

Sharayu.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6898 OF 2013

**Ambernath Sahakari Samudaik Shetki ...Petitioner
Society Ltd.**

Versus

Ambernath Nagar Parishad & Ors. ...Respondents

Mr. Rupesh R. Lanjekar, for the Petitioner.

Mr. Balkrishna D. Joshi, for the Respondent No. 1.

Mr. A.P. Vanarase, AGP, for the Respondents No. 3
to 5.

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

DATE : 24 November 2017

ORDER :

By this writ petition, the petitioner seeks a mandamus against the respondents to demolish and remove the unauthorised construction and illegal encroachment on the land leased to the petitioner namely, survey No. 166, admeasuring 210 acres and 33 gunthas.

It is stated on behalf of the petitioner-society that the aforesaid land admeasuring about

210 acres was granted to the petitioner on lease in the year 1964. It is stated that time and again encroachment is made on the land leased to the petitioner and though the petitioner had made representations to the municipal council, the police authorities and the revenue authorities, no steps have been taken for removal of the encroachment.

Shri. Joshi, the learned counsel for the respondent No. 1 states by referring to the affidavit-in-reply filed on behalf of the municipal council that in view of the complaints made by the petitioner-society, action was taken for demolition of the illegal construction on two occasions. It is stated that the demolition drive was conducted for removing the illegal construction in the year 2009 and 2011. It is stated that it would be necessary for the petitioner-society to protect its property. It is stated that if the petitioner is not able to protect its property, the petitioner cannot time and again seek the help of the municipal authorities and the revenue authorities to remove the illegal construction.

In the circumstances of the case, we are not inclined to grant the prayers made by the petitioner-society in the writ petition. We find from a reading of the affidavit-in-reply filed on behalf of the municipal council that the encroachments made on the lands of the petitioner were removed firstly in the year 2009 and secondly

in the year 2011. It would be necessary for the petitioner, as rightly submitted on behalf of the respondent No. 1 municipal council that the petitioner should take steps for the protection of its property. If the petitioner is not diligent in protecting its property, which is a huge piece of land, the petitioner would not be entitled to approach the Court time and again to seek the removal of the encroachment, in exercise of the writ jurisdiction. The petitioner has other remedies. The petitioner could have also availed one of the remedies of filing a suit, which the petitioner has not done.

In the circumstances of the case, the relief sought by the petitioner cannot be granted. Hence, we dismiss the writ petition with no order as to costs.

The points raised in the petition are however kept open.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A NAIK, J.]