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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.5031/2013

Anantrao Laxmanrao Deshpande.
...Petitioner..

Versus

The State of Maharashtra & others.
...Respondents...

.....

Shri M.M. Bhokarikar, Advocate for petitioner.
Shri S.P. Sonpawale, AGP for respondent no.1.
Shri R.R. Karpe, Advocate h/f Shri S.S. Deshmukh,
Advocate for respondent no.2.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 20.08.2016

ORDER :

1] The petitioner assails the notice issued by the Municipal Council dated 29.5.2013 requiring the petitioner to remove the construction on the ground that the same is unauthorized.

2] Learned counsel for the petitioner submits that the writ construction is an old construction. Even the resolution is passed by the Grampanchayat according

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permission to the petitioner to carry out the construction. The writ property came within the limits of the Municipal Council, Jamner, in the year 2002. The permission was granted by the Grampanchayat in the years 1994 and 1999 and said construction is in consonance with the permission granted by the Grampanchayat. The resolutions to that effect are placed on record. The learned counsel submits that as the construction is prior in point of time i.e. before the said area came within the jurisdiction of the Municipal Council, now the Municipal Council cannot turn around and dub the said construction as an unauthorized construction. The learned counsel seeks to place reliance on the resolutions, tax receipts and various other documents.

3] Learned counsel for the respondent no.2 – Municipal Council submits that admittedly the petitioner does not have any construction permission from the Municipal Council. Even the petitioner has admitted that he could not carry out construction till the year 2010. If the petitioner has carried out construction in the year 2010, then it was incumbent upon the petitioner to seek permission from the Municipal Council. As no permission

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is sought from the Municipal Council, the construction carried out by the petitioner is unauthorized construction liable for demolition. The learned counsel submits that even otherwise, the property on which the construction is carried out by the petitioner is reserved for playground and shopping complex. As such the said property cannot be used for any other purpose than the one for which it is reserved.

4] We have considered the submissions canvassed by the learned counsel for the respective parties.

5] It appears that the petitioner is relying upon some resolutions passed by the Grampanchayat with regard to his construction. Whereas according to the respondent no.2, the construction was never carried out before 2010 and in the year 2010, the construction that is carried out is without permission from the Municipal Council. It is for the Municipal Council to consider all the earlier documents, the manner of construction and then arrive at a conclusion. The impugned notice / order refers to a notice dated 1.9.2010. The said notice dated 1.9.2010 has not been produced by either of the parties before this Court. As such, it is not possible to come to the

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conclusion as to whether the said notice was a show cause notice seeking explanation from the petitioner or the same was also an order purportedly u/ss. 52 and 53 of the Maharashtra Regional Town Planning At.

6] Be that as it may. It would not be possible for this Court to enter into all these aspects. It would be appropriate for the petitioner to approach the Municipal Council with all the relevant documents in his possession and the Municipal Council shall, after considering all the documents produced by the petitioner, consider the aspect about the construction being authorized / unauthorized afresh and take decision accordingly.

7] In the result, we pass the following order.

ORDER

The petitioner, within a period of three weeks from today, shall approach the Municipal Council, Jamner Dist.Jalgaon, with his application / representation alongwith all relevant documents with regard to his construction. The Municipal Council shall consider the said application / representation alongwith the documents produced by the

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petitioner on its own merits in accordance with law and take decision about the construction and communicate the said decision to the petitioner. Till the Municipal Council takes decision upon the application / representation of the petitioner and the petitioner is in receipt of the said decision, the impugned notice shall not be acted upon. Further course of action be taken by either of the parties depending upon the decision taken by the Municipal Council. Writ petition is disposed of accordingly. No costs. It is made clear that we have not considered the rival contentions of either of the parties on merits.

(K.L. WADANE, J.)**(S.V. GANGAPURWALA, J.)**