

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

8 WRIT PETITION NO. 4564 OF 2017

NANDKISHOR VITTHALRAO RAUT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 7068 OF 2017

SHESHRAO ABHIMANYU JAGTAP A.
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...
Advocate for Petitioners : Mr. V.D. Hon, Sr. Advocate h/f. Hon Ashwin V.
GP for Respondents/State: Mr. A.B. Girase
AGP for Respondents/State: Mr. A.R. Kale
...

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.
DATE : 24.07.2017**

P.C. :-

. In these petitions, the argument of the petitioners' senior counsel is that they cannot be disposed of in the light of the judgment of this Division Bench in Writ Petition no. 5182 of 2017 and connected matters.

2. In pressing these petitions, the further argument is that the petitioners' business are not conducted within a distance of 500 meters from National Highway or State Highway. There is, thus, no violation of

the order passed by the Hon'ble Supreme Court of India. Secondly, the impugned order does not specify, whether the petitioners' establishments are within the distance and prohibited in terms of the Supreme Court order from a National Highway or a State Highway. Additionally, the petitioners were informed in writing and in reply to an application under the Right to Information Act, 2005 that the petitioners' establishments which are allegedly on Nepti Square Road to Savarkar Square Road, Ahmednagar is neither a part of National Highway no.222 nor a state Highway. Further, this road is within the municipal limits and under the control of the Ahmednagar Municipal Corporation and reliance is placed on a letter dated 07.09.2016 to that effect.

3. On careful perusal of the impugned order at page 36 reveal that it has been passed on 31.03.2017. That order refers to the Supreme Court Judgment. That order also refer to the petitioners' license and details of the petitioners. We see no reason for the petitioners' to seek clarifications by making applications to the National Highway Authority of India. The National Highway Authority of India replied to the petitioners' application on the eve of the Supreme Court order and has stated on 21.01.2017 that the road within the two squares is within National Highway No. 222 or not cannot be informed for there is no

notification to that effect. Prior, thereto, the petitioners seek the same information from the Ahmednagar Municipal Corporation. The Ahmednagar Municipal Corporation gives a guarded reply and says that there is no record of the Public Works Department of the State whether the road between two squares falls within the National Highway. Pertinently, it says whether this road and passing through municipal limits has been handed over for management and administration to the Municipal Corporation or not cannot be stated positively for there is no record or document to that effect or a resolution in the files of the Municipal Corporation nor is there any information about any resolution of the State Government. The petitioners were advised to contact the State Government. Then, the Municipal Corporation merely clarifies that the road between these two squares is within the municipal limits.

4. All these aspects have been dealt with by us in great details in our order passed in writ petition no. 5182/2017. We have deliberately re-produced the Supreme Court observations, findings and conclusions on the point. The Supreme Court was aware that an argument can be raised that a road, though, styled as a Highway passing through municipal limits could be conveniently excluded or left out from the purview of its prohibitory order and direction. That is why the Supreme

Court employs a rather strong word "subterfuge". It holds and very clearly that even if such Highways may pass through municipal limits, they do not cease to be highways nor their character can be altered by raising such argument and raised in order to avoid the prohibition. In such circumstances and going by the petitioners' documents itself, we are of the clear opinion that the order passed by the Collector and after a site inspection cannot be interfered with. The writ petitions are dismissed.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]