

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

Writ Petition No. 6758 of 2011

1. Ravi Mukundlal Abbot,
Age : 39 years,
Occupation : Business,
R/o. Abbot Bungalow,
Aurangabad Road,
Ahmednagar.
 2. Mukundlal L. Abbot,
Age : 69 years,
Occupation : Business,
R/o. as above.
 3. Harish Mukundlal Abbot,
Age : 35 years,
Occupation : Business,
R/o. as above.
- .. Petitioners.

versus

1. The State of Maharashtra,
through Secretary,
Urban Development,
Mantralaya, Mumbai - 32.
2. The Collector,
Ahmednagar.
3. Municipal Corporation,
Ahmednagar,
through Commissioner.
4. Asfak Husain Shaikh,
Age : Major,
Occupation : Business,
R/o. GLRS No.8,
Opp. S.T. Workshop,
Sarjepura, Ahmednagar,
Taluka & District : Ahmednagar.

5. Salim Hasan Shaikh,
Age : Major,
Occupation : Business,
R/o. as above.
6. Dada Bhau Jagtap,
Age : Major,
Occupation : Business,
R/o. as above.
7. Chandulal Bansilal Rathod,
Age : Major,
Occupation : Business,
R/o. as above.
8. Ramchandra Bhaurao Lokhande,
Age : Major,
Occupation : Business,
R/o. as above. .. Respondent no.8
deleted.
9. Sakhubai Ganpat Borge,
Age : 55 years,
Occupation : Household,
R/o. as above.
10. Ismile Khan / Shaikh Mannan Aziz,
Age : Major,
Occupation : Business,
R/o. as above.
11. Mukund Maroti Bhagat,
Age : Major,
Occupation : Business,
R/o. as above.
12. Rameshwar Bapurao Bhosale,
Age : Major,
Occupation : Business,
R/o. as above.
13. Nandu s/o. Tukaram Jadhav,
Age : Major,
Occupation : Business,
R/o. as above. .. Respondents.

.....

Mr. P.R. Patil, Advocate, for the petitioners.

Mrs. M.A. Deshpande, Asst. Government Pleader, for respondent nos.1 and 2.

Mr. V.S. Bedre, Advocate, for respondent no.3.

Mr. Amol K. Gawali, Advocate, for respondent nos.4 to 7 and 9 to 13.

.....

**CORAM : S.V. GANGAPURWALA &
A.M. BADAR, JJ.**

DATE : 25TH JANUARY 2016

COURT'S ORDER *(Per S.V. Gangapurwala, J.) :*

1. We have heard Mr. Patil, the learned Counsel for the petitioners, who submits that respondent nos.4 to 13 have erected unauthorized construction and have encroached over the property by virtue of which rights of the petitioners are also affected. The Municipal Corporation is not performing its statutory duties. In the year 2007, they passed the order and thereafter have not taken any steps. It is the respondent no.3 who is empowered and to take action.

2. Mr. Gawali, the learned Counsel for respondent nos.4 to 7 and 9 to 13, submits that respondent no.3 does not have jurisdiction. Property wherein the construction of these respondents stand, is in Cantonment Area and respondent no.3 cannot exercise its jurisdiction over the same.

According to the learned Counsel, the dispute is also in respect of landlord and tenant and the proceedings between two of the present petitioners and respondent is also pending before this Court with regard to tenancy.

3. Mr. Bedre, the learned Counsel for respondent no.3 - Corporation, submits that notices were issued under Section 54 of the Maharashtra Regional & Town Planning Act 1966, to the petitioners and respondents and after hearing them, orders are passed in 2007. However, further steps were not taken as it was reported that some Civil Suits are pending between the parties. If there are no prohibitory orders from any Court and dispute is not pending, then respondent no.3 - Corporation will proceed further with the action.

4. We are not called upon to decide about the jurisdiction i.e. whether the Municipal Corporation can exercise its powers over the area where the property is situated. The parties in appropriate proceedings may take up the said issue of jurisdiction. The Corporation has filed affidavit stating that after hearing the parties in 2007, the orders have been passed and further action has not been taken only on the ground that some proceedings are pending. It is further stated by the learned Counsel for respondent no.3 - Corporation that in case, civil proceedings between the parties are not pending and there are no prohibitory orders, then respondent no.3 would proceed further and take action as per law.

5. We accept the said statement. In case, some proceedings are initiated by respondent no.3 - Corporation, parties are at liberty to take steps as would be permissible in law. In that event, contentions of

respective parties are kept open.

6. With the above observations, the Writ Petition is disposed of.
No costs.

(A.M. BADAR)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

.....