

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.3626 OF 2019

Jawed Khan Shabbir Khan Patel
and others

Petitioners

Versus

The State of Maharashtra & others

Respondents

Mr.V.D.Sapkal, advocate for petitioners.
Mrs.M.A.Deshpande, AGP for Respondents No.1 and 3 to 5.
Mr.A.P.Bhandari, advocate for Respondent No.2.

WITH
WRIT PETITION NO.3760 OF 2019

Shaikh Irfan Shaikh Yusuf Patel
and others

Petitioners

Versus

The State of Maharashtra & others

Respondents

Mr.Shaikh Mobin H., advocate for petitioners.
Mrs.P.V.Diggikar, AGP for Respondents No.1 and 3 to 5.
Mr.A.P.Bhandari, advocate for Respondent No.2.

WITH
WRIT PETITION NO.3764 OF 2019

Shekh Baba s/o Shekh Bane

Petitioner

Versus

The State of Maharashtra & others

Respondents

Mr.U.L.Momale, advocate for the petitioner.
Mrs.V.S.Choudhari, AGP for Respondents No.1 and 3.
Mr.A.P.Bhandari, advocate for Respondent No.2 & 4.

An additional prayer is also noticed in other petitions

as regards restraining the respondents from taking possession of the properties of the petitioners without following due process of law.

3 The submissions of all these petitioners is, by notification dated 14.05.2015 issued by the State Government in exercise of powers under Section 3 of the Maharashtra Municipal Corporations Act, 1949, area in which the property of the petitioners is located came to be merged in the jurisdiction of Aurangabad Municipal Corporation. Even on earlier occasion, Respondent-authorities have tried to take possession of their properties without following due process of law. This Court has directed the respondents to follow the procedure of law and then only resort to the act, which is impugned in the present petitions.

4 In some of the cases, submissions of the learned Counsel for petitioners is that already there is a permission in favour of petitioners granted by the Village Panchayat and that being so, the structures cannot be demolished labelling the same to be illegal.

5 *Per contra*, learned Counsel Mr.Bhandari, appearing for Respondent-Corporation, on instructions, submits that the procedure, as prescribed in law, will be followed for taking possession of the properties of the petitioners, particularly, having regard to the fact that the Respondent-Corporation has taken recourse to provisions of MRTP Act.

6 According to Mr.Bhandari, the properties in question

are affected by the Development Plan (DP) plan road i.e. Beed By-pass where heavy load of traffic is regulated. Since past few years, it is noticed that width of the beed by-pass is unable to cope up with the load of traffic and at some places bottle neck is formed. It is also claimed by him that there are number of accidents which have resulted into casualties. Number of school going children, office going persons have lost their lives because of narrow width of the road in question. As such, having notice that there is need to have service road, and the existing width of by-pass needs to be extended, steps are taken.

7 The next limb of submission of Mr. Bhandari is whatever actions are taken against the parties like the petitioners, Respondent-Corporation has taken recourse to the provisions of Section 478 of the Maharashtra Municipal Corporations Act by issuing appropriate issued notices/orders. According to him, the petitioners have carried out construction beyond the permissible limits. He would then urge that on 16.03.2019 notices under Section 478 were already served on the petitioners. Accordingly, he sought dismissal of the petitions.

8 The learned AGP, representing the interest of the State Government, the Commissioner of Police and other authorities have supported the submissions of the learned counsel for the Respondent-Corporation.

9 Having dwelt upon the submissions made, what can be noticed is in some cases permission for carrying out constructions granted by the Gram Panchayat is produced.

10 Though the learned counsel for the petitioners have stated that they have carried out the construction in accordance with the permission granted by the Gram Panchayat, the perusal of such permission reflects that the same was conditional. A specific condition is incorporated therein that if the land is required for extension of road, the same will be used by the authorities.

11 Apart from above, the fact remains that, on instructions, the learned counsel for the Respondent-Corporation has made a specific submission that the Respondent-Corporation will demolish only such structures which are found to be illegal. Mr.Bhandari, learned Counsel for Respondent-Corporation, has submitted that appropriate compensation will be paid to the petitioners in case, if their lands are acquired for expansion of Development Plan road. Since the statement about dispossession is made on instructions, same is accepted as an undertaking from the Corporation that in case, lands of the petitioners are acquired, same will be done in accordance with law.

12 The submission of Shri Bhandari, learned Counsel for the Respondent-Corporation, that the notices are already issued and served on the petitioners in compliance with the order of earlier Division Bench, is accepted since the said statement is made on instructions.

13 Considering the fact that the action is being taken by

the Respondent-Corporation in public interest, particularly, to meet the urgent situation, in the backdrop of number of accidents, casualties, etc, this Court is not inclined to show any indulgence in exercise of extraordinary jurisdiction of this Court.

14 Apart from above, an issue was sought to be canvassed as to whether, Gram Panchayat was the planning authority for the area in question at the relevant time, or it was the Collector pursuant to the provisions Section 52 of the MRTP Act? Without going into aforesaid issue, this Court is of the opinion that since the interest of the petitioners is safe-guarded in view of the statement made by the Respondent-Corporation that the possession of property/land will not be taken without following due process of law, we do not intend to entertain these writ petitions in exercise of extra ordinary jurisdiction conferred upon this Court.

15 These petitions are, as such, disposed of.

16 Needless to clarify that petitioners are at liberty to take out the proceedings as permissible in law, for redressal of their grievance arising out illegal act of the respondents, if noticed in future.

NITIN W. SAMBRE
JUDGE

PRASANNA B. VARALE
JUDGE