

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 4594 OF 2016

Manikrao Sampat Kadam and others

.....Petitioners

V/s.

The State of Maharashtra through
Government Pleader and others

....Respondents

Mr. J. D. Khairnar i/b Mr. Amey Deshpande for the petitioner
Ms. Nisha Mehra AGP for respondent 1 & 3
Mr. S. S. Patwardhan for the respondent no. 2.
Mr. Pramod N. Joshi for respondent nos. 4 & 5.

**CORAM : SMT. VASANTI A. NAIK,
RIYAZ I. CHAGLA, JJ.**

DATE : NOVEMBER 15, 2017.

P.C.

By this writ petition, the petitioners seek a direction against the Malegaon Municipal Corporation to remove the illegal construction made by the respondent nos. 4 & 5 on survey no. 151/1 + 2/7 of mouje Soygaon.

The relief sought by the petitioners cannot be granted in exercise of the writ jurisdiction. We find that the respondent no. 4 had filed Regular Civil Suit No. 263 of 2016 against the Malegaon Municipal Corporation for a declaration and permanent injunction and the suit is decreed in favour of the respondent no. 4 on 12/04/2017. The notices served by the

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respondent/Corporation on the respondent nos. 4 & 5 were challenged in the said suit and they were declared by the civil Court to be bad in law. The civil Court had also permanently restrained the Malegaon Municipal Corporation from demolishing the structure on the suit property. We find from the averments in the writ petition that the description of the suit property in the judgment dated 12/04/2017 in Regular Civil Suit No. 263 of 2016 is the same i.e. survey no. 151/1 + 2/7. Since a decree is passed by the civil Court against the Malegaon Municipal Corporation, not to take any action for demolition of the construction made by the respondent nos. 4 & 5 on the suit property, the prayer made by the petitioners cannot be granted in exercise of the writ jurisdiction.

In the result, the writ petition fails and is dismissed with no order as to costs.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A. NAIK, J.]