

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5874 OF 2015

MOHD ABDUL MUQEET SIDDIQUI
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mrs. Pratibha Wankhede (Bharad)
AGP for Respondent No.1 : Mrs. A.V. Gondhalekar.
Advocate for respondent Nos. 2 and 3 : Mr. S.S. Tope
Advocate for respondent No.4 : Mr. Amol Joshi, Adv. h/f. Mr. R.S. Deshmukh

CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE : 29th JUNE , 2016.

PER COURT:

1. Learned counsel for the petitioner strenuously contends that the petitioner is the president of Altamash Colony Plot Owners Development and Welfare Society. The said plots of the members of the said society are situated in Survey No. 36. The said plots have been developed after obtaining necessary permission. Respondent No.4 has constructed a complex known as "Hayat Complex". The boundaries stated in the sale deeds pursuant to which the respondent No.4 has purchased his property is different than the boundaries of Hayat Complex constructed by respondent No.4. The respondent No.4 has encroached upon the area earmarked for play ground. Learned counsel further submits that respondent No.4 is not the owner and possessor of any portion admeasuring 370 square meters, on which Hayat Complex is erected. This fact is brought to the notice of the Municipal Corporation by various representations and prayer was made to conduct an enquiry in the said matter. However, no cognizance is taken by them Learned counsel relies on various layout plans and maps to substantiate her contention. According to learned counsel, respondent No.4 owns plot No.46, whereas, the construction has been made on the opposite side of said

plot No.46 encroaching the area meant for the play ground. Learned counsel submits that respondent No.4 has already sold the property plot No.46 in the year 2008 by registered sale deed to one Dr. Sayeda Afroz Meer Anwar.

2] Mr. Tope, learned counsel for respondent Corporation submits that respondent No.4 had purchased the property in Survey No.36 part in the year 1988 by registered sale deed. Thereafter, Respondent No.4 purchased property from survey No. 34 part in the year 1996 by registered sale deed. The plots purchased by the respondent No.4 vide said sale deeds were adjacent to each other. Said plots were amalgamated on the application of respondent No.4 by deleting area of 140.64 square meters under reservation. According to learned counsel, after considering all the documents on record construction permission was granted to respondent No.4 and thereafter, construction has been completed. According to learned counsel, there does not appear to be a case of encroachment on reserved area. Counsel for respondent No.4 also submits that no encroachment has been made by respondent No.4 at any point of time and the construction has been made on his property after obtaining commencement certificate.

3] As far as the case put forth by the petitioner is concerned, the same has been denied by the respondents. The Corporation has filed an affidavit, thereby specifically contending that respondent No.4 has not encroached on any area reserved for play ground. The construction made by respondent No.4 is on private land and not on the land owned by the Aurangabad Municipal Corporation.

4] There are rival contentions. In writ jurisdiction, it will not be possible for us to embark upon an investigation into the disputed questions of fact. Considering the aforesaid aspect of the matter and more particularly, affidavit filed by respondent Corporation it would not be possible to entertain the disputed questions of fact in the present writ petition. In case the petitioner nourishes grievance of encroachment on

public land or land reserved for public purpose, the petitioner and/or any interested person can approach the competent forum in that regard. In case representations are made in that regard, the authorities of the Municipal Corporation shall consider the same, on its own merits. With this liberty, writ petition is disposed of. No costs.

[K.K. SONAWANE]
JUDGE

grt/-

[S.V. GANGAPURWALA]
JUDGE.