

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

32 WRIT PETITION NO. 11904 OF 2015

JABBAR MAJIDKHAN PATHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Mr. Deshpande Amit S.
AGP for Respondents 1 and 3 : Mrs. R.P. Gour
Advocate for Respondents 2 and 6 : Mr. A. V. Hon
Advocate for Respondents 4 and 5 : Mr. Manohar Deshpande
h/for Mr. C. R. Deshpande

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

DATE : 22nd November, 2016

ORDER:

1. We have heard Mr. Deshpande, learned counsel for the petitioner.
2. Grievance of the petitioner is that respondent Nos. 4 and 5 have made encroachment on public road. Even the Corporation had issued notice under section 54 of the MRTP Act. However, no steps are taken for removal of the encroachment.
3. Affidavit is filed on behalf of respondents 2 and 6 wherein the person serving as Town Planner with the Municipal Corporation has denied the fact of encroachment and stated that as per the inspection report, there is no road in existence on western side of the petitioner. The affidavit is filed with regard

to the description of the property.

4. It would not be possible for this Court to enter into the investigation of facts as claimed by either of the parties as, for determining the encroachment as alleged by the petitioner, evidence would be required to be adduced. In view of the affidavit filed by the respondents and the contention advanced, the petitioner has to establish the encroachment on the road by adducing evidence.

5. In the light of above, the petitioner is at liberty to approach the Civil Court with regard to the alleged encroachment as claimed in the present petition.

6. Writ petition is disposed of with liberty as aforesaid. It is made clear that all contentions of the respective parties are kept open.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC