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IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO.2871/2016

(Suvarna Gautam Gawai vs. The Akola Municipal Corporation and others)

Office Notes, Office Memoranda of
 Coram, appearances, Court's orders
 of directions and Registrar's orders

Court's or Judge's order

Mr. Rahul Dhande, Adv. for petitioners
 Mr. S.V. Sohoni, Adv. for respondent nos.1 and 2
 Mr. S.A. Mohta, Adv. for respondent no.6
 Mr.Amit Chutke, AGP for respondent no.7

CORAM : **B.P. DHARMADHIKARI &**
MRS.SWAPNA JOSHI, JJ.

DATED : 16th January, 2018.

1. The petitioner claims that she has purchased a plot in non-agricultural property by a registered sale-deed and thereafter raised a structure there. It has been demolished high-handedly by respondent no.1 and, its Officer, namely, respondent no.4 has misused his powers and position because of the influence and pressure brought by respondent no.6. It is also the contention that the respondent no.6 has already filed two Civil Suits for removal of alleged encroachment of petitioner and those Suits are still pending.

2. Contention is, recourse to provisions of either Section 260 or 267, in such circumstances, is unwarranted.

3. Adv. Sohoni appearing for respondent nos.1 and 2 has opposed the petition. He submits that part of the structure raised by petitioner is on public road 'shivdand' and petitioner did not produce

any sanctioned map or other documents to establish authorized character of that structure. Hence only that part which constituted encroachment on street, was to be removed as per law. He further submits that under Section 260 as other structure is also without proper sanction and unauthorized one, it is to be removed. However because of interim orders passed by this Court, action could not be completed.

4. Adv. Mohta appearing for respondent no.6 submits that the petitioner is an encroacher and, as such, there cannot be any legal structure raised by her on the property in dispute. He states that Civil Suits are filed by respondent no.6 in individual capacity and hence action taken by respondent no.1 as per provisions of Maharashtra Municipal Corporations Act, 1949, is independent one. According to him, in this situation, Civil Suits filed by respondent no. 6 claiming to be owner of the property, cannot bar the action taken by Municipal Corporation.

5. Mr. Chutke, learned AGP appearing for respondent no.7 submits that for the present, respondent no.7 is not concerned in any way with the controversy.

6. Papers on record particularly a map filed, shows that part of structure of petitioner is shown on *shivdand*. *Shivdand* appears to be a passage connecting National Highway No.6 to a road going towards Washim through Survey No.20, Survey No.11/1 and Siddharthawadi. We need not observe more on this map because sanctioned layout map is not produced on record by anybody. At one stage, counsel for petitioner attempted to demonstrate that possession and structure is also protected by the provisions of Maharashtra

Gunthewari Development (Regulation and Upgradation & Control) Act, 2001.

7. The petitioner has produced before this Court a 7/12 extract which shows that out of total 1.02 hectare, about 0.81 hectare of land has been permitted to be converted to non-agriculture use. The petitioner claims that portion of 0.03 hectare purchased by her is in this portion of 0.81 hectare. At this stage, we are not in position to record a finding either way on this dispute.

8. *Prima facie*, it appears that petitioner was/is in a settled possession and hence opportunity of hearing should have been given to petitioner. The authorities have proceeded against structure only on the ground that part of it is encroachment on the *shivdand* and part of it is unauthorised. Photographs of structure are also placed on record. It appears that walls of first room in the structure have been demolished.

9. Various disputed questions arise. We find that the respondent nos.1 and 2 ought to have first attempted to find out why structure in question cannot be regularized. If part of it is standing on public street, the other part not so situated, could have been considered for regularization. That exercise also has not been undertaken. Whether entire structure is an encroachment or then there is any dispute in relation to title or possession between private parties could not have been a relevance circumstance for this exercise.

10. In this situation, we continue interim orders granted on 13.5.2016 for a period of three months more. We direct petitioner to appear before respondent no.1 through its Municipal Commissioner,

on 5th February 2018. Said respondent shall peruse documents, consider all contentions and pass suitable orders as per law within next two months.

11. It is made clear that petitioner can submit additional affidavit or representation to respondent no.1 raising additional grounds to support her possession and structure.

12. The petitioner has also claimed high-handed demolition and also prayed for compensation and made prayer for exemplary costs and damages. We keep those prayers open.

13. Needless to mention that in view of this direction impugned notice (Annexure "H") dtd 2.5.2016 is quashed and set aside.

14. With liberty to petitioner to reiterate those prayers in appropriate challenge, either before this Court or any other competent court of law, we dispose of the petition. No costs.

JUDGE

JUDGE

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