

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

PIL PETITION NO. 90 OF 2014

Suresh s/o Balkrishna Mukkawar,
Age : 41 years, Occu : Business,
R/o, Samadhan Niwas, Nalegaon
Road, Near Railway Gate, Nanded
-Bider Road, Udgir, Tq. Udgir,
Dist. Latur.

...Petitioner

Versus

1. The State of Maharashtra,
through Principal Secretary,
Urban Development Department,
Mantralaya Mumbai-32.
2. Collector, Latur
Dist. Latur.
3. The Deputy Engineer,
Public Work Department, Udgir,
Tal. Udgir, Dist. Latur.
4. Udgir Municipal Council,
Udgir, Tq. Udgir, Dist. Latur
Through its Chief Officer
5. Faiz Mohamadkhan Pathan,
Age : Major, Occu : Vice President
Municipal Council Udgir,
R/o : Udgir, Tq. Udgir, Dist. Latur.

...Respondents

Mr. M.S.Deshmukh, Advocate h/f Mr. U.L.Momale, Advocate
for Petitioner

Mr. S.S.Dande, AGP for Respondent Nos. 1 and 2

Mr.P.V.Barde, Advocate for Respondent No.4

Mr. M.B.W. Khan, Advocate for Respondent No.5

**CORAM : R.M.BORDE AND
A.M. DHAVAL, JJ.**

DATED : 12th June, 2018

PER COURT

1. The instant Public Interest Litigation is presented by the petitioner seeking directions to respondent Nos. 1 to 4 to prevent respondent No.5 from making unauthorized and illegal construction on the Nanded-Bider Road at Udgir, which is stated to be State Highway. The petitioner is also praying for directions to respondent Nos. 1 to 4 to remove the unauthorized construction made by respondent No.5. The petitioner is also seeking directions to respondent Nos. 1 and 2 to initiate and complete enquiry within the prescribed time frame. The petitioner contends that respondent No. 5, at the relevant time was holding the office of the Vice President of the Municipal Council. It is alleged that one Nurendappa Mandolappa Khene is the original owner of agricultural land bearing Gut No. 376 situated at Udgir. Respondent No. 5 has no concern with the aforesaid gut number. However, he has, by use of muscle power as well as taking undue advantage of the office occupied by him, encroached upon public property and carried illegal construction. It is contention of the

petitioner that respondent No.5 has carried out construction without securing permission from the Municipal Council and violated the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter, referred to as 'Act of 1965') and the Maharashtra Regional Town Planning Act. The respondent No.5 has controverted the contentions raised by the petitioner. It is contended that the petitioner is a person set up by another individual, who has failed to secure adverse orders against the petitioner in spite of presentation of the suit. It is contended by respondent No. 5 that he has not violated the provisions of the Municipal Law or Maharashtra Regional Town Planning Act. Respondent No. 5 has specifically stated that he has neither made encroachment nor has raised any illegal construction on the public property.

2. On consideration of the pleadings of the parties, it does appear that disputed questions are raised in the petition. Those needs to be investigated by the fact finding forum. It is informed that respondent No. 5 is an elected councillor of the Municipal Council. Section 44 of the Municipalities Act provides that if the councillor has constructed or constructs by himself, his spouse or his dependent, any illegal or unauthorized

structure violating the provisions of this Act, or the Maharashtra Regional and Town Planning Act, 1966 or the rules or bye-laws framed under the said Acts; or has directly or indirectly been responsible for, or helped in his capacity as such Councillor in, carrying out such illegal or unauthorized construction or has by written communication or physically obstructed or tried to obstruct any Competent Authority from discharging its official duty in demolishing any illegal or unauthorized construction, shall be disabled subject to the provisions of sub-section (3) from continuing to be a Councillor and his office shall become vacant. In view of sub-section (3) of section 44, the Collector is prescribed as Competent Authority to declare vacancy in the office of Councillor, and until the Collector decides the vacancy has arisen, and the said decision has been communicated to the Councillor, he shall not be deemed to have ceased to hold office.

3. In view of the provisions of section 44 of the Act, 1965, it is for the Collector to conduct an appropriate inquiry. The Collector shall conduct such an enquiry and pass proper order and may issue direction to the Municipal Council. In the facts and circumstances of the case, it would be in the fitness of things to permit the petitioner to tender an appropriate

petition to the Collector raising all the contentions, which are raised in the instant petition. If the petitioner tenders appropriate application to the Collector within contemplation of section 44 of the Act, 1965, the Collector shall consider said application and take appropriate decision in accordance with the provisions of law, expeditiously. If the petitioner tenders application to the Collector within four weeks from today, the Collector shall take an appropriate decision in the matter within a period of four months from the date of receipt of such application after extending an opportunity of hearing to all the parties concerned and in observance of the provisions of law.

4. With the directions as above, the Public Interest Litigation is disposed of.

5. It is informed that the petitioner in order to demonstrate his bona fides has deposited a sum of Rs.50,000 (Rupees Fifty Thousand) in observance of the order passed by this Court on 18th October, 2016. The counsel for petitioner fairly states that aforesaid amount be transmitted to the account of the High Court Bar Association Library, Aurangabad.

6. In view of the statement made as above, the amount deposited by the petitioner in this court shall be transmitted to the account of High Court Bar Association Library.
7. The Public Interest Litigation is accordingly disposed of.

(A.M.DHAVALA)
JUDGE

(R.M.BORDE)
JUDGE

mta