

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

928 WRIT PETITION NO. 4093 OF 2015
WITH WP/4094/2015 WITH WP/4113/2015

MADHAV RAMESHCHANDRA CHAUDHARI AND ANOTHER
VERSUS
MUNICIPAL CORPORATION, DHULE AND OTHERS

...
Advocate for Petitioners : Naseem R. Shaikh
Advocate for Respondent 4 : P.P. Chavan
...

CORAM : T.V. NALAWADE, J.
DATED : 15th December, 2016.

ORDER :

1. The petitions are filed to challenge the orders made by the learned Civil Judge, Junior Division, Dhule on Exh. 5 in three civil suits and also the decisions given by the District Court in three Misc. Appeals filed by present petitioners. Both the sides are heard.

2. The suits are filed by the present petitioners for relief of declaration that notice given by the Town Planning Department of the Local Body, Corporation dated 9.10.2013, received on 14.10.2013 is illegal. The relief of injunction is also claimed to protect the construction which is in possession of the plaintiffs, petitioners.

3. In the suits, both respondent Nos. 4 and 5 and

Corporation appeared and they filed written statement. It is contended that the construction is made in set back space which is required to be kept after main road and so, it is encroachment. It is also contended that the construction itself was not made by taking permission of construction.

4. The learned counsel for petitioners submitted that these are the structures, having size of 6 ft. x 8 ft. and petitioners are running shops since last 30 years. The learned counsel submitted that with malafide intention, respondent Nos. 4 and 5, the owners and landlords of the petitioners had made application before the authority for removal of construction and these respondents had taken steps for removal of the construction as they wanted to use short-cut method of eviction. The learned counsel submitted that even suits for eviction were filed, but the suits were dismissed. He submitted that in view of these circumstances, the Trial Court ought to have given relief of temporary injunction to protect the possession.

5. The Trial Court has observed that the construction is not only illegal due to absence of permission, but the construction is in the space which needs to be kept as set back space and so, the construction is made by making encroachment in the space which can be used by the Local Body. With these

observations and by holding that there is nothing illegal in the notice, relief is refused.

6. The submissions made show that the petitioners want to protect the construction by making submission that the act is being done by the Local Body only to help the landlords. Even if that submission is accepted as it is, the construction of the petitioners cannot be protected. If the construction is made in set back space, it necessarily causes nuisance to the public at large. Considering the power given to the Local Body and authority created under the Town Planning Act, the Court is not expected to interfere in the action taken by the Local Body. There is record of notice and from it, it can be said that necessary procedure was followed by the authority. The learned counsel for respondents placed reliance on section 149 of Maharashtra Regional and Town Planning Act and submitted that the Civil Court is not expected to entertain such matters. There is force in this submission also. This Court holds that there is no reason to interfere in the order made by the Trial Court, which is confirmed by the Appellate Court. In the result, the petitions stand dismissed.

[T.V. NALAWADE, J.]

ssc/