

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

923 WRIT PETITION NO. 9089 OF 2016

DNYANESHWAR KARBHARI SHINDE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Chetan Jadhav h/f. Kulkarni Smita S.

AGP for Respondents: Mrs. A.V. Gondhalekar

Advocate for Respondents : Mr. A.V. Hon for R/5

Advocate for Respondents : Mrs. Madhaveswari D. Thube-Mhase
for R/6 to 10

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

DATE : 04.07.2017.

P.C. :-

. When this petition was placed before us today in pursuance of our earlier direction. We perused the two affidavits one filed and affirmed by Yashwant Bhimrao Dange, Chief Officer of the Shirdi Nagar Panchayat and another by Devram Ramchandra Sajan. resident of Shirdi, Taluka Rahata, District Ahmednagar affirmed on behalf of himself namely respondent nos. 6 to 10. While these private respondents maintained that they have not contravened any permission and sanction while making the subject construction and it is within the sanctioned plan, the Chief Officer does not accept this position.

2. The Chief Officer in the affidavit filed in reply in para 5 and 6 stated as under:

“5. I say that as per the construction permission given by the Nagar Panchayat on 25.10.2012, the property could have been developed, east-west 8.33 meter road and towards south-north 9.25 meters. However, the construction is not as per the sanctioned plan as towards east-west the construction is 8 meters as against 8.33 meters whereas from north-south construction ought to have been 6.44 meters, however, it is constructed 8 meters. I say that there is therefore, construction made contrary to the sanctioned plan. Towards the southern side, the construction ought to have been 18.78 meters, however, it is 18 meters. I say that the required side margins are also not kept as per the sanctioned plan. I say that on the ground floor, as per the plan, the sanctioned construction was 158.70 sq. meters as against which the construction is made 221.20 sq. meters. On the first floor, the sanctioned construction was 138.18 sq. meters, however, the construction is made of 144 sq. meters. On the second floor, the sanctioned construction was 138.18 sq. meters however; the construction is made of 144 sq. meters. I say that as per the sanctioned plan total construction ought to have been 435.06 sq. meters however, the construction have been made which is total 509.02 sq. meters. I say that from the above figures, it would be evident that the trust has carried out the excess construction than the actual sanctioned plan.

6. *I say that after noticing the excess construction made by the Trust, the respondent Nagar Panchayat has issued notice in accordance with the provisions of Section 189 of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act 1956 r.w. provisions of Sections 52,53 and 54 of the Maharashtra Regional Town Planning Act 1966 whereby the trust has been asked to forthwith stop the construction and to remove the excess construction within a period of one months, failing which the Nagar Panchayat would be constrained to take necessary steps in accordance with law. I say that copy of the said notice is at page 38 Exh.E of compilation.”*

3. When this affidavit is on record, and the attention was invited to this material, the petitioner’s advocate submitted that this Court must ensure compliance by the counsel of the statements made on oath.

4. Mrs. Madhaveshwari, appearing on behalf respondent nos. 6 to 10 after some arguments admitted the position that these respondents will have to accept and abide by the statements made by the Chief Officer based as they are on public records.

5. The construction ought to have been within the limits specified in the affidavit of the Chief Officer. He says that the construction permitted was to the extent of 435.06 sq.mtrs. However,

the construction actually carried out at site is 509.02 sq.mtrs.

6. On taking instructions from the concerned respondents, it is stated by Mrs. Madhaveshwari that at their costs, charges and expenses by these respondents will remove the excess construction within a period of 15 days from today. We accept the statement made on instructions as an undertaking to this Court.

7. Needless to state that, if this undertaking is not complied with, the Chief Officer shall ensure that the excess construction is removed and charges, expenses and costs for such removal/demolition shall be recovered from respondent nos. 6 to 10. The writ petition is disposed with these directions. The amount deposited by the petitioners in this Court shall be refunded to them with accrued interest.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]