

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

WRIT PETITION NO.4100 OF 2016

[Shri Somaji s/o Sadashiv Nikhade .vs. The Chief Executive Officer, Nagar Parishad, Kalmeshwar and others]

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

Court's or Judge's orders

Shri P.H. Khobragade, counsel for the petitioner.

.....

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : AUGUST 05, 2016.

By this writ petition, the petitioner seeks a direction to the Nagar Parishad, Kalmeshwar to take action against the respondent nos.2 to 4 for illegally constructing a toilet and a septic tank on the southern side of the petitioner's house.

It is the case of the petitioner that the house of the respondent nos.2 to 4 is situated on the southern side of the petitioner's house and by encroaching upon the land of the petitioner, they have illegally constructed a toilet and a septic tank which is just adjacent to the construction of the petitioner. It is stated that the construction of a toilet and a septic tank is causing nuisance to the petitioner, more so when the same is constructed on the petitioner's land and not on the land of the respondent nos.2 to 4.

We are afraid, the relief sought by the petitioner cannot be granted in exercise of the writ jurisdiction. If on the petitioner's land, somebody has encroached and has made the construction, it would be for the petitioner to plead and prove in civil proceedings that the other party has encroached on his land. If it is the petitioner's case that the petitioner and the respondent nos.2 and 4 are adjoining land holders and the respondent nos.2 to 4 have illegally encroached on the land of the petitioner,

the remedy of the petitioner lies elsewhere.

In the circumstances of the case, we decline to exercise the writ jurisdiction. The writ petition is dismissed, with no order as to costs. The points raised in the petition are, however, kept open.

JUDGE

JUDGE

Gulande, PA

CERTIFICATE

“I certify that this order uploaded is a true and correct copy of original signed order.”

Uploaded by : A.S. Gulande, P.A.

Uploaded on : 08.08.2016