

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

WRIT PETITION NO. 10777 OF 2016

**SATISH RAMNATH HANDA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioners : Shri S.V.Dixit h/f Shri Pandav Suresh P. and Shri
A N Walujkar.

AGP for Respondents/ State : Shri A.R.Kale.

Advocate for Respondent 2 : Shri A.P.Bhandari.

Advocate for Respondent 4 : Shri Suryawanshi Kamlakar J..

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

DATE :- 27th June, 2017

PC.:

1 By this petition under Article 226 of the Constitution of India,
the Petitioner has sought the following reliefs:-

- "(C) *Issue a writ of mandamus or any other appropriate writ order or directions in the like nature, directing the respondent No.2 and 3 to forthwith exercise the powers under section 478 of the Maharashtra Municipal Corporations Act and demolish the illegal and/or unauthorised construction carried out by the respondent No.4 in the marginal space/ side margins of the building constructed on Plot No.10 in the respondent No.5 society at the cost of the respondent No.4.*
- (D) *Issue a writ of mandamus or any other appropriate writ, order or directions in the like nature, directing the respondent No.2 to make a thorough inquiry of the officials who are hand in gloves with the respondent No.4 and who are responsible in allowing*

the decree to be passed in favour of the respondent No.4 knowing fully well that the construction raised by the respondent No.4 is illegal."

2 We do not comment upon the decree passed by the 3rd Joint Civil Judge, Senior Division, Aurangabad in Regular Civil Suit No.334/2003 decided on 17.02.2005. It is entirely for the Municipal Administration and those in-charge of running civic affairs, to take a call. The Petitioner has brought to the notice of the authorities and specifically that he has been making complaints about illegal construction raised by Respondent No.4. We are also not concerned with the inter-se disputes. Respondent No.4 has raised illegal construction in the side margin/marginal space. Precisely, that is the allegation. The Petitioner states that the encroachment or construction made on this portion blocks and obstructs everything particularly entrance of the southern side. In the event of some fire or unforeseen emergency including medical emergency, it will not be possible for the rescue teams to go around the construction and then carry out their operations. It is this inaction of the Municipal Corporation that has compelled the Petitioner to move this Court.

3 The Petitioner's son runs a dental care unit. However, after he has purchased the property and commenced his user, he has been waging a continuous struggle so as to cause removal of obstruction. On some ground or other, the Municipal Corporation has failed to take action.

4 The Petitioner says that the construction of shed-cum-shop in this portion violates the Development Control Regulations styled as Development Control Regulations applicable to the cities specified in the Divisions specified in Schedule-A to the Government Resolution dated 20.09.2016.

5 Our attention has been specifically invited to the Regulations falling under the Chapter or Portion styled as “Part-IV”. Title to this part is “*General Building Requirements, Set Backs, Marginal Distances, Height, Permissible FSI*”. Regulation 26.1 is for congested area. Secondly, we find that the Regulations are made for outside congested areas. Nomenclature apart, these are the spaces which have to be compulsorily kept open to sky and no construction activity should be carried out and to sub serve the larger public interest. In an emergent situation like fire, it is not only bound to affect the construction or building in which this calamity occurs, but it is also bound to affect those passing by or residing in neighbourhood.

6 It is in these circumstances that no construction is permissible in these compulsory open areas or spaces on the side and that margin has to be maintained necessarily. This is how the Regulations are framed, then we will expect the Municipal Corporation not only to take note of the Petitioner's complaint, but in the light of these regulations which have been brought into force from September, 2016, take necessary action.

7 We accept the statements made by Shri Bhandari, on instructions, that the Municipal Corporation/ Municipal Administration will now act and swiftly and take necessary steps in accordance with law. They would take the requisite steps and actions in accordance with law, as expeditiously as possible and within a period of THREE MONTHS from the date of receipt of a copy of this order.

8 The Writ Petition is, accordingly, disposed of.

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(MANGESH S. PATIL, J.)

(S.C. DHARMADHIKARI, J.)