

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

WRIT PETITION NO. 5964 OF 2019

**MUNICIPAL CORPORATION AURANGABAD THROUGH
COMMISSIONER AND ANOTHER
VERSUS
SANTOSHSING PRALHADSINGH BARVAL AND OTHERS**

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Advocate for the Petitioners : Shri A. P. Bhandari

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 10th JUNE, 2019.

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PER COURT :

1. The petitioner Municipal Corporation, Aurangabad is aggrieved by the judgment and order dated 01/10/2018 delivered by the First Appellate Court, vide which, Misc. Civil Appeal No. 110/2018 filed by respondent Nos. 1 and 2 herein, original plaintiffs, has been allowed and the rejection of the application for temporary injunction Exhibit 5 by order dated 29/06/2018 by the Trial Court, has been overturned and temporary injunction has been clamped against the petitioners.

2. The learned Advocate for the petitioners has strenuously criticized the impugned judgment on the following grounds :-

(a) The erstwhile owners of the property bearing Survey No. 23 had moved an application in 1989 seeking grant of lay out and a tentative sanction, vide which, 15 % of the land was shown to be an open space.

(b) In 1989, there was a tentative sanction to the lay out in the suit plot bearing Survey No. 23 situated at Shahanoorwadi, Taluka and District Aurangabad.

(c) From 1983-1992, 15 % open space was mandated.

(d) As the law underwent a change, from 1993 onwards, 10 % of the plot is to be earmarked as open space.

(e) As per the tentative lay out, there were 26 plots mentioned in the suit land. Plot Nos. 27 and 28 were never a part of the lay out.

(f) A building which has a ground floor plus three floors, was erected in plot Nos. 27 and 28 having a built up area of 1425 sq. ft.

(g) After the petitioners noticed the illegal construction, a notice as prescribed in law was issued to the plaintiffs as the Corporation intended to demolish the illegal construction.

(h) The plaintiffs approached the Trial Court by lodging Regular Civil Suit No.113/2015. An exparte ad interim

injunction was granted below application Exhibit 16.

(i) After the pleadings were complete, the Trial Court considered application Exhibit 5 filed by the plaintiffs under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure and by a reasoned order dated 29/06/2018, the said application was rejected and the status quo order below Exhibit 16 was vacated.

(j) The Trial Court framed an issue as to whether the suit is maintainable, in the light of the objection raised by the petitioner Corporation under Section 433-A of the Maharashtra Municipal Corporations Act, 1949.

(k) After recording of evidence, the Trial Court concluded that the suit was maintainable and the Corporation has not assailed the said order as on date.

(l) The plaintiffs approached the Appellate Court in MCA No. 110/2018 and by the impugned order, the order of the Trial Court dated 29/06/2018 was set aside and the petitioners were directed not to demolish the building erected on the suit plots until further orders.

(m) The Trial Court was directed to decide the suit within six months from the date of the judgment of the Appellate Court.

(3) The learned Advocate for the Corporation submits that the Trial Court has considered the legal provisions and the fact situation while concluding that, *prima facie*, the plaintiffs do not deserve any protection and the building erected deserves to be demolished. It is only on the basis of misplaced sympathy that the First Appellate Court has protected the illegal structure. He strenuously submits that in such matters, taking into account the tendencies of the citizens in flouting the rules and norms and erecting illegal constructions for gaining economic benefits, it is necessary that such tendencies need to be curbed by issuing strict orders. He submits that such tendencies amongst the citizens have grown and citizens are showing little respect to the law when it comes to their personal gains through such illegal constructions.

4. *Insofar* as the submissions of the learned Advocate for the Corporation as recorded in the foregoing paragraph are concerned, I am in complete agreement since such tendencies have assumed epidemic proportions. People have lost respect for law while erecting illegal structures and by indulging

statutory authorities in litigation, such structures are standing. An example of such litigation is the case in the matter of *Campacola Residents Assn. Versus State of Maharashtra Transferred Case (C) No. 55/2012, decided on 27/02/2013 SC sub nom Esha Ekta Apartments Cooperative Housing Society Limited and others Versus Municipal Corporation of Mumbai and others, (2013) 5 SCC 357.*

5. I, however, find from the record that the suit has progressed post decision on the T.I. application and especially in view of the impugned judgment of the Appellate Court which is dated 01/10/2018. In my view, the proceeding before the Trial Court must reach a logical end and there must be a verdict by the Trial Court on the basis of oral and documentary evidence. In the event the Trial Court concludes that the suit building is illegal and cannot be regularized, no further protection could be granted to the plaintiffs, much less on the ground of sympathy.

6. However, as on date, it is yet to be finally concluded that the said building is illegally constructed. If the demolition is

permitted at this stage and in the event subsequently the plaintiffs convince the Trial Court and succeed in making out a case of legal construction, an irreparable harm, manifest inconvenience and serious prejudice would be caused to the plaintiffs, *inasmuch* as, there could be a proceeding against the Corporation for seeking directions to re erect the said building at their own costs. This would involve public money and such expenditure will have to be made from the tax payers money.

7. Considering the comparative hardships and the balance of convenience and after noting that the injunction granted by the impugned order is in existence for almost 8 months, the ends of justice would be met by directing the Trial Court to scrupulously decide the suit within a particular time frame.

8. In view of the above, this petition is disposed off. If the Trial Court has failed to decide the suit within the time frame granted by the First Appellate Court, I deem it appropriate to direct the Trial Court to decide RCS No. 113/2015 as expeditiously as possible and in any case, on or before 31/12/2019. The parties would be precluded from seeking

unnecessary adjournments and the Trial Court would be justified in rejecting requests for adjournments if justified grounds are not put forth.

(RAVINDRA V. GHUGE, J.)

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