

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

29 WRIT PETITION NO.8674 OF 2018
WITH CA/1054/2019 IN WP/8674/2018

SANJAY VITTHALRAO JADHAV AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. R. N. Dhorde, Senior
Advocate h/for Mr. Choudhari Yuvraj S
AGP for Respondents State: Mr. Y. G. Gujrati
Advocate for Respondent No.5 : Mr. Suresh W. Munde
Advocate for Respondent No.6 : Mr. V. D. Hon, Senior
Advocate i/by Mr. P. P. Dawalkar

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATE : 19th March, 2019

PER COURT :

1. Rule. Rule made returnable forthwith. With the consent of the parties the petition is taken up for final disposal at the admission stage.

2. The petitioners assail the proceedings initiated against them under Section 42 of the Maharashtra Municipal Councils, Nagar Panchayat and Industrial Township Act, 1965 (for short, the MMC Act). Mr. Dhorde, learned Senior Advocate for the petitioners submits that initially, respondent No.6 had filed false complaint under section 44 of the MMC Act against the petitioners, bearing Application No.04/2014

before the Collector. The said application is rejected. Respondent No.6 was instrumental in taking up another proceeding under sections 55A and 55B of the MMC Act. The same was in respect of property No.273A. This Court, in Writ Petition No.11567/2015, has granted Rule in the said matter and stayed the further proceeding, considering the Civil Suit pending in the Civil Court at Gangapur(RCS No.74/2014). In the proceedings under section 44 of the MMC Act before the Collector, Aurangabad bearing Application No.1/2014, Land Survey No.273A and 274 were the subject matter. The allegations were with regard to encroachment of the property of the Municipal Council and the same is rejected. The proceeding under section 44 also involves the property bearing No.296 situated at Gangapur. The Court had directed measurement and the measurement is in favour of the petitioners.

3. The proceeding taken up under section 42 of the MMC Act is filed with same charges, except the property- Municipal House No.505 has been added. The petitioner purchased the said property under the registered sale deed and no other person is claiming

to be the owner of the property. Still, because of the political reason, the proceedings are initiated against the petitioners.

4. Mr.Hon, the learned Senior Advocate for the respondents submits that it is only against the show cause notice, the petitioners have filed the writ petition and if any orders are passed, the petitioners have right to challenge the same. The petition is premature. The learned Senior advocate further submits that the charges are enumerated in the show cause notice with regard to the property bearing No.273-A. Action is not proposed to be taken.

5. The learned A.G.P. also submits that the show cause notice was issued and the petitioners have to file reply to the same.

6. This Court certainly is loath in entertaining the petitions challenging the show cause notice and in normal case, we would not entertain the petitions challenging the show cause notice as the petitioner has opportunity to file reply. However, the facts of the present case compel us to exercise our writ

jurisdiction under Article 226 of the Constitution of India.

7. The petitioners were councilors of the Gangapur Municipal Council. Initially, proceedings under section 55A and 55B of the MMC Act were initiated pursuant to the application filed by respondent No.6 on 25.11.2013. The said proceeding was in respect of property bearing No.273-A and Property No. 274. Writ Petition No. 11567 of 2015 is filed by the petitioner and this Court has granted Rule and stayed the further proceedings considering the pendency of the Civil Suit. Thereafter, at the behest of respondent No.6, again the proceedings under section 44 of the MMC Act were initiated with regard to the property Survey No. 296 on the ground of unauthorized construction. The proceeding came up before this Court. This Court directed measurement of the property to find out whether there is encroachment. The said order was passed in P.I.L. No. 136/2013. This Court directed measurement and called for the report. The measurement report was in favour of the petitioners, holding that there is no encroachment.

8. Now, again the application is filed by respondent No.6 purportedly under section 42 of the MMC Act. In the complaint filed, Municipal House No. 505 is not specifically mentioned. However, it appears that enquiry was directed to be conducted by the S.D.M., Vaijapur and say was also called from the petitioners.

9. As far as the property bearing Nos. 273A and 274 so also property No. 296 are concerned, it cannot be again subject matter of proceedings as the dispute is sub-judice. As far as Municipal House No. 505 is concerned, the same was mutated in the name of Satish Annasaheb Bare and the petitioners have purchased it by virtue of a registered sale deed. The proceedings are initiated on the ground that it is not clear how the property was mutated in the name of Satish Annasaheb Bare. No other person has claimed House No.505. There is no complaint in respect of the property i.e. House No.505 that House No.505 is not belonging to Satish Bare and in fact the petitioner were instrumental in wrongly mutating the property in the name of Satish Annasaheb Bare. In the absence of any other person claiming ownership, the petitioners have purchased the

property from Satish Bare in whose name the property is mutated.

10. All other properties included in the notice are the subject matter of the earlier proceeding before this Court under Section 55A, 55B and Section 44 of the MMC Act. Show cause notice could not have been issued in respect of the properties again just by changing the section as observed supra.

11. As far as property-House No.505 is concerned, no other person is claiming ownership upon the same nor the respondents have been in a position to show that Satish Bare was owner or some other persons were owners of the said property. As such, notice could not be sustained. In the peculiar facts and circumstances of the case, we have exercised our jurisdiction and admitted the petition against the show cause notice.

12. In the light of above, the proceedings initiated against the petitioners under section 42 of the MMC Act, and the show cause notice dated 10.12.2018 issued to the petitioners are quashed and set aside.

13. Rule is made absolute in the above terms.
14. Writ petition is accordingly disposed.
15. In view of disposal of the writ petition, civil application also stands disposed of.

(A. M.DHAVALA, J.)

(S.V.GANGAPURWALA, J.)

JPC