

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

WRIT PETITION NO. 4823 OF 2018
WITH
CIVIL APPLICATION NO. 10324 OF 2018

Kanhayya S/o Madanlal Agrawal and Ors. ...Petitioners

Versus

The State of Maharashtra and Ors. ...Respondents

Mr. S.G. Dodya, Advocate for Petitioners
Mr. K.B. Jadhavar, Assistant Government Pleader
for Respondent Nos. 1 to 4 and 7, 8
Mr. S.S. Deshmukh, Advocate for Respondent No. 5

**CORAM : S.V. GANGAPURWALA AND
A.M. DHAVALA, JJ.**

DATE: 7th JANUARY, 2019

PER COURT

1. The petitioners seek directions against the respondents to demolish the compound wall constructed in front of their shops.

2. Mr. Dodya, the learned Counsel for the petitioners submits that the petitioners are holders of the shops allotted to them under the Kabala in the year 1951. The Kabala specifically states that on the east, there is a new road and the parade ground.

3. According to the learned Counsel, in 2004, illegally, the respondents had constructed the compound wall that has

became dilapidated and the same did not exist. Now, recently they invited tenders for construction of the compound wall. The learned Counsel submits that during the pendency of the petition, respondents constructed the compound wall and thereby encroached the road. The learned Counsel submits that even as per the Development Control Rules and the building by-laws, no person shall be allowed to construct or re-construct a building from foundation or plinth without leaving in front such portion of his plot as would secure a minimum set back of 1.5 metres from the centre line of the street. The compound wall is within the ambit of definition of building. According to the learned Counsel, the right to livelihood of the petitioners is involved and in such cases, the question of promissory estoppel would not arise. Though in the year 2004, the action was not challenged that would not disable the petitioners from challenging action now. The learned Counsel submits that the area in front of the shops of the petitioners towards the east side would be deemed street. For that purpose, he relies on the Judgment of the Apex Court in the case of ***M/s Gobind Prasad Jagdish Prasad Vs. New Delhi Municipal Committee reported in AIR 1993 SC 2313***. The learned Counsel submits that when the fundamental rights are violated, the Writ Petition is maintainable.

4. The learned Assistant Government Pleader submits that the compound wall is constructed on the Ramleela Maidan. Encroachments were made on the Ramleela Maidan. Encroachers put up their shops on Ramleela Maidan. Thereafter, the drive was taken to remove encroachment and to protect the property, the compound wall has been constructed. The objection has already been taken to the proposed development plan showing 12 meter road in front of the shops of the petitioners.

5. Mr. Deshmukh, the learned Counsel for the respondent/Municipal Council submits that in the proposed development plan , 12 meter road is shown.

6. It is not disputed that the Ramleela Maidan exists and the land is owned by the Government. The width of the road is not on record. The width of road in front of shops of the petitioners as per the Kabala is not on record. The width of the road neither in the Kabala is mentioned nor there is any record showing the width of the road.

7. According to the respondent/State, the construction of the compound wall is made on its own land i.e. the Ramleela Maidan and not on the road. The Municipal Council states that 12 meter road is proposed in the development plan. However, the

same is not yet sanctioned. Naturally, to protect the property, the Government has constructed the compound wall which initially even according to the petitioners was constructed in the year 2004 and the encroachers demolished it and had put up their shops on the Ramleela Maidan, which is a public property. The public property will have to be safeguarded. If the construction of the compound wall is not in accordance with the law, it is for the Municipal Council to take steps in that regard. However, there is nothing on record to show that the compound wall constructed by respondent/State is on the road, more particularly, in absence of the area of the width of the road. Whether the construction of the compound wall is on the Ramleela Maidan or on the street would be disputed question of fact. The same cannot be gone into the present Writ Petition.

8. In light of the above, we are not inclined to entertain the Writ Petition. The Writ Petition is accordingly disposed of. No costs.

9. In view of disposal of the Writ Petition, the Civil Application is disposed of.

(A.M. DHAVAL, J.) (S.V. GANGAPURWALA, J.)

mta