

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

WRIT PETITION NO.9259 OF 2005

Shri Somnath Sandipan Mukte

.. Petitioner

Vs

Executive Director, Solapur Sahakari

Dudh Utpadak & Prakriya Sangh Maryadit & Ors.

.. Respondents

...

None for the Petitioner.

Mr. Manish M. Pabale, AGP for the Respondent No. 4.

Mr. Akshay Kulkarni i/b. Mr. A. M. Kulkarni for Respondent No.1.

***CORAM : A. S. OKA &
SMT. VIBHA KANKANWADI, JJ.***

DATE : 14 JUNE, 2017.

ORAL ORDER: (PER SMT. VIBHA KANKANWADI,J)

1] None for the Petitioner. The matter was kept back twice. Heard Learned AGP for Respondent No. 4 and learned Advocate appearing for Respondent No. 1. The Petitioner herein has prayed for a writ to be issued directing the Respondent Nos. 2 and 3 to take appropriate action against Respondent No. 1 for violation of law, contending that the Respondent No. 1 has raised unauthorized construction.

2] The Petitioner has contended that the Respondent No. 1 – Solapur Sahakari Dudh Utpadak and Prakriya Sangh Maryadit, which is a registered Co-operative Society decided to construct a building in Gut No. 33A admeasuring about 1 Hectar and 62 R in the vicinity of Jamgaon Grampanchayat in Solapur district. However, though it is mandatory u/s. 52 of Bombay Village Panchayat Act to obtain permission to erect building, the Respondent No. 1 had not taken any such permission. When objection regarding the same was taken by the Petitioner, the Respondent had made application to the Grampanchayat on 06.08.2004 by that time 50 to 60 percent construction was completed. It has been further contended that the application made by the Respondent No. 1 was rejected by the Grampanchayat. The members of the Grampanchayat also decided that illegal structure should be demolished. It is further contended that the Respondent No. 1 did not file any appeal as contemplated under Section 52 (4) of the Bombay Village Panchayat Act before the Standing Committee within the stipulated period. However, since the construction activity has continued and the Petitioner made repeated complaint, the Grampanchyat had issued notice dated 19.05.2005 contemplated under Section 52 (5) (b) of Bombay Village Panchayat Act for demolition of the illegal structure. There was no

response to the same. No action is taken by the Respondent Nos. 2 and 3 against the Respondent No. 1 and therefore, the Petitioner has approached this Court under its Writ Jurisdiction.

3] Affidavit-in-reply has been filed by Shivram Dadabhau Papal, the Managing Director of the Respondent No. 1 unfolding the facts. He has denied that Respondent No. 1 has completed the construction work up to 50 to 60% and then applied for building construction permission in view of the objection raised against the same. It has been stated that the permission was rejected by the Grampanchyat on 17.05.2005/20.06.2005. The entire petition proceeds on the basis that the building permission was rejected by the Grampanchyat, however, the Petitioner has concealed the material fact with malafide intention. It is stated that the order of refusal or rejection of the building permission was duly challenged by the Respondent No. 1 before the Standing Committee of Zilla Parishad, Solapur by filing Appeal on 30.07.2005 and 02.08.2005. The Standing Committee allowed the appeal and specifically granted permission in favor of Respondent No. 1 for construction on 29.10.2005. In pursuance to said permission granted by the Standing Committee, the Respondent has constructed a building for its Industrial Unit. Thereafter, other infrastructural amenities and facilities have been established by the

Respondent No. 1. The other necessary approvals have also been obtained from the Collector, Solapur and Maharashtra Pollution Control Board. It has been further contended that due to political rivalry the Writ Petition has been filed.

4] The documents on record show that an application was filed for grant of construction of the building on 06.08.2004 by the Respondent No. 1. It came to be rejected by the Grampanchayat on the ground that about 50 to 60% of the construction has been completed and the permission ought to have been sought two months prior to the commencement of the construction. Thereafter, the said decision that was taken on 28.08.2004 was communicated to the Respondent No. 1 by the Grampanchayat on 31.08.2004. Thereafter, notice under Section 52 (5) (b) of the Grampanchayat Act came to be issued on 19.07.2005 to the Respondent No.1. However, it appears that the Respondent No.1 approached Standing Committee of the Zilla Parishad in appeal. Appeal came to be allowed. Accordingly, the permission was granted on 29.10.2005. Those necessary documents have been filed on record.

5] After the affidavit-in-reply has been filed, the Petitioner has

not filed any rejoinder or has not pointed out any such fact which would show that any further appeal challenging the decision of the Standing Committee of the Zilla Parishad, Solapur was ever preferred by any party. This shows that the order passed by the Standing Committee of Zilla Parishad has attained finality and therefore, the construction that has been made by the Respondent No.1 cannot be held to be an illegal construction. It is not the case made out that the construction carried out is contrary to the permission. Under such circumstances, the Writ Petition appears to be misconceived for the aforesaid reasons. Hence we proceed to pass following order.

O R D E R

- a) The Writ Petition is hereby dismissed.
- b) Rule is discharged no order as to costs.

(SMT. VIBHA KANKANWADI, J)

(A. S. OKA, J.)