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

WRIT PETITION NO.15143 OF 2017

Sopan s/o Baburao Sahane,
Age: 69 years, Occu: Agril.,
R/o. Chikhali, Tq. Sangamner,
Dist. Ahmednagar

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai-32
2. The Collector, Ahmednagar
3. The Tahsildar, Sangamner,
Dist. Ahmednagar
4. The Chief Executive Officer,
Zilla Parishad, Ahmednagar
5. The Executive Engineer,
Public Works, North Division,
Zilla Parishad, Ahmednagar
6. Chhatrapati Shivaji Maharaj Doodh
Utpadak Sanstha Maryadit, Chikhali,
Tq. Sangamner, Dist. Ahmednagar
Through its Chairman/Secretary

..RESPONDENTS

Mr P. B. Shirsath, Advocate for petitioner;
Mr S. S. Dande, A.G.P. for respondent Nos.1 to 3;
Mr S. T. Shelke, Advocate for respondent Nos.4 & 5;
Mr R. L. Kute, Advocate holding for Mr V. R. Dhorde, Advocate for
respondent No.6

**CORAM : PRASANNA B. VARALE
AND
MANGESH S. PATIL, JJ.**

DATE : 19th November, 2018

ORAL ORDER:

Heard Mr Shirsath, learned Counsel appearing on behalf of the petitioner.

2. The petitioner is before this Court with a prayer, namely, prayer clause (B), which reads thus:-

“(B) Issue a writ of mandamus or writ in the nature of mandamus or a direction in the like nature, directing the respondents to remove the encroachment of respondent No.6 on Chikhali-Jawale Kadlag Road;”

3. The other prayers are interim prayers.

4. The submission of the petitioner is, respondent No.6 constructed a building which is abutting to the road and this construction is an encroachment.

5. The petitioner submitted representation on 26th July, 2017 to the District Collector, Ahmednagar, the Chief Executive Officer, Zilla Parishad, Ahmednagar and to the Executive Engineer, Zilla Parishad. The petition nowhere refers to the factual aspect of the period/time as to when the construction activity started and when it was completed. It only states that the construction of respondent No.6 is abutting to the said road and this is an encroachment.

6. The notice was issued to the respondents by this Court on 4th January, 2018. In response to the notice, an affidavit-in-reply is filed on behalf of respondent Nos.4 and 5. It is submitted in the said affidavit-in-reply filed on behalf of respondent Nos.4 and 5 i.e. the Chief Executive Officer, Zilla Parishad, Ahmednagar and Executive Engineer, Public Works, Zilla Parishad, Ahmednagar that the said road, namely, Chikhali-Jawale Kadlag road is in the category of 'Other District road'. This Other District Road is under the control and supervision of Ahmednagar Zilla Parishad. The Government of Maharashtra in Public Works Department issued G.R. dated 9th March, 2001, thereby prescribing the distances of 'Building Line' & 'Control Line'. Then it is stated that a panchnama was carried out for measurement of the road. It is then stated in affidavit-in-reply that there is an encroachment on the road to the extent of 5.35 meters.

7. A notice was issued to respondent No.6 and respondent No.6, by filing affidavit-in-reply submitted before this Court that the permission was sought for from the Gram Panchayat and the building is constructed 25 years back i.e. in the year 1993 and the building is standing since then. It is further stated that wife of the petitioner was the Director of respondent No.6 for the period from 1990 to 1995 and the petitioner himself as well as his wife who was the Director of respondent No.6 were well aware of the fact of construction of the building. Then it is stated that respondent No.6 had

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approached Civil Court by filing Regular Civil Suit No.499 of 2018. A copy of the plaint of said civil suit is also placed on record. The petitioner is defendant No.1 whereas other defendants are the Executive Engineer, Zilla Parishad, Ahmednagar and the Collector, Ahmednagar. The suit is filed under the provisions of Specific Relief Act. Respondent No.6 submits in the affidavit-in-reply that a panchnama has been carried out on 29th September, 2017 behind his back. Then it is stated in the affidavit-in-reply that the petitioner is carrying a grudge against respondent No.6 due to political rivalry.

8. Though Mr Shirsath, learned Counsel for the petitioner vehemently submitted that the fact of encroachment is admitted by the parties, we are unable to accept the submission at the threshold, for the reason that respondent No.6 in his affidavit-in-reply clearly opposes this submission that the construction carried out by respondent No.6 is an encroachment. On the contrary, respondent No.6 submits that the construction is carried out by seeking permission from Gram Panchayat. In view of this fact, we are unable to accept submission of Mr Shirsath that the fact of encroachment is admitted by the parties. Secondly, respondent No.6 had approached Civil Court and now it is the competent Civil Court, who possesses the authority and discretion to decide the civil rights of the party. If the matter is pending before the competent Civil Court, this Court would be slow in entertaining the petition.

9. Considering the fact that there are disputed questions of facts in the petition and one of the parties has already approached Civil Court, we are not inclined to entertain the petition. As such, the petition is disposed of.

(MANGESH S. PATIL, J.)

(PRASANNA B. VARALE, J.)

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