

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

10 WRIT PETITION NO. 9218 OF 2017

PUSHOTTAM GOPAL CHOUDHARI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Surve Hemant
GP for Respondents/ State : Mr. A.B. Girase
...

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

P.C. :-

. On two earlier occasions, this petition was placed before us. Firstly, when it was sought to be circulated and secondly when it was placed on 19.07.2017.

2. On both days, it was argued that these petitions cannot be disposed of in terms of the order passed in Writ Petition no. 5182/2017, the controversy is somewhat different.

3. The petitioners' counsel was attempting to point out that there are two stretches of the road which meet but the point at which they meet or they pass through a common municipal limit, they will not be falling within the roads specified as Highways in the Supreme Court

order.

4. The precise argument of Mr. Surve was that the petitioners have been targeted in the garb of this Supreme Court order and the subsequent clarification of the petitioners, though, their shops/establishments are not within 500 meters of the highway. It is that the Municipal Council Shahada has passed two resolutions, whereby, it has resolved to include the stretch of State Highway no.1 falling in the limits of the Shahada Municipal Council to be a road within the municipal area, reliance was placed upon that resolution. Then, it was argued that the petitioners' establishments are located at such a point which would enable the petitioners' to argue that Shahada City abuts State Highway no.1, in fact Shahada City has two highways intersect. One highway is known as Pramukh Rajya Marg No.1 and the latter one is highway no.1. The topography of Shahada city and a map is relied upon. Principal Highway no.1 which passes through Shahada City is de-notified as a road pertaining to Municipal Council Shahada. A proposal was approved by the State Government on 21.03.1990 and relied upon by the petitioner, a copy of the same is annexed at Annexure 'D'. The petitioners, then, clarify that as regards the stretch of the road which falls within the territorial limits of Shahada City from Highway no.1, the proposal of its

inclusion within Shahada Municipal Council was mooted since 1988. The resolution no.15 was passed by the Municipal Council Shahada and it was forwarded to the Public Works Department Authorities. Even the authorities conveyed that the roads falling within the limits of the Shahada Municipal are maintained by the council and not the State Government. That is how Annexure 'E' was relied upon.

5. We are, after hearing Mr. Surve and perusing the petition and annexures thereto, of the firm opinion that the pleadings in the petition cannot be relied upon. Though, the petition opens with the above pleadings, contained in para nos.3 to 5 what we find in para 7 is that the petitioners' themselves refer to the stretch of the road as Principal Highway no.1 and term it as a Municipal Road. We do not know how both the nomenclatures can be attached to the road, if the petitioners' term it as a municipal road. If this road is excluded from the policy of closure of liquor shops within 500 meters of Highway, an intersecting road, Highway no.1 is not recognized as a municipal road, is equally the pleading. Therefore, one can look it either way but so long as there is a Highway which is merely passing through the limits of the Shahada Municipal Council, it does not mean, by itself and without anything more that is enough to exclude it from the purview of the Supreme Court

judgment.

6. We are of the opinion that the Supreme Court Judgment would apply to this case, we are not in agreement with Mr. Suve on the point. The petition is devoid of merits and is therefore dismissed. The petitioners' have also in the meanwhile received the closure orders but when the petition was filed it was on an apprehension that the shops/establishment would be closed down.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]

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