

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

WRIT PETITION NO. 6585 OF 2016

The Municipal Council,
Kinwat, Tq. Kinwat,
Dist. Nanded, through
its chief officer

.. Petitioner /
(Ori. Deft. No. 1)

versus

1] Vyankatrao s/o Mukundrao Nemaniwar
Age : 68 years, occup. Business,
r/o Velmapura, Kinwat, dist. Nanded,

2] Swati w/o Kewal Nemaniwar,
Age : 38 years, occup. Household,
r/o Velmapura, Kinwat,
dist. Nanded

.. Respondents/
(R.1 & 2 are ori.)

3] The District Collector,
Collector Office, Nanded

(R.3 is ori.deft.)

Mr B.A. Darak, Advocate for petitioner

Mr A.G. Godhamgaonkar, Advocate for respondents no. 1
and 2

Mr S.P. Tiwari, Assistant Government Pleader for
respondent no.3

CORAM : SUNIL P. DESHMUKH, J.
DATE : 6th August, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally by consent.

2. Learned counsel for petitioner - municipal council Mr Darak submits that since respondents no. 1 and 2 were carrying out construction beyond authorization under the permission granted, a notice came to be issued to them directing them to stop construction and to remove unauthorized construction. Said notice had been subjected by respondents no. 1 and 2 to challenge before civil judge, senior division, Nanded in proceeding bearing regular civil suit no. 67 of 2016. Respondents had also filed application for temporary injunction putting restraint on petitioner-municipal council from causing interference with or obstruction to their peaceful possession over suit property.

3. He submits that having regard to section 149 of the Maharashtra Regional Town Planning Act, 1966 ("MRTP

Act") and municipal council being a planning authority, an order passed or notice issued by it under said Act would be final and cannot be questioned in suit or in other proceedings. He submits that the trial court had accordingly dismissed temporary injunction application (Exhibit – 6) under its order dated 03-03-2016.

4. Aggrieved by rejection of application for temporary injunction, respondents no. 1 and 2 had been before the appellate court under miscellaneous civil appeal bearing no. 18 of 2016. The appellate court, reversed order passed by trial court and allowed said miscellaneous civil appeal under order dated 29-04-2016 clamping injunction against municipal council - respondent therein (present petitioner) and thus the municipal council is before this court.

5. Learned counsel for petitioner submits that having regard to aforesaid and to the citation referred to in impugned order, the appellate court's order is improper and is unsustainable.

6. Per contra, Mr Godhamgaonkar learned counsel appearing on behalf of respondents no. 1 and 2 – original

plaintiffs submits that notice challenged in the suit has been issued malafide. Construction in the property is being carried on under due permission from the municipal council and yet before construction is made, allegations are being levelled against respondents at the behest of their adversaries. Notice is issued to settle certain scores. He further submits provisions of MRTP Act do not provide for efficacious and adequate remedy to pose challenge to the notice.

7. It is being contended by Mr Godhamgaonkar that temporary measures to protect building material are being dubbed and alleged as unauthorized construction and the plaintiffs are being unnecessarily hounded. He submits, huge investment is involved in construction and further that to carry out unauthorized construction is not in the interest of respondents – plaintiffs. He submits that construction is being carried out as per permission granted and can not be termed as unauthorized construction. He further points out that notice is vague and has been so maintained in order to vex the plaintiffs.

8. Additionally, Mr Godhamgaonkar submits that civil rights are being asserted before civil court by plaintiff and the same is sought to be blocked and preempted by reference to section 149 of said Act. He submits, unless and until it emerges that the matter is squarely covered by section 149 of said Act, it cannot be *ipso facto* said that notice impugned is issued in exercise of powers under said Act. He submits that permission has been granted to respondents in exercise of powers under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 and said enactment does not create blockade for prosecution of civil suit.

9. Having heard learned counsel as aforesaid, while suit has been pending since 2016 and injunction has been operating against present petitioner since then and while an opportunity appears to be available to the parties to deal with question of bar of jurisdiction of civil court, it appears that this is not a case wherein impugned order deserves to be interfered with.

10. In the circumstances, writ petition is dismissed. Rule is discharged.

11. Suit proceedings, however, may proceed with expeditiously and the same be disposed of as early as possible preferably within a period of nine months from the date of receipt of writ of this order.

12. The observations in this order and by appellate court in miscellaneous civil appeal hitherto are at the interlocutory stage of the suit and shall not influence decision on merits to be given in the suit.

SUNIL P. DESHMUKH,
JUDGE

pnd/-