

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2824 OF 2015

SANJAY JAGANNATH PATIL AND OTHERS
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Sapkal V. D.
AGP for Respondents 1 to 3: Mr. K.J. Ghute Patil

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**CORAM : R. M. BORDE AND
V. K. JADHAV, JJ.**

DATED : 24th MARCH, 2015

P.C. :-

1. The petitioners are objecting to certain directions issued by the Division Bench of this Court while disposing of writ petition No. 2384 of 2002, decided on 9.1.2015. The petition is presented by the residents of locality of Pratapnagar, Jalgaon, in effect, support the cause of respondent No.5 in writ petition No. 2384 of 2002 i.e. Shri Swami Samarth Seva Kendra, Jalgaon.

2. According to the petitioners, a small piece of area out of the open space available for the society has been handed over to Shri Swami Samarth Seva Kendra by the then Administrator in the year 1982. The Swami Samarth Seva Kendra has raised construction on the area and is conducting religious and social activities since then.

It is contended that the entitlement of Seva Kendra to continue to occupy the piece of land out of open space has been confirmed by granting extension by the Municipal Council from time to time. It is thus contended that Seva Kendra cannot be prevented from raising construction over the open area and directions issued by the Division Bench of this court to the Municipal authorities for removal of encroachment are not justified. It is contended that the activities of the Seva Kendra are beneficial and majority residents of locality do not object to the religious activities and as such, the said Seva Kendra shall be permitted to continue to occupy the piece of land out of open area and shall be permitted to continue to perform the religious and social activities.

3. We have heard the arguments advanced by learned counsel appearing for the petitioners and perused the documents annexed to the petition. It is noticed that while allotting the land, procedure prescribed under Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965 in respect of transfer of municipal property has not been adhered to. In absence of proper allotment/lease of municipal property in accordance with the legal provisions, occupation of the Seva Kendra over municipal property i.e. open space cannot be said to be authorized by law. The open space in the locality is meant for beneficial use and enjoyment of the

residents of the locality and shall be maintained as open area and no construction of permanent nature shall be permitted to be carried out. The Regulations in respect of permissible construction over open area shall also be strictly adhered to by the Municipal Council/Corporation.

4. In the instant case, the permission accorded by Municipal Council in favour of Seva Kendra appears to be in violation of Municipal Law. The directions issued by Division Bench of this Court while disposing of writ petition No. 2384 of 2002 cannot be said to be erroneous. Paragraph 10 of the judgment of Division Bench in writ petition No. 2384 of 2002 reads thus:-

“10. From the photographs which are taken on record, we found that the establishment of respondent No. 5 is bound by a high compound wall. They have complete control of the land and the structure inside the compound wall. The plot bound by compound wall is about 20,000 sq. feet. By any standard, this is a huge establishment compared to the open space in question. The development of such establishment is nothing but a stark example of lawlessness. This could be possible only with active connivance of the local authority.”

5. It is open for the aggrieved party to raise challenge to the directions issued in writ petition No.2384 of 2002 by approaching the

appropriate forum. In exercise of jurisdiction under Article 226 of the Constitution of India, no interference is called for. Writ petition as such stands dismissed. There shall be no order as to costs.

(V. K. JADHAV, J.)

(R. M. BORDE, J.)

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