

SQP

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 790 OF 2013**

|                                     |                |
|-------------------------------------|----------------|
| Akhtar Babu Shaikh & Ors.           | ...Petitioners |
| Versus                              |                |
| The Town Planning Department & Ors. | ...Respondents |

Mr. Kuldeep S. Patil for the Petitioners

Mr. Rohit Sakhadeo for the Respondent Nos.1 and 2

Mr. S. M. Oak i/b Mr. Sagar Joshi for the Respondent No. 3

Mr. Pranil Sonawane for the Respondent No. 4

**CORAM : A. S. OKA &  
REVATI MOHITE DERE, JJ.  
THURSDAY, 13TH AUGUST, 2015**

**P.C. :**

1. Heard learned Counsel for the petitioners, learned Counsel appearing for the first and second respondents and learned Counsel appearing for the fourth respondent. Our attention is invited to the affidavit filed by Shri Rajan Raghunath Khandpekar, Executive Engineer of the Thane Municipal Corporation and in particular, paragraph 14 thereof.

Paragraph 14 reads thus :

*“14. It is submitted that, the Petitioner is resident/occupant of the building known as “Tambe Building”, it is brought to the notice of this Hon'ble*

*Court that, the said Tambe Building itself is “unauthorized building”, hence the petitioners have violated the basic principal of Law i.e. “one who approaches the Court for violation of his constitution rights has to come with clean hands.” This itself shows that, though the Petitioners are aware of the fact that, the building which is occupied by them itself is “unauthorized building” they have not disclosed this in their petition. On this ground the Petition deserves to be dismissed.”*

2. This affidavit has been filed on 22<sup>nd</sup> April, 2013. What is stated in paragraph 14 is not controverted by filing any rejoinder.

3. If according to the petitioners, their right of way is affected by the construction carried out by the fourth respondent, the petitioners will have to establish the said right by approaching competent Civil Court. Considering the uncontroverted averments in paragraph 14, which we have quoted above, this is not a fit case where the petitioners should be allowed to invoke discretionary jurisdiction of this Court under Article 226 of the Constitution of India. We, therefore, decline to entertain this petition. Though the petition is rejected, we make it clear that petitioners will be entitled to approach Civil Court and file appropriate proceedings. All contentions on merits are kept open. It will be open for the petitioners to

rely upon the report submitted by Sadashiv Nargundkar & Associates dated 24<sup>th</sup> July, 2014.

4. As Sadashiv Nargundkar & Associates was appointed at the instance of the petitioners, we direct the petitioners to pay a sum of Rs. 44,944/- to the said Architects as per the bill dated 5<sup>th</sup> August, 2014. Amount shall be paid within a period of one month from today. If the amount is not paid, the Registry to list the petition on 16<sup>th</sup> September, 2015 for directions.

**(REVATI MOHITE DERE, J.)**

**(A. S. OKA, J.)**