

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3094 OF 2014

- 1) Panditrao s/o Narayanrao Kharpude,
Age: 59 years, Occu: Business
- 2) Nilesh s/o Panditrao Kharpude,
Age: 31 years, Occu : Business

Both R/o : Pargalli, Near Vishal Ganpati
Temple, Ahmednagar, Tq. Ahmednagar,
Dist. : Ahmednagar

...PETITIONERS
(Orig. Appellants)

VERSUS

Ahmednagar Municipal Corporation,
Ahmednagar, Dist. : Ahmednagar,
Through its Commissioner

...RESPONDENT
(Orig. respondent)

Mr Niteen V. Gaware, Advocate for petitioners;
Mr K. N. Lokhande, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 3rd March, 2015

ORDER

Both the Courts below have rejected the prayer for grant of temporary injunction in relation to the suit property developed by the petitioners on the ground that, (a) there was no permission by the respondent – Municipal Corporation to carry out construction and (b) that

the plot on which the construction is carried out is not sanctioned/approved by the planning authority.

2. The fact remains that the petitioners are in possession of the suit property since 2004 and their construction is standing thereon, part of which was demolished by the Municipal Corporation.

3. The petitioners have come out with a case of deemed sanction as according to them, the application seeking permission to carry out construction was not decided within the stipulated period. The law on the said issue is well settled. Under the deeming provision, the party cannot get a premium of protection of illegal structure. Construction which is in contravention to the Building Control Regulations cannot be protected.

4. In view of above and having regard to the submissions made by the learned Counsel for the petitioners, that the trial in the suit has begun, there shall be status quo as regards the present status of the suit property with a rider that the respondent Corporation shall not carry out any demolition of structure which is in accordance with the Building Control Regulations, to be more precise, the Corporation shall not demolish such construction of the petitioners which is permissible under the Building Control Regulations.

5. With the above observations, the present writ petition stands disposed of.

6. The petitioners undertake that they shall not carry out any further development over the suit property without permission of the respondent – Municipal Corporation.

7. Hearing of the suit is expedited. Petitioners undertake to co-operate for early disposal of the suit.

(N.W. SAMBRE, J.)

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