

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

6 WRIT PETITION NO. 135 OF 2016

NANDKISHORE KISHANLAL LAHOTI
VERSUS
AHMEDNAGAR MUNICIPAL CORPORATION THROUGH
COMMISSIONER AND ANOTHERS

...
Advocate for Petitioners : Mr. Totala Rameshwar F.
Advocate for Respondents : Mr. Bedre Vinayak Sudhakar For R/1
Advocate for Respondents : Mr. Latange V.P. For R/2
...

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.
DATE : 15.06.2017.**

P.C. :-

1. After having heard both sides, we find that we as a writ Court are not interested in a private dispute pending between two residents of the city of Ahmednagar in competent civil Courts. The petitioner has brought a suit against the second respondent being R.C.S. No.262/14. The second respondent, however, has filed a Suit No. 772 of 2014 essentially against the Municipal Corporation challenging its notice dated 27.11.2014.

2. The only submission of the petitioner's advocate, which impresses us is that there is no specific order tying the hands of the Municipal Corporation. So long as the Civil Court has not restrained it

from acting upon its notice and taking appropriate action in accordance with law against the second respondent there is no justification for the Municipal Corporation's inaction.

3. The Municipal Corporation has beyond stating that both sides are locked in dispute in a Civil Court not provided any reason for its inaction. It has not assigned any reasons in its communications either. What has been shown to us and specifically by the petitioner's advocate is a file noting by the Divisional Head of the Unauthorized Construction, Prevention and Encroachment Removal Division, Mahanagarpalika, Ahmednagar which states that, as far as, the construction by the second respondent is concerned both under the planning law as also under the Municipal Law it will have to be proceeded against. A prima facie assertion of the Municipal Corporation is that this construction is unauthorized. That is how the final notice dated 27.11.2014 at page 79 would read.

4. The answer provided by the corporation to the petitioner on 01.08.2015 denotes that the Municipal Corporation's hands have been tied up on account of a restraint order by the Civil Court. There appears to be no restraint order. A request was made to the Civil Court to pass an

ad interim injunction. That request was not granted by the Civil Court.

5. It is in these circumstances that we are of the view that if the Corporation feels throughout that it is not prevented in law from proceeding against an unauthorized construction, then, its inaction can be made subject matter of this proceeding and styled as a writ petition. That may be brought by another resident but what is projected is the inaction of the Municipal Corporation of the city of Ahmednagar.

6. We are in such circumstances directing the corporation to proceed in accordance with law against the construction which has been carried out by the second respondent and subject matter of its final notice dated 27.11.2014 and all notices preceding the same. In doing so the corporation will not be influenced and shall not take any cognizance of its reply to the petitioner in which it makes a statement that the Civil Court has issued a restraint order against it from proceeding in furtherance of its notices. However, we clarify that we have expressed no opinion on the construction carried out and whether it is unauthorized or otherwise and to what extent. We have also expressed no opinion on the rights and contentions of both the sides in the civil suits which are pending in the Civil Court. They shall proceed in accordance with law and uninfluenced by the orders in the writ petition.

7. Writ petition is accordingly disposed of.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]