

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

**926 CIVIL APPLICATION NO. 11583 OF 2017
IN SA/621/2006 WITH SA/622/2006 WITH CA/6732/2006
IN SA/622/2006 WITH CA/6733/2006 IN SA/621/2006
WITH CP/451/2013 IN CA/16669/2010**

BAPU CHAPHEKAR THRO. LRS SUMANBAI
AND OTHERS

.. Applicants

VERSUS

MUKTAJI BHAU BHARITAKAR
AND OTHERS

..Respondents.

...

Advocate for Applicants : Shri L.V. Sangeet

Advocate for Respondents No.3 & 4 : Shri A.S. Bajaj

...

CORAM : PR. BORA, J.
Dated: August 10, 2018

PER COURT :

1. By filing the present application, the applicant is seeking permission to first demolish and then to reconstruct the house in RCC of the house situated at land Survey No.386/1+2/C admeasuring 2-R situated at Sangamner by modifying the status-quo order.

2. Previously, on 08.06.2018, when the present application was heard, it was felt necessary in view of the objection raised by the respondent that, there shall be a report from the competent Officer, whether the area wherein the

construction was sought to be carried out falls within the prohibited area from the centre of the National Highway or otherwise? However, it appears that, the applicant did not take any step for obtaining the report from the TILR. It is the assertion of the respondent that, the suit property comes within the 35 meters from the centre of the road. It is the contention that, the suit properties are abutting to the National Highway. It is brought to my notice that, no construction can be carried out in the properties abutting to the National Highway, which comes within the distance of 75 meters from the centre of the road.

3. The respondent along with the reply had placed on record the sketch as well as the copy of the relevant Government Resolution dated 09.03.2001. During course of the argument, it was pointed out that, prohibition for carrying out the construction in the properties, which are abutting to the National Highway is 40 meters from the centre of the road in non-residential areas (*Anagari bhag*). It was the contention of Shri Sangeet, the learned Counsel appearing for the applicants that, the construction intended to be carried out is beyond the

said distance of 40 meters and construction which was coming in the suit, prohibited area was removed in the past. The learned Counsel for the respondent, however, has placed on record the sketch, which shows the property at a distance of 21 meters from the centre of the road. In view of the rival contentions that, the parties were directed to get the measurements done or obtain the report from the competent authority since the applicant has failed in bringing on record any such evidence or to get the measurements carried out by the Officers, I do not see any reason for disbelieving the primary evidence placed on record by the respondent.

4. In view of the bar for carrying out the construction within the 40 meters distance from the centre of the road, the permission as sought for in the present application cannot be granted.

5. It was alternatively submitted by the learned Counsel for the applicant that, the applicant may then be permitted to carry out the repairs in the said property. The learned Counsel explained that, the applicant then will change flooring tiles and

get the plaster done to the walls.

6. The alternative prayer is opposed by Shri Bajaj, the learned Counsel appearing for the respondent. Learned Counsel submitted that, according to the case of the applicant himself, these type of sundry repairs will not serve the purpose since entire property is in dilapidated condition and beyond repair.

7. I have perused the contents of the application. It appears that, it is the contention of the applicant himself that, the property now will have to be reconstructed and repairs are not possible. In view of the submissions of the applicant himself, I am not inclined to accept the alternate prayer also and that also stands rejected. Hence the following order.

ORDER

(i) Civil Application No.11583 of 2017 is rejected.

(PR. BORA, J.)