

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2220 OF 2015

SOPAN SHRIPATRAO WAGHMARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. J.M. Murkute
AGP for Respondents: Mr. S.M. Ganachari.

CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE : 11th AUGUST , 2016.

PER COURT:

1] Heard Mr. Murkute, Advocate for the petitioner, AGP for the State, Mr. Gangakhedkar, Advocate for respondent No.4 and Mr. Chandak, Advocate for respondent No.3.

2] Mr. Murkute, learned counsel for the petitioner submits that encroachment has been made on the Pathway/Pandan. No action is taken by the Municipal Council to remove the same. Petitioner has also filed the photographs showing that because of the encroachment the water logging takes place. No arrangement is made to release the blocked water from the area of pandan, or to remove the encroachment over the pathway/pandan which passes through village Manoli to Manwat. The petitioner has also given a representation to that effect.

3] Mr. Gangakhedkar, learned counsel for respondent No.4 submits that there is no encroachment made by respondent No.4. Petitioner had also filed a civil suit before the competent civil court. Same was initially decreed. Respondent No.4 filed an appeal bearing Regular Civil Appeal No. 129 of 2009, wherein the petitioner and the Municipal Council are parties and the appellate court has allowed the appeal of the present respondent

No.4, specifically holding that present respondent has not committed any encroachment nor has taken into possession 10 to 15 feet of Pandan road, to narrow it. The present petitioner has filed a Second Appeal against the said judgment and order. Same is pending. According to learned counsel the allegations of the petitioner are incorrect. Petitioner is prosecuting a dual proceeding for the same relief.

4] Mr. Chandak, learned counsel for the respondent Municipal Council submits that the Municipal Council is bound by the judgment delivered by the competent civil court. He further submits that the municipal council has already constructed a bridge over the pandan, for easy access to the public.

5] As far as allegations of encroachment are concerned, same cannot be considered at present in view of the judgment and order of the competent civil court and the said judgment being subjudice in the Second Appeal filed by the petitioner himself. If there is any water logging as claimed, it is for the Municipal Council to take steps to maintain proper hygienic condition and to streamline the process of water logging and to restore the basic amenities. If such a situation arises, the petitioner may move the authorities and the authorities shall take steps and perform the statutory duties for releasing the water logging and maintaining hygienic conditions.

6] With these observations, writ petition is disposed of. No costs.

[K.K. SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-