

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.11250 OF 2018**

Pushkar Desaram Vyas. ...Petitioner
Versus
1.Ulhasnagar Municipal Corporation & Ors. ...Respondents

AND

WRIT PETITION NO.11251 OF 2018

Gulablal Kharpattu Gupta ...Petitioner
Versus
1.Ulhasnagar Municipal Corporation & Ors. ...Respondents

AND

WRIT PETITION NO.11252 OF 2018

Kanayalal Kharpattu Gupta. ...Petitioner
Versus
1.Ulhasnagar Municipal Corporation & Ors. ...Respondents

Mr.N.R.Bubna, for the Petitioners.

Ms.Nisha Mehra, AGP for the State.

Ms.Pooja Joshi, for the Corporation.

**CORAM : NARESH H. PATIL, ACTING CJ. &
G.S. KULKARNI, J.**

DATE : 1st October, 2018

P.C.:

1. Heard the learned Counsel for the petitioners and the Corporation and the learned AGP for the State.

2. The petitioners in these petitions have approached this Court under Article 226 of the Constitution principally for a relief that the Respondents be directed not to demolish and/or interfere with petitioners possession of the structure in question in each of these petitions, without first carrying out (i) survey by TILR as per sanctioned development plan, (ii) following due process of law as prescribed by section 126 of M.R.T.P. Act,1966 and paying and/or depositing the compensation for property sought to be acquired.

3. The common contention of the petitioners is that the land in question is a private land and no proceedings for acquisition of the land has been resorted by the Ulhasnagar Municipal Corporation (for short 'the Corporation') before proposing to demolish the the petitioners' structure. The next contention as urged on behalf of the petitioners is that the respondent – Corporation does not have any jurisdiction as the road widening in question is not of the State highway but is of a National highway. It is further contended that the entire action is at the behest of some contractors.

4. We have perused the petition. We have also perused the record. We have heard the learned Counsel for the parties.

5. It is not in dispute that the petitioners were issued a notice

dated 25 May 2018 by the Municipal Corporation *interalia* informing the petitioners, of the work of the proposed widening of the State highway no.222, passing through the municipal limits of the municipal corporation. It was informed that the road widening was being undertaken by the Mumbai Metropolitan Regional Development Authority and for this purpose the Mumbai Metropolitan Regional Development Authority had informed the municipal corporation to remove the encroachments on road as proposed to be widened. The The petitioner's structures being one of them. The petitioners were called upon to show cause within seven days as to why their structures shall not be removed. The petitioners were also called upon to attend a hearing on 30 May 2018 at 11.30 a.m., failing which it would be presumed that the petitioners do not have any say.

6. The petitioners admittedly neither responded to this notice by submitting any written reply nor the petitioners attended the hearing which was being offered by the municipal corporation on 30 May 2018. The contentions as urged before the Court, are for the first time asserted. The petitioners have also not produced iota of material which would show that the petitioners' structures are not encroachments. It is therefore, difficult to believe as also accept the petitioners' case that the land of the petitioners should be acquired by the concerned authorities

and more so in the absence of any such material. Further in regard to the petitioners' structure there is no material to show that the construction put up by the petitioners was in any manner permitted and/or authorised by the corporation. The law in regard to the illegal constructions is well settled.

7. In the above circumstances in any case the issues in regard to the petitioners' legal rights in respect of the structures/premises, which prima facie we see none, are disputed question of facts requiring evidence to be led and certainly cannot be gone into by this Court in the jurisdiction of the Court under Article 226 of the Constitution.

8. The petitions are devoid of merits. They are accordingly rejected. No costs.

(G.S. KULKARNI, J.)

(ACTING CHIEF JUSTICE)