

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

WRIT PETITION NO. 12272 OF 2017

Pramod Vasudeo Gokhale ...Petitioner
Versus
Pune Municipal Corporation,
Through Its Municipal Commissioner And Ors. ...Respondents

Mr.Shriniwas Sudhir Patwardhan for the Petitioner.

Mr.Rajdeep S. Khadapkar for Respondent Nos.1 & 2.

Mr.Pankaj Jagannath Das for Respondent No.3.

**CORAM : A.S.OKA &
M.S. SONAK, JJ.**

DATED : 13th DECEMBER 2017

P.C.

1. Heard learned counsel appearing for the petitioner, the learned counsel appearing for the first and second respondents and the learned counsel appearing for the third respondent.

2. By this petition under Article 226 of the Constitution of India, the challenge is to the letter dated 29th September 2017 addressed by the Executive Engineer of the first respondent to the petitioner. By the said letter, the petitioner has been called upon to remove encroachment on the subject road within a period of 8 days.

3. In Writ jurisdiction under Article 226 of the Constitution of India, we cannot decide the disputed question of fact

as to whether the petitioner has made any such encroachment.

4. If the first to third respondents are of the view that any such encroachment has been made by the petitioner on 09 meter wide road by carrying out construction or by a making compound, the Municipal Corporation will have to adopt due process of law for removing the encroachment. Needless to add that before taking action of removal, the Municipal Corporation will have to give an opportunity to all concerned including petitioner.

5. As directed above, the action of removal of encroachment cannot be taken without following due process of law. Hence, it is not necessary to entertain this petition. Accordingly, the petition is disposed of with the above direction.

6. We make it clear that we have made no adjudication on merits of the controversy whether the petitioner has made any encroachment as alleged by the concerned respondent. All contentions of the parties are kept open.

(M.S. SONAK, J)

(A.S.OKA, J.)