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

WRIT PETITION NO.888 OF 2015

Devidas Somnath Pastapure and others. ..Petitioners

-Versus-

Chief Officer, The Municipal Council. ..Respondent

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Mr.S.V.Chandole h/f Mr.M.G.Biradar, Advocate for the Petitioners.

Mr.M.K.Bhosle h/f Mr.P.V.Barde, Advocate for the Respondent.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 11th February, 2015

Per Court:

1 I have heard the learned counsel appearing for the Petitioners. The Petitioners are aggrieved by the rejection of an application Exhibit-5 preferred by them under Order 39 Rule 1 of the Code of Civil Procedure seeking injunction against the Respondent/ Municipal Council in RCS No.137/2013.

2 The Petitioners are similarly aggrieved by the order passed by the Appellate Court dated 18.12.2014 below Exhibit-15 in Miscellaneous Civil Appeal No.8/2014 filed under Order 41 Rule 27 r/w Order 43 Rule 2 r/w Section 151 of the Code of Civil Procedure for production of additional evidence.

3 I have heard the learned counsel for quite sometime. In Miscellaneous Civil Appeal No.8/2014, the Petitioners are questioning the rejection of a temporary injunction application. During the pendency of the Appeal, the Petitioners claim that the completion certificate dated 30.10.2010 thereby signifying the legality of their construction, was received by them on 18.11.2014. It is not disputed that the said purported completion certificate was received after the Trial Court rejected the application Exhibit-5 by the order dated 03.01.2014.

4 Miscellaneous Civil Appeal No.8/2014 filed by the Petitioners is for questioning the sustainability of the order rejecting the temporary injunction application, on the basis of the material that was before the Trial Court. By application Exhibit-15 filed before the Appellate Court, the Petitioners sought to produce such additional material which was not produced before the Trial Court which dealt with the temporary injunction application.

5 The design of the Petitioners to question the sustainability of the order dated 03.01.2014 on the basis of the additional evidence/document which was never before the Trial Court, has been rightly rejected by the Appellate Court. The Petitioners cannot allege perversity in

the findings of the impugned order on the basis of such material which was never placed before that Court which dealt with the temporary injunction application.

6 I, therefore, do not find that the impugned order dated 18.12.2014 passed by the learned District Judge, Udgir could be said to be perverse or erroneous. Nevertheless, the Petitioners would always be at liberty to produce such material as they may deem fit and proper before the Trial Court for the proper adjudication of their claim made in the suit.

7 In the light of the above, this Writ Petition being devoid of merits is, therefore, dismissed. No order as to costs.

(RAVINDRA V. GHUGE, J.)