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

...

WRIT PETITION NO. 5046 OF 2016

**AJIT MADHUKARRAO TANDALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

**Advocate for Petitioners : Mr. S.P.Brahme h/f Mundhe Shrimant
GP for Respondents: Mr.A.B.Girase for R.1 to 3.
Advocate for Respondents : Mr.V.D.Salunke for R.6 & 7.
Adv. Mr.G.K.Thigale for R.4.**

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**CORAM : T.V.NALAWADE AND
SANGITRAO S. PATIL,JJ.**

DATE : 08/02/2017

PER COURT :-

Petition is filed for giving direction against local body to stop the construction which respondents no.6 and 7 are making on portion of Survey No.35 and to take action like removal of construction already made therein. It is contended that the place on which construction is being made is reserved by the local body in the Development Plan for construction of Shopping Complex of the local body and on that portion without taking permission, the construction is being made by respondents 6 and 7.

2] Both sides are heard. It is not disputed that the local body has passed Resolution that 61 Aar portion of Survey No.35 will be

required for construction of Shopping Complex of local body. The record produced shows that initially there was no construction permission and there was even no Development Plan approved in respect of portion purchased by respondents 6 and 7 from the original owner. However, there is the record showing that under the Provisions of Maharashtra Gunthevari Development Act, 2001, the permission was subsequently granted by the local body. There is grievance of the petitioner that the provisions could not have been used as the provisions can be used only if the constructions are made prior to 1/1/2001. In view of the nature of relief claimed, this point can not to be addressed at present. There is record now to show that under this Act, permissions are granted and no relief in respect of those permissions is claimed in the present proceeding.

3] Learned counsel for petitioner could not show to the Court that the portion on which respondents 6 and 7 are making construction was specifically shown as reserved by the local body. On the other hand, learned counsel for local body has filed affidavit of the local body and also map showing the reservation. The submission made for the local body and the map shown that the disputed portion is not reserved but the portion situated towards eastern side of that portion is reserved. In view of these circumstances, this Court holds that no order as sought in the present petition can be made.

4] Learned counsel for respondents 6 and 7 submitted that unnecessary harassment has been caused by petitioner. He submitted that the construction was already started and then present proceeding was filed and so there was harassment. It was submitted that to settle personal scores and due to some dispute of personal level, present proceeding is filed and so heavy costs need to be imposed. It is already observed that there was no map collected by the petitioner when the proceeding was filed and the local body was required to produce such map about reservation. In view of this, this Court holds that costs of Rs.10,000/- needs to be paid by petitioner to respondents 6 and 7.

5] In the result, Petition stands dismissed. Costs of Rs.10,000/- is imposed on petitioner which is to be paid to respondents 6 and 7. Learned counsel for respondents 6 and 7 submits that he would like to see that the amount is given to the Legal Aid. So the amount is to be deposited in High Court Legal Services Authority, Aurangabad within 30 days. If the amount is not deposited, Registrar (Judicial) should take steps.

(SANGITRAO S. PATIL,J.)

(T.V.NALAWADE,J.)

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