

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1 PUBLIC INTEREST LITIGATION NO.107 OF 2012

MOHAMMAD MUSHIRODDIN MOHD. GAUSODDIN
VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Shri Thombre S.S.

GP for Respondent nos.1 & 2: Shri A.B. Girase

**CORAM: PRADEEP NANDRAJOG, CJ &
R.G. AVACHAT, J.**

DATE: 27.09.2019

PER COURT :

1] We do not find adequate material to issue notice in the petition filed in public interest on the plea that respondent No.4 who was issued a commencement certificate to construct a building on the subject land; having shops on the ground floor and residence on the first floor, has constructed a hospital building.

2] The reason why we are not proceeding to issue any notice is that the notice dated 30.11.2011 annexed as Annexure 'C' issued by the Maharashtra Regional and Town Planning Authority records contradictory facts. On the one hand it records that the construction is without a sanction and in the next breath it alleges that the construction is contrary to

the development permission.

3] Now, either a construction is without a development permission or it is contrary to a development permission.

4] It is the case pleaded by the petitioner himself that respondent No.4 has obtained the necessary permission.

5] If the construction is contrary to the permission granted the notice must state the fact as to why it is alleged that the construction carried out is contrary to the development permission.

6] Suffice it to state that a construction alleged to be contrary to the permission granted must record, with reference to the sanctioned plan, what the deviations are. We find that in the notice dated 30.11.2011 no such fact has been stated.

7] If the building is used contrary to the land user thereof then it would be a case not of unauthorized construction but of unauthorized user.

8] We dismiss the petition.

9] Costs made easy.