

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

WRIT PETITION NO. 10231 OF 2017

Ratnabai Chatur Patil and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri V. D. Hon, Senior Advocate i/by Shri A. D. Ostwal, Advocate
for Petitioners.

Mrs. A. V. Gondhalekar, Addl.G.P. for Respondent Nos. 1 to 4.

Shri G. V. Wani, Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 18TH AUGUST, 2017.

FINAL ORDER :

. The petitioners assail the order passed by this Court of which one of us (Mangesh S. Patil, J.) was a member. The petitioners also assail the notices issued by the respondent No. 5, wherein action of demolition is being undertaken.

2. Mr. Hon, the learned senior counsel for petitioners submits that, when this Court passed the order dated 26.07.2017 in Writ Petition No. 7827 of 2012, these petitioners were not heard. Present petitioners were not parties to the said proceedings. In fact, there is collusion between original respondent No. 6/Sanstha

and Municipal Council. The learned senior advocate further submits that, the petitioners are legally inducted as tenants in the writ premises after 1995 and since then they are running their avocation. They are small businessmen. The learned senior advocate further submits that, though the writ property is in the educational zone, still resolution was passed by the Municipal Council to permit construction to the extent of 15% as a commercial complex. The said resolution was suspended by the Collector. Appeal filed to the Commissioner came to be dismissed. However, revision before the Government is still pending consideration. The Hon'ble Minister has even asked the Municipal Council to consider the said aspect.

3. The learned senior advocate further submits that, the respondent No. 5/Municipal Council has issued notices levying property tax. This would show that even respondent/Municipal Council is accepting the petitioners as legal occupants of the writ premises. The learned senior advocate further submits that, no notices have been issued to these tenants for demolition of writ premises, though in the year 2012 notice was issued to the respondent No. 6. The learned senior advocate further submits that, as per condition No. 6 of the lease of the year 1982 in favour of the respondent No. 6, it is stated that, if terms and conditions are violated, then the respondent/State would be entitled to resume the property. As such, at the most the respondents can

resume the property, however, cannot demolish the construction. The learned senior advocate further submits that, atleast till the period the revision is decided, the respondents needs to be directed not to proceed with the demolition activity. The learned senior advocate further submits that, notices for payment of taxes were issued from time to time to petitioners, but the respondent/Municipal Council did not accept the taxes from the petitioners.

4. According to the learned senior advocate, demolition activity has not yet commenced, though personnel of the Municipal Council are on the site.

5. Mr. Wani, the learned advocate for the respondent No. 5 submits that, the demolition has actually commenced and major demolition work has been done.

6. We have also heard the learned Additional Government Pleader for respondent Nos. 1 to 4.

7. This Court in its order dated 26.07.2017 in Writ Petition No. 7827 of 2012 has considered various facets of the matter and also the effect of pendency of revision before the Government. This Court in the said order has observed that, the Government cannot exercise the powers of revision in view of second proviso to

Sec. 318 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965.

8. This Court thereafter has recorded the undertaking of the Chief Officer of the Municipal Council that the notice of the year 2012 would be implemented.

9. Mere recovery of taxes certainly would not regularize the construction. The construction is in the educational zone. Admittedly, no permission has been obtained while making construction of commercial complex. Since 2012 the notices are being issued by the Municipal Council asking the respondent No. 6 to remove the construction. Since then no further steps have been taken even by present petitioners.

10. Considering earlier order passed by this Court and the factual matrix, it is not possible to entertain the grievance of petitioners. The writ petition as such is dismissed. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]