

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

Writ Petition No. 2564 of 2015

(Shri Ekveera Devi Sansthan, Amravati through its Treasurer and authorized
Singatory Shri Rajendra D. Tembe Vs. Amravati Municipal Corporation
through its Municipal Commissioner and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Shri M. G. Bhangde, Senior Advocate with Shri R. M.
Bhangde, Advocate for the petitioner
Shri J. B. Kasat, Advocate for the respondent no. 1
Shri A. J. Gilda, Advocate for respondent no. 2

**CORAM : Smt. Vasanti A. Naik and
Prasanna B. Varale, JJ.**

DATE : 14-12-2015.

Heard.

By this petition, the petitioner seeks a declaration that the respondent no. 2 – Shri Ambadevi Sansthan is not entitled to construct Yatri Niwas so as to obstruct the main entrance of the Ekvira Devi temple of the petitioner - Shri Ekveera Devi Sansthan.

It is the case of the petitioner – Sansthan that the respondent – Corporation has wrongly sanctioned the building plan submitted by the respondent no. 2 in contravention of the Development Control Rules and against the D. P. Reservation. According to the petitioner, the respondent – Corporation has sanctioned the building plan on a part of the land which belongs to the Government. It is the case of the petitioner – Sansthan that the construction is being made on an area earmarked for the pathway.

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It is stated that though the Corporation had sanctioned the construction only till the plinth level, the respondent no. 2 – Sansthan had constructed a double storied structure. It is stated that though the area on which the construction is made is earmarked for public utility – semi public utility, the same is used for the construction of the shops.

It is submitted on behalf of the Corporation that the plan has been sanctioned only as per the Development Control Rules and the respondent no. 2 – Sansthan is permitted to construct utility blocks and that does not violate the development plan. It is stated that no construction is permitted by the respondent – Corporation on Government plot. It is stated that the plan has been sanctioned for construction on the land of the respondent no. 2 – Sansthan only. It is also stated that if the respondent no. 2 deviates from the sanctioned plan while making the construction, the Corporation would take appropriate action.

The learned counsel for the respondent no. 2 denies that the area is earmarked for the pathway. It is stated that shops were already existing on the land in question and to accommodate the shopkeepers/tenants, utility blocks are being constructed. It is stated that the respondent no. 2 – Shri Ambadevi Sansthan is not constructing on the Government plot and the plans have been sanctioned as per the Development Control Rules.

On hearing the learned counsel for the parties

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and on perusal of the proposed amendment and the submissions made on behalf of the respondents, we find that the issues involved in this writ petition cannot be decided in exercise of the writ jurisdiction. A declaration cannot be granted that the respondent no. 2 – Shri Ambadevi Sansthan is not entitled to construct Yatri Niwas on the land mentioned in the writ petition so as to obstruct the main entrance of Ekveera Devi Temple. There is a serious dispute that the area is earmarked for the pathway and that the construction is being made on the land of the respondent. There is a word against word in respect of the construction made by the respondent no. 2 on the land of the respondent no. 2. Also, though it is the case of the petitioner that construction is being made in violation of the Development Control Rules and the development plan, the said fact is disputed by the respondent nos. 1 and 2. Since disputed questions of facts arise for determination in this writ petition, it would not be proper for this Court to decide the same in exercise of the writ jurisdiction. The petitioner is free to avail the appropriate remedy.

We dismiss the writ petition with no order as to costs.

The points raised in the writ petition are kept open.

JUDGE

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