

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

WRIT PETITION NO.470 OF 2019

**DILIP EKNATH NAGRE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr.R.F. Totla h/f. Mr.R.A.Karwa, Advocate for the petitioners.
Mr.S.S. Dande, AGP for the respondent/State.

**CORAM : PRASANNA B. VARALE &
S.M.GAVHANE, JJ.
DATED : 15.01.2019**

P.C. :-

1. Mr.Totla, learned Counsel for the petitioners at the outset submitted that an error occurred in the title clause of the petition and instead of referring respondent No.3 as the District Collector, Ahmednagar, respondent No.3 is referred as District Collector, Shrirampur, Dist. Ahmednagar. The Counsel orally prayed for correction of the status of respondent No.3. The oral prayer is allowed. The amendment be carried out forthwith.

2. The petitioners are before this Court challenging the application submitted at the instance of respondent No.4 to respondent No.3. Respondent No.4 submits in the application that these petitioners, who are respondents before the Collector as respondent Nos.2,3 and 4, have indulged in an act of illegal construction. Respondent No.4 also alleges that these respondents are creating hurdle in the official acts of respondent No.1 to the

application i.e. Shrirampur Municipal Council through the Chief Executive Officer of Shrirampur Municipal Council. It may not be necessary for us to refer to details of the application.

3. Mr.Total, learned Counsel submitted before us that these petitioners are active in political field and respondent No.4 is political opponent of these petitioners. Then it is submitted that on 26th September, 2018 a notice was issued to these petitioners. Learned Counsel submitted that the petitioners are partners of a business firm, namely, Sai Shradha Developers and are dealing with sale, purchase and development of real estate. Certain properties of one Shri Baban Nivrutti Girme was purchased by these petitioners. By notice dated 26.09.2018, the Chief Officer, Shrirampur Municipal Council, Shrirampur informed the noticee that the noticee is carrying out construction activity in defiance to the building permission granted to them and there are also certain deficiencies. There are as many as 15-16 deficiencies pointed out in the notice and the notice concludes that the noticee should immediately stop the construction activity. The notice was replied by these petitioners on 15.10.2018 by seeking legal assistance. Learned Counsel then submitted that by taking shelter of this notice, respondent No.4 approached respondent No.3 – the Collector, Ahmednagar by submitting an application thereby seeking

disqualification of these petitioners. Learned Counsel, on instructions, also submitted that notice dated 26.09.2018 issued by the Chief Officer of the Municipal Council, Shrirampur is under challenge before this Court by way of Writ Petition No.1431 of 2018.

4. Learned Counsel then submitted that on institution of proceedings before the Collector, Ahmednagar, a notice was issued to the petitioners and the petitioners were directed to appear before the Collector on 03.01.2018. The petitioners appeared before the Collector and sought time for submitting their say. Learned Counsel then submitted that the petitioners were directed to appear before the Collector on 14.01.2019. On 14.01.2019 the petitioners submitted an application before the Collector. Learned Counsel placed before us a copy of application submitted by the petitioners and order passed on the application. Same is taken on record and marked "X" for identification. Perusal of the application shows that the petitioners submitted to the authority that the petitioners have already approached this Court challenging the validity of the application and the matter is fixed before this Court today i.e. on 15.01.2019. In the application the petitioner further requested the authority to adjourn the matter and then prayed for grant of time for filing say. The application is

rejected with an endorsement which states that hearing at Collector Office is under section 44 of the Maharashtra Municipal Council Act. Application is summarily rejected. It was submission of learned Counsel that the petitioners apprehend that authorities in general and respondent No.3 – Collector already formed opinion that the construction alleged in the application is an illegal construction. Learned Counsel by inviting our attention to the report submitted to the office of the Collector through the Chief Officer of Shrirampur Municipal Council submitted that the Collector on receiving earlier applications from the President of Shrirampur Municipal Council directed the subordinate authority to take appropriate action. Learned Counsel further submitted that in response to the communication from the office of the Collector, Ahmednagar, the Chief Officer of Shrirampur Municipal Council submitted his report, as such the petitioners carry an impression in the mind that the Collector is under an impression that the petitioners have carried out illegal construction and this apprehension prompted these petitioners to approach this Court.

5. Learned Counsel Mr.Totla then submitted that only anxiety of the petitioner is of having an opportunity of hearing before the Collector so that these petitioners may submit their stand before the Collector, Ahmednagar in the proceedings initiated

at the instance of respondent No.4. Learned Counsel Mr. Total further submitted that the proceedings are initiated for seeking disqualification of these petitioners and these proceedings are serious in nature as the result of the proceeding claimed by respondent No.4 would lead to unsettle these petitioners, who are elected Councilors of the Municipal Council. As the proceedings is before quasi-judicial authority, it would be more necessary for the petitioners to have an opportunity of hearing thereby following the principles of natural justice is the submission of learned Counsel Mr. Totla. Learned Counsel Mr. Totla also submits that respondent No.4 is having no locus to seek disqualification of these petitioners as respondent No.4 is not a voter.

6. Though Mr. Totla makes this statement, as we are not assessing merits of the grounds raised in the proceedings before the Collector, we are not inclined to dilate on these submission of Mr. Totla. True it is that basic prayer in the petition is prayer clause "B", wherein the petitioners challenge institution of application itself and for such challenge this Court would certainly be very slow in exercising the extraordinary powers of this Court under Articles 14 and 226 of the Constitution of India, but only on considering other submission of Mr. Totla, namely, that the proceeding initiated against these petitioners is for seeking

disqualification of these petitions, who are elected Councilors and requested for an opportunity of hearing in the proceeding by following principle of natural justice cannot be said to be unreasonable request, we have entertained this petition only on this limited background. We are of further opinion that the petition itself can be disposed of by taking care of the apprehension expressed by the petitioners and by issuing directions to the authority if that grievance in the form of apprehension expressed before this Court is redressed, no prejudice would be caused to the respondents.

7. Learned Counsel Mr. Totla on instructions submitted before us that the Collector, Ahmednagar has fixed the matter on 17.01.2019. On the backdrop of these facts, we dispose of the petition with directions to respondent No.3 directing the Collector, Ahmednagar to grant opportunity of hearing and they would submit their say before the Collector. Learned Counsel also fairly submitted that the petitioners have already engaged Counsel to represent their case before the authority.

8. The District Collector, Ahmednagar to permit these petitioners to submit their say on 17.01.2019 i.e. on the next date of hearing scheduled by the Collector in the matter. The

petitioner may also submit application if they are desirous of grant of personal hearing apart from written say to the Collector. If such application is submitted to the Collector, the Collector to pass appropriate orders on the application. If the Collector is of the opinion that apart from written say, an opportunity of personal hearing be granted to these petitioners, he may fix date for undertaking such exercise by complying above referred directions of this Court. The Collector may conclude the proceedings initiated by respondent No.4 expeditiously, needless to state, on the merits of the proceedings.

9. With these directions, the writ petition is disposed of.

10. Parties to act upon authenticated copy of this order. Learned AGP to communicate this order to the Collector, Ahmednagar.

[S.M.GAVHANE, J.]

[PRASANNA B. VARALE, J.]