

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

**Writ Petition No.4082 of 2014
With
Civil Application No.4119 of 2019
With
Civil Application no.4662 of 2019**

* Asha d/o Daulatrao Dandge,
Age 32 years,
Occupation: Advocate,
R/o Plot No.G-1, 40, N-7,
CIDCO, Triveni Nagar,
Aurangabad. **.. Petitioner.**

Versus

- 1) The State of Maharashtra,
Through Secretary,
Revenue & Forests Department,
Mantralaya, Mumbai.
- 2) The Collector, Aurangabad,
District Aurangabad.
- 3) The City & Industrial Development
Corporation of Maharashtra
Limited, Through its Administrator,
CIDCO, New Aurangabad.
- 4) Aurangabad Municipal Corporation
Through its Commissioner,
Aurangabad, District Aurangabad.
- 5) Rajendra Darda,
Education Minister, M.S.,
C/o Lokmat Bhavan, Jalna Road,
Aurangabad,
District Aurangabad. **.. Respondents.**

Shri. B.L. Sagar Killarikar, Advocate, holding for Shri. N.T. Tribhuvan, Advocate, for petitioner.

Shri. S.B. Yawalkar, Assistant Government Pleader, for respondent Nos.1 and 2.

Shri. A.S. Bajaj, Advocate, for respondent No.3.

Shri. J.R. Shah, Advocate, for respondent No.4.

Shri. L.D. Vakil, Advocate, for respondent No.5.

**Coram: T.V. NALAWADE &
MANGESH S PATIL, JJ.**

Date : 22 APRIL 2019

JUDGMENT (Per T.V. Nalawade, J.):

1) Rule. Rule made returnable forth. By consent heard both the sides for final disposal.

2) The proceeding is filed by one Advocate of Aurangabad for relief of direction against the respondents that they should remove the unauthorized structure which is constructed on the property of the local body, Corporation (N-7, CIDCO Ward No.25) which is made from the funds sanctioned to M.L.A., respondent No.5, by the Government.

3) The submissions made and the record show that it is not disputed that from the funds sanctioned by the Government to each M.L.A. for executing some work in his constituency, the amount of Rs.9,98,368/- was made available for making construction of Community Hall in the aforesaid ward. This was to be constructed through Public Works Department of the Government. The funds were made available on 12-2-2014. On 18-2-2014 objections were raised by the residents of that locality that the land was from green belt, there were many standing trees and the construction which was started was illegal. Complaints were made to the Collector and even to the local body. The record was collected to the effect that as per the development plan of Aurangabad Municipal Corporation it was green belt and no construction was permissible.

4) It appears that even before technical sanction of the utilisation of the amount, the City Engineer of the local body had given no objection certificate on 30-1-2014 to carry out the said construction. The construction was to be carried out of 200 square meters, of single storeyed

building. However, in the no objection it was informed that before starting the construction, the sanctioned development plan of the city needs to be considered and permission and opinion of the town planning department needs to be obtained. Though there was such remark, it was directly informed to the District Collector on 10-2-2014 that the Corporation had no objection to carry out the construction of the community hall. The record shows that, the town planning authority never issued no objection certificate and did not give opinion about the aforesaid proposal.

5) There is correspondence made by CIDCO with the Municipal Corporation showing that the space where the construction was going on was kept as green belt and as the space was reserved only for that purpose, it was to be kept open, it was not possible to make construction on that place. To the M.L.A. many citizens made representations to stop that construction. Objections were given to the local body also but the construction was made and it was completed.

6) Learned counsel for the Corporation submitted that this Court had expressed in the past that possibility of regularization can be considered by the local body (order dated 24-6-2015). It appears that only in February 2019 the local body gave public notice to call objections for making change in the development plan. Prior to that, the Collector had realised the irregularity and the Collector had issued directions to the local body to see that responsibility was fixed on the person who had issued no objection certificate. It appears that no such steps were taken by the local body. The record shows that issue was taken before the general body and the general body resolution was passed to obtain legal opinion and then take decision. It was done in October 2016 but steps were not taken in accordance with that resolution of the general body.

7) Instances of grabbing public property by influential persons are on rise. This Court had noticed instances in which open places which are belonging to Corporations, Municipal Councils, Village Panchayats, Agricultural Federations were used by influential persons

under different pretext and the open spaces are virtually grabbed. Though the constructions are made by utilizing the funds of the Government like in the present matter, the persons who make funds available keep control over construction and many a times some institutions are created and registered and they keep on working in such buildings. In any case, if a particular space is kept for public at large and it is in green belt, the Corporation is not expected to allow anybody including M.L.A. who wants to make construction by utilizing funds made available to him by the Government. All the rules and regulations were violated in the present matter and it can be said that the local body acted under the influence of the M.L.A.

8) The learned counsel for the petitioner placed reliance on observations made by Apex Court in the following reported cases.

- (i) *(2006) 7 SCC 597 (Royal Paradise Hotel (P) Ltd. v. State of Haryana;*
- (ii) *AIR 2011 SC 1123 (Jagpal Singh v. State of Punjab);*
- (iii) *2012 AIR SCW 5463 (Dipak Kumar Mukherjee v. Kolkata Municipal Corporation);*

- (iv) *(2014) 14 SCC 557 (Campa Cola Residents Assn. v. State of Maharashtra);*
- (v) *(2012) 3 SCC 619 (Manohar Joshi v. State of Maharashtra).*

9) The Apex Court has laid down that Court cannot ignore when there is violation of rules regarding development, when it is deliberate and Court should not condone such violations. The Apex Court has observed that if the illegal/unauthorized constructions are protected such orders affect fundamental rights also as such constructions made by economically weaker section are never protected when such constructions made by economically affluent people are protected. A different treatment to the constructions made by influential persons cannot be given. Such utilization is one way grabbing of the public property as handing over of the structure to the local body remains on the paper but the name of the influential persons remain on the building and everything ordinarily remains under its control. If the action is not taken against such construction, by using similar modus operandi others also may grab the public property. This Court holds that orders need to be made to see that the

structure is pulled down and action is also taken against the concerned for the aforesaid illegality. In the result, following order :

10) The writ petition is allowed. Relief is granted in terms of prayer clause (B). The State Government, the concerned Department are to see that enquiry into the aforesaid irregularities is made and also responsibility is fixed on the concerned both departmentally and also for the loss of public money. It is presumed that the construction itself is illegal and it could not have been carried there and the construction against which the petition is filed needs to be pulled down. Rule is made absolute in the aforesaid terms. Civil applications are disposed of.

Sd/-
(MANGESH S PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)

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