

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

16 WRIT PETITION NO.4374 OF 2014

**SUSHILABAI SAKHARAM HIWALE
VERSUS
MUNICIPAL COUNCIL, PARBHANI AND ANOTHER**

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Advocate for Petitioner : Mr. A.A. Mukhedkar

Advocate for Respondent 1 : Mr.S.S. Bora

Advocate for Respondent 2 : Mr. P.N. Kalani

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CORAM : T.V. NALAWADE, J.

DATED : 14/02/2019.

ORDER :

1. The petition is filed to challenge the order made by the learned Civil Judge, Junior Division, Parbhani on Exh.52 in Regular Civil Suit No. 176/2008. The application was filed by the present respondent No. 2, Cooperative Housing Society for permission to intervene in the matter for joining the suit as defendant. The application is allowed by the Trial Court. Both the sides are heard.

2. The aforesaid suit is filed by the present petitioner for relief of injunction and in the suit, the petitioner has prayed for the relief against show cause notice issued by Local Body, respondent No. 1 about the illegal construction made by the petitioner on some open space. The society wants to show to the

Court that it is not only illegal construction, but the space on which construction is made, was not allotted to the present petitioner and the petitioner has made encroachment over the open space of the society. The Court has considered this contention of the society and as that is relevant circumstance in injunction suit, the Trial Court has allowed the application filed by the society. This Court has no hesitation to observe that such circumstance needs to be considered when there is notice of Local Body, Corporation or Municipal Council for removal of illegal construction. Encroachment is one more illegal activity of the person which needs to be considered by the Court for relief of injunction and all the circumstances are required to be considered. This Court holds that the Trial Court has not committed any error in allowing the application.

3. The learned counsel for petitioner placed reliance on some observations made by this Court in the case reported as **1972 BCI 30 [Jivanlal Damodardas Wani Vs. Narayan Ukha Sali]**. The facts of that case were totally different and the matter was involving the dispute between the landlord and the tenant and in view of that circumstance, it was held that no other person could have intervened in the matter. In the result,

the petition is dismissed. The Trial Court is expected to dispose of the suit expeditiously and in any case, within four months from today.

[T.V. NALAWADE, J.]

ssc/