

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2908 OF 2015.

New Saurashtra Kirana Jawahar Road, Akot and anr.

..VS..

Municipal Council, Akot and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.R.L.Khapre, Advocate for the petitioners.
Mr.A.R.Deshpande, Advocate for respondent no.1.

**CORAM : B.P.DHARMADHIKARI AND
P.N.DESHMUKH, JJ.**

DATED : APRIL 6, 2016.

Heard for some time.

Petitioners claim to be purchasers of lease hold rights in public auction and accordingly they claim that they have raised structures in which they are carrying their business. According to petitioners, structures are of permanent nature and are in existence for last more than fourteen years.

Challenge in petition is to the notices dated 13th of April, 2015 issued to them pointing out that they have encroached and raised unauthorized/illegal structures. They are called upon to remove said structures as also encroachment. It is also pointed out in that notice that they have to discontinue user of said land and vacate it for its use as public road and for public development.

The reply placed on record by Municipal Council states that main reason for issuing notices is

only unauthorized nature of constructions. The constructions have been erected without previous permission and petitioners do not have any sanctioned building plan. The constructions are temporary in nature and therefore recourse to Section 55 of the Maharashtra Regional and Town Planning Act has been taken. Section 55 permits the Planning Authority to issue notices for removal or discontinuing of unauthorized temporary development.

At least, in present matter, there is no record before this Court to hold that petitioners have not purchased lease hold rights from Municipal Council itself in public auction. Shri Deshpande has urged that the petitioners applied to S.D.O., Akot for grant of permanent lease but S.D.O. has rejected their applications. He also states that except for these two structures, all other encroachments in the vicinity have been removed.

If the arguments of Municipal Council are accepted, the legal rights of petitioners to continue in possession of the sites on which the structures have come up is not in dispute. However, the language of notices dated 13th of April, 2015 shows that the petitioners have to remove entire structures and also vacate the sites.

In this situation, as notices appear to be vague, we grant respondent – Municipal Council leave to serve appropriate notices, in accordance with law, upon petitioners.

This Court has on 15th of March, 2015 while issuing notices in the matter stayed effect and operation of impugned notices. In view of liberty granted, as we have found notices not in accordance with the legal provisions, we make that order absolute. Accordingly, writ petition is partly allowed and disposed of. No costs.

Needless to mention that all rival contentions are kept open.

JUDGE

JUDGE

Chute.