

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION [STAMP] NO.4521 OF 2019**

Castel Royale Magnifique Sahakari  
Gruhrachana Sanstha Maryadit & Anr. .... Petitioners

Vs.

The Commissioner, Pune Municipal  
Corporation & Others .... Respondents

Mr. Mahendra Kawchale with Mr. Kishor Ajetroa  
for the Petitioners.

Mr. A.P. Kulkarni for Respondent Nos.1 & 2.

Ms Savita A. Prabhune for Respondent No.3.

Ms M.P. Thakur, AGP, for the Respondent-State.

**CORAM: S.C. DHARMADHIKARI &  
M.S. KARNIK, JJ.**

**DATE : MAY 03, 2019**

**P.C:**

1. The rejoinder affidavit of the petitioners is taken on record.

2. This petition prays for demolition of a structure which is claimed to be unauthorised and illegal. On hearing both sides, a detailed order was passed by this Court on 29-3-2019.

The same is reading as under:-

*“After hearing both sides, we find that Mr. Kulkarni appearing for the Municipal Commissioner as also the Pune Municipal Corporation should take specific instructions as to whether a meditation centre obstructs the development plan road.*

*2 The City Engineer should file his personal affidavit informing this Court as to how much area is consumed by the construction of a meditation centre and whether indeed that is put up on an amenity plot as claimed by the Petitioner or an open plot vesting in the Municipal Corporation*

*3 Mr. Kulkarni has been instructed to state that, had this meditation centre not been put up, the open portion by now would be encroached. That is admittedly not belonging to the Petitioner nor have they any concern with the same. The Municipal Corporation may have proposed a development plan road with a much larger width and length but eventually while sanctioning that development plan and particular proposal therein, the sanctioning authority has reduced width of that road. That is why it looks as if the construction is on a road but it is not so.*

*4 Let the City Engineer visit the site along with the concerned official and then file his affidavit.*

*5 The matter is listed on the Supplementary Board on 25<sup>th</sup> April, 2019 before which the inspection should be carried out, the affidavit filed, and copy duly served on the Petitioner's advocate.”*

3. In pursuance of these directions, an affidavit in reply has been filed by the Pune Municipal Corporation.

4. That affidavit in reply indicates that the Meditation Centre is not affecting the existing D.P. Road. The reservation of the D.P. Road on the Development Plan as also the other designations would not be affected because though the Planning Authority initially proposed a 30 metres wide D.P. Road, the alignment was altered and sanction was received to reduced width of this D.P. Road. In such circumstances, the open space would have been otherwise encroached. That is how a structure styled as Meditation Hall with other amenities for the public was allowed to be constructed in this open space.

5. The petitioners in their rejoinder would submit that the annexures to the affidavit in reply do not indicate that the State has reduced the width of the road. There are no documents to that effect and mere production of some letter or communication along with the Plan would not suffice.

6. To our mind, whether the structure is authorised or otherwise or wholly illegal, as alleged, cannot be decided on the basis of the pleas of the petitioners in the rejoinder. The

petitioners deny the assertion of respondent Nos.1 & 2. When they so deny, they place another version on record. They also seek to rely upon the allegations in the writ petition and which, according to them, would indicate that the 3<sup>rd</sup> respondent, on behalf of the petitioners, handed over this amenity space but on the assurance that a 30 metres wide D.P. Road would be laid. The plan and the layout were sanctioned with the road width of 24 sq.metres. How that is reduced and to benefit whom is therefore tried to be established before us.

7. On a perusal of the writ petition, its annexures and the affidavits placed on record, we are of the firm view that the issue involved is essentially of facts. In the event the version of the Pune Municipal Corporation/public body based on public documents is disputed, then the burden is entirely on the petitioners and they would have to make clear and specific allegations supported by oral and documentary evidence and then alone they can claim any reliefs. This is imminently possible in a Civil Suit. Therefore, the writ petition is disposed of only on this ground, leaving open to the petitioners the remedy of a Civil

Suit and to be filed in a Competent Civil Court. All contentions of both sides on the factual aspects are kept open.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)