

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

WRIT PETITION NO. 2495 OF 2017

Balurao s/o Bapurao Bansode,
Age : 64 Years, occu : Retired School
Teacher, R/o : At post Bhimnagar,
Ahmedpur, Tq. Ahmedpur,
Dist. Latur.

...Petitioner

Versus

- 1] The State of Maharashtra,
Through its Secretary in the
Department of Municipal Administration,
Mantralaya, Fort, Mumbai - 32.
- 2] The Municipal Council
At Ahmedpur, Dist. Latur,
Through its Chief Officer,
- 3] The District Collector,
Latur.
- 4] Sayyed Zabin Mustafa,
Age : 28 years, occu : Household,
R/o : Sangvi Sunegaon,
Tq. Ahmedpur, District Latur.
- 5] Shaikh Saber Jilani Shaikh,
Age : 30 years, occ : Business,
R/o : Municipal house no. 8,
K.G.N. Chowk, Line Galli,
Ahmedpur, Tq. Ahmedpur,
District Latur.

...Respondents

Mr. A. A. Mukhedkar, Advocate for Petitioner
Mr. S.M. Ganachari, AGP for Respondent Nos. 1 and 3
Mr. V.P. Latange, Advocate for Respondent No. 2
Mr. G.R. Syed, Advocate for Respondent Nos. 4 and 5

**CORAM : P.B.VARALE AND
MANISH PITALE, JJ.**

DATE: 23rd AUGUST, 2018

ORDER :-

1. Heard Mr. Mukhedkar, learned counsel appearing for the petitioner at length. Mr. Latange, the learned counsel appearing for respondent No.2, the learned AGP for respondent Nos.1 and 3. Though the respondent Nos. 4 and 5 are being represented through the Council, Mr. Sayed appears for respondent Nos. 4 and 5. The petitioner is approaching this Court with the prayers namely, prayer clause (B) and (C). The Division Bench of this Court was pleased to issue notice on 23rd February, 2017. While issuing notice, it is observed by this Court as follows :-

1. This Court would not consider the grievance of the petitioner with regard to the construction made by the respondents in their own land. The same appears to be a private dispute between the petitioner and the respondents. We are issuing notice only to the extent of the allegations with regard to the construction being made on the street.

2. Learned counsel Mr. Mukhedkar vehemently submitted that the part construction is on the street. In support of his submission, Mr. Mukhedkar heavily relied on the documents placed on record. The same is at Exhibit "B". The document is titled as 'panchanama'. The learned counsel Mr. Mukhedkar submits that a panchanama clearly shows that the construction is on street. The learned counsel thus, further submitted that as the part construction is on the street and certain steps are taken by the Municipal Council, the petitioner approached this Court for seeking writ of mandamus, and thereby, pray for directions to the authorities to remove the construction, which is on street. The learned counsel also relied on the affidavit filed on behalf of the Municipal Council to submit that the Council admits that the construction is on street. The learned counsel then placed reliance on the Judgment of the Apex Court reported in **AIR 2005 SC 1794** in the matter of **Mahendra Baburao Mahadik Vs. Subhash Krishna Kanitkar and others**. Though the submission of Mr. Mukhedkar looks attractive at the first flush, on going through the material placed on record, we are of the clear opinion that the petition is misconceived. The petitioner in

support of his submission, placed heavy reliance on the documents i.e. Exhibit "B". Even the perusal of the document, panchanama, nowhere states that it is an authoritative statement of the Council that the construction is erected on the street, it only refers to a part of construction being an unauthorized construction. Mr. Mukhedkar also made an attempt to submit before us that the council admits this factual position in the reply. Even perusing the reply and more particularly, paragraph 4 and 5 of the reply, we are unable to accept the submission of Mr. Mukhedkar, the learned counsel for the petitioner. Paragraph Nos. 4 and 5 of the affidavit in reply are as follows :-

4. I say that, the respondent No. 4 and 5 are the owner of Municipal House No. S-8/960. I say that, in view of the complaint made by the petitioner the deponent had visited the suit property of the respondent No. 4 and 5 after visiting the suit property panchanama is prepared on 19.07.2016 which is annexed as Exhibit-B with writ petition at Page No. 13 and after visiting the suit property it is found that the respondent No. 4 and 5 has started construction unauthorizedly without taking prior permission of the deponent.

5. The deponent submit that, the respondent No. 4 and 5 had also made a illegal construction which was demolished by the respondent No.4 and 5 in presence of deponent officer but the unauthorized construction still in existence, therefore, on 25.07.2016 notice under section 52 (1) of the Maharashtra Regional and Town Planning Act, 1966 is came to be issued. The said notice is already annexed with the writ petition at Page No.14.

3. Even perusal of the paragraph 4 would show that Council reiterates its stand that the construction is unauthorized and certain steps are taken namely, issuing notice under the provisions of Maharashtra Regional and Town Planning Act, 1966. The copy of the notice is also placed on record along with the petition itself at page No.14. It is a specific statement made in the reply filed by the Council that the construction erected by the respondent is unauthorized as it is without seeking prior permission of the Council. Thus, reading reply in whole, and more particularly, paragraph 4, we are unable to accept submissions of Mr. Mukhedkar that the Council admits that the erection of the construction is on street. Though there

cannot be any dispute on the preposition of law reflected in the judgment of the Apex Court relied on by the learned counsel, we are of the opinion that the judgment hardly helps the petitioner on the backdrop of the facts which we have referred to in the earlier part of the order.

4. Considering all these facts, we are of the clear opinion that the petition is misconceived. As the petition is meritless, the same deserves to be dismissed. The same is accordingly dismissed.

5. We further make it clear that if the petitioner is having any other alternative remedy available to him under law and if so advised, he may avail this remedy available. The Writ Petition is disposed of accordingly.

(MANISH PITALE, J)

(P.B.VARALE, J)

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