

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

**901 WRIT PETITION NO.2507 OF 2006
WITH CA/3028/2010 IN WP/2507/2006**

KAUTIK GUNAJIRAO GHUGE AND ANR ..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND ORS ..RESPONDENTS

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Mr. S. S. Thombre, Advocate for the Petitioners.

Mr. K. S. Patil, AGP for Respondent-State.

Mr. S. P. Sonpawle, Advocate for the Respondent No.4.

Mr. Eknath P. Sawant, Advocate for the Respondent No.5.

Mr. V. P. Latange, Advocate for the Respondent No.6.

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**CORAM : S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.**

DATED : 11th DECEMBER, 2018.

PER COURT:-

1. We have heard Mr. Thombre, learned counsel for petitioners.

2. According to Mr. Thombre, learned counsel for petitioners as per the development plan of the Jintur City, the road is to be constructed from Post Office to Main Road having width of 9 mtrs. The road is almost complete, but because of encroachment of respondent no.5, the completion of the road work has not taken place. The notices are

also issued to respondent no.5 by the Municipal Council on 17.01.2003. The respondent no.5 stopped the construction on the acquired plot, but however again he started the work on the plot reserved. Though petitioner no.1 and other persons approached the Municipal Council pointing out the unauthorized construction of respondent no.5, no action is taken. Even, the petitioner had approached the Executive Magistrate, Jintur. He also directed the Chief Officer, Municipal Council to stop the construction, however, no action is being taken. The learned counsel submits that the public road is encroached and the authorities are not taking any action.

3. Mr. Sawant, learned counsel for respondent no.5 submits that the petitioner has personal feud against him. He has not alleged anything against real encroacher. The suit is filed by respondent no.5 and same is pending with the Trial Court after remand from the Appellate Court. According to him, respondent no.5 has not made encroachment. The measurement has been directed to be made by the Collector. It is under the valid permission, the construction is being carried out by respondent no.5.

4. Mr. Latange, learned counsel appears for respondent no.6.

5. The affidavit is filed by the Deputy Director, Directorate of Municipal Administration Worli, Mumbai. Paragraph nos.2 and 3 of the affidavit reads thus:

"2. It is revealed from the record that Municipal Council Authorities Jintur have strictly followed the directions issued by this Hon'ble High Court and submitted its report. The deponent further submits that as per the directions issued by this Hon'ble High Court dated 02/03/2010 the Municipal Council Jintur, removed encroachment on the road from post office to main road and also complied the said directions and submitted the affidavit in this petition. The report dated 22/03/2018 has been submitted to the present respondent by Jintur Municipal Council.

3. The deponent say and submit that, it appears from record that civil suit was filed against the Municipal Council by the respondent no.5 for injunction and against the order of C.J.J.D., Jintur, against that Municipal Council Jintur preferred an appeal in the District Court, Parbhani. The District Court Parbhani allowed the said appeal and remanded back the matter to C.J.J.D. Jintur and that suit is now pending before the C.J.J.D. Jintur, therefore in such circumstances, if petitioner is having certain grievances, he may raise its before the Civil Court and while deciding earlier two Writ Petitions Nos.3234/2010 and 5098/2010, this Hon'ble High Court observed and given liberty to concerned petitioner to approach the appropriate Court. In the present petition it appears that prayer for removal of encroachment is already considered by this Hon'ble High Court by giving directions to Municipal Authorities and the Municipal Authorities Jintur, already

complied the said order. Hence nothing to survive in this petition in view of the report submitted by Municipal Council Jintur, present petition may kindly be disposed of or appropriate order may kindly be passed in the interest of justice."

6. As per the affidavit filed, the encroachment is removed and the report to that extent has been submitted to the deponent of the said affidavit by Jintur Municipal Council.

7. Be that as it may, it is also observed that the Civil Suit is filed by respondent no.5. In an appeal filed by the Municipal Council it is partly allowed and remanded to the Trial Court. This Court in fact under order dated 03.02.2014 had directed the disposal of the suit by 31.05.2014. It is submitted that the said suit is still pending at the stage of evidence. The learned Trial Judge ought to have decided the suit as per the directions of this Court.

8. The Trial Court shall decide the suit bearing R.C.S. no.16 of 2001 filed by respondent no.5 expeditiously and under any circumstances within a period of six (06) months. The respondent no.5 and/or the defendants therein shall not claim adjournment without genuine reason. The Trial Court shall consider the same.

9. The authorities shall also take steps to construct the road from Post Office to main

road as may be demarcated in the plan.

10. Writ Petition is disposed of. No costs.

11. In view of disposal of writ petition no.2507 of 2006, nothing survives in the present civil application. Civil Application as such disposed of.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/December-18