

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

WRIT PETITION NO. 1371 OF 2017

Sushila Ramesh Patil

...Petitioner

VERSUS

The State of Maharashtra
and others

...Respondents

.....

Shri V.B.Patil, advocate for the petitioner

Shri P.S.Patil, A.G.P. for respondent nos. 1 and 2

.....

CORAM : S.V.GANGAPURWALA & K.L.WADANE, JJ.

DATED : 6th FEBRUARY, 2017

O R D E R :

Mr. V.B.Patil, learned counsel for the petitioner states that the petitioner is owner of Plot No.3 of a lay out in Gat No. 343/3. Ten percent of the land has been reserved as open space. According to the learned counsel, no construction is permissible in the said open space. The learned counsel submits that the open space can be used and enjoyed by each and every plot holder. Some illegal construction was

started by unauthorized person in open space in the year 2011. As such, the petitioner approached respondent no.3 and made request for taking appropriate action. The petitioner in January 2012 also made request to respondent nos. 3 and 4 to allow plantation of trees in the said premises. In May, 2012 the petitioner approached respondent no.3 to take appropriate action as against the illegal construction in the open space. Respondent no.4 accepted that there is illegal construction in the open space but the said matter was referred to respondent no.2 Committee. The petitioner approached the Committee, however, the Committee under the decision dated 29.8.2013 negatived the contention of the petitioners. The learned counsel submits that illegal construction is not permissible in the open space and the open space has to be kept open for all purposes.

2. Judgment of this Court in Writ Petition No. 2384 of 2002 dated 9.1.2015 and the judgment of the Apex Court in Civil Appeal No. 1132 of 2011

decided on 28.1.2011 are cited by the learned counsel. According to the learned counsel, it is nowhere stated in the order of the Committee as to location of the said illegal construction in the open space i.e. whether it is one corner or spread out. The learned counsel submits that the respondents are duty bound to remove the encroachment and keep the open space as it is. The open space calculated is the combined open space of lay out Nos. 343 and 342. Both the lay outs are different and open space is required to be calculated independently. Even the Municipal Corporation subsequently has asked the documents from the respondent no.5 about the construction under its notice dated 11.8.2016.

3. We have also heard learned A.G.P. for the respondent/State.

4. When a bona fide litigant approaches this Court with a grievance for removal of encroachment on a public place, this Court normally entertains

the petition. The open space of a lay out is meant for use and enjoyment of all the plot owners. The open space does not vest with the Municipal Corporation. In open space construction to the extent of 10 per cent of the open space is permissible for activities as laid down in by-laws. In the open space in question, there are three structures, one of Hanuman temple, another temporary tin shed of 56 x 70 sq. mtr. and one Hall of a permanent construction admeasuring 17.28 sq. mtrs. The Corporation had referred the matter to the Committee. The Committee gave detailed hearing to the petitioner and thereafter passed the order on 29.8.2013. For 2½ years the petitioner chose to remain silent.

5. From perusal of the order, it appears that litigation on behalf of the petitioner is not bona fide one. The petitioner wants to settle her personal score with respondent no.5 and is approaching the Court for said purpose. In the order of the Committee, it is specifically

observed that the petitioner does not have any objection with regard to the structure of Hanuman temple. It appears, the petitioner, is not litigating bona fide and in good faith. The structure in question of which grievance is raised by the petitioner is existing since the year 2001 for conducting some religious activities. It has been observed in the order that the same can also be regularized. The said construction is not even 5 per cent of the open space and major construction is of temporary nature. It has also been observed in the order that all the lay out holders and the owners have permitted the same. The order specifically states so.

6. This Court cannot entertain a petition of a litigant who does not approach the court bona fide and in good faith. The petition appears to have been filed with oblique motive. If the petitioner had grievance with regard to construction made in the open space, then the petitioner ought to have had a grievance with

regard to Hanuman temple constructed therein but that does not appear to be so.

7. In the light of above, we are not inclined to entertain the Writ Petition. The Writ Petition, as such, is dismissed. No costs.

(K.L.WADANE, J.)

(S.V.GANGAPURWALA, J.)

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