part that the plaintiff shall implead the Municipal Council, Jintur in the suit as the defendant if it declines to be the plaintiff under Order I Rule 10 of the CPC.
3. The Municipal Council, Jintur has filed a purshis, below Exhibit 85, wherein it has been stated that the defendants have filed counter claims against the plaintiff in the suit and as such, it was difficult for the Municipal Council to take a stand, whether it should be a plaintiff or the defendant.

4. The trial Court, while dealing with the said purshis has observed in the impugned order that the plaintiff was directed to array the Municipal Council as a defendant. With these observations, the purshis Exhibit 85 was filed.

5. The petitioner contends that the Municipal Council should be arrayed as a plaintiff since it is the responsibility of the Municipal Council to remove illegal encroachments. Further contention is that the Municipal Council is not performing its function as is expected.

6. Merely because the petitioner has a feeling that the Municipal Council as a plaintiff would be in a better position to deal with the encroachment of the defendant, would not render the impugned order perverse or erroneous. In the event, the petitioner establishes encroachment on the part of the defendant, the trial Court would be in a position to issue necessary directions to the Municipal Council to exercise its powers and remove the encroachment.

7. In the light of the above, I do not find that this petition deserves to be entertained. Same is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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