

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
1021 WRIT PETITION NO.6693 OF 2019**

M/S LAXMI NARSINHA CONSTRUCTION THROUGH ITS
PROPRIETOR RAJESH BABURAO DOLE ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

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Mr. Sunil V. Kurundkar, Advocate for the
Petitioner.

Mrs. M. A. Deshpande, AGP for Respondents-State.

Mr. S. G. Chapalgaonkar, Advocate for Respondent
No.2.

Mr. S. S. Thombre, Advocate for Respondent No.3.

Mr. R. N. Dhorde, Senior Advocate a/w Mr. V. R.
Dhorde for Respondent Nos.4 to 10.

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**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.
DATED : 13th MARCH, 2020.**

PER COURT:-

1. The writ petition was initially filed challenging the notice dated 04.06.2019, thereby directing the petitioner to remove the construction and make way for road. Subsequently, the petitioner amended the writ petition seeking directions against respondent no.2 to re-construct the demolished portion of the compound wall situated at South to North, C.T.S. No.15298/P of Vedmantra Apartment at its own cost, so also sought direction against respondent no.2 to re-construct entry gate of Vedmantra Apartment.

2. Mr. Kurundkar, learned counsel for the petitioner contends that the petitioner had purchased the writ property by registered sale

deed. The respondent no.2 granted permission to the petitioner on 18.09.2012 to develop the writ plot. The petitioner in accordance with the permission granted constructed 56 flats and sold the same. The petitioner had not carried out any unauthorized construction. The respondents committed error in issuing notice dated 04.06.2019 describing side margin space as layout road. As per the construction permission and the approved plan it is space between two buildings which has to be kept open as side margins as per the Development Control Rules. The respondent directed the petitioner to provide road from the said side margin, the same is illegal. The road for Vishal Nagar is already in existence from the eastern side of the building. The residents of Vishal Nagar have made encroachment. The Vishal Nagar itself is an unauthorized development. The learned counsel submits that the gate and the compound wall has been constructed as per the permission granted. In sanctioned building plan the same is shown. The impugned notice is illegal. The respondents in high handed manner demolished the compound wall and the gate. The respondent no.2 resorted to illegal activity.

3. The learned counsel submits that the residents of Alankar Co-operative Housing Society were demanding the road from the site of the petitioner. Under communication dated 14.09.2012, the Assistant Director, Town Planning informed the

member of the Alankar Co-operative Housing Society that no such road is proposed from the plot of the petitioner. The road of Alankar Co-operative Housing Society does not pass through the petitioner society. In spite of all these aspects, respondent no.2 in high handed manner demolished the construction.

4. Mr. Thombre, learned counsel for respondent no.3 submits that the proposal for gunthewari of Vishal Nagar is pending. According to the learned counsel original owner from whom the petitioner purchased the property has categorically admitted that the road from his plot existed. The said space is used by the residents of the Vishal Nagar for more than 35 to 40 years as road. The petitioner has illegally closed the same. As the same was illegally closed, the grievance was made and rightly the same has been considered by the Corporation. The notice was given to the petitioner. The petitioner did not remove the construction, as such, respondent no.2 was within its rights to remove the illegal compound wall and the gate blocking road. More than 300 families are residing in the area of New Vishal Nagar. As the approach road is stopped by the petitioner thereby closing the access road, lot of inconvenience is caused to the public at large. The public road cannot be closed.

5. Mr. Chapalgaonkar, learned counsel for Municipal Corporation submits that one Public

Interest Litigation was filed bearing Stamp No.6415/2019 before this Court contending that the residents of Vishal Nagar area had approach road from the lay out of Vedmantra Apartment. It was further contended that the road was available since long and it was being used by the residents of Vishal Nagar area to access Essar Petrol Pump. This Court after considering the prayers in Public Interest Litigation, permitted the petitioners therein to withdraw the same with liberty to approach Commissioner Municipal Corporation, Aurangabad for the redressal of grievance. The respondent-Corporation received representation on 27.03.2019 signed by the residents of Vishal Nagar area. The inspection was caused. The enquiry was made. It was noticed that the water pipeline and electricity line is also passing from the said portion and previously there was approach road from Essar Petrol Pump to Vishal Nagar. The petitioner had constructed two buildings and also raised compound wall. In view of the said construction, the approach road that was used by the residents of Vishal Nagar is permanently closed. Considering the above and the demand of the residents of Vishal Nagar, the petitioner was called upon under notice dated 20.05.2019 to remove the obstacle created in the approach road from Essar Petrol Pump to Vishal Nagar. In spite of the said notice no action was taken, as such Corporation removed the obstacle and opened the approach road.

6. Mr. Dhorde, learned senior counsel appears for respondent nos.4 to 10 and submits that respondent-Municipal Corporation has illegally demolished the compound wall and the gate. The general public and strangers pass through the same. The space between the two apartments is sought to be used by the general public and the strangers. The security of the locality as such would be at stake. The respondent no.2 has acted against the sanction plan. The site no.224 is reserved for playground, however, the said area has been encroached illegally and illegal constructions are made in violation of the sanctioned plan. At the behest of the persons who have indulged in illegal act, the Corporation has taken steps of demolishing compound wall and the gate.

7. We have considered the submissions canvassed by the learned counsel for the respective parties.

8. It is not subject matter of dispute that the petitioner has carried out the construction namely Vedmantra Apartment after obtaining the construction permission from the Municipal Corporation.

9. It is not the case of Municipal Corporation that the construction carried out by the petitioner is not accordance with the commencement certificate or sanctioned construction

plan. The sanctioned construction plan and the commencement certificate depicts the compound wall and the gate. In view of the above, it can safely be concluded that the petitioner was permitted to construct the compound wall and the gate.

10. We asked the learned counsel for Municipal Corporation whether the construction of the compound wall and the gate which is subsequently demolished was in accordance with the construction permission. The learned counsel for the Municipal Corporation could not deny that the construction by the petitioner of the compound wall and the gate that is demolished is as per the construction permission.

11. If the construction of the compound wall and the gate carried out by the petitioner is in consonance with the construction permission, then certainly respondents could not have resorted to demolish the same by giving 24 hours notice to the petitioner. The 24 hours notice would be valid in case the construction is illegal or unauthorized. In the present case, as the construction carried out by the petitioner of the compound wall and the gate is authorized and in consonance with the construction permission granted by the Municipal Corporation, the respondents could not have demolished the same nor could have issued impugned notice to demolish the same. The said action of the Municipal Corporation is a high handed action

not supported by the provisions of the statute. If the Municipal Corporation wanted to redress the inconvenience of some other persons, then it could have resorted to some other methodology. The development plan also does not show the existence of road so as to contend that the construction permission was not in tune with the development plan. The said argument is also not available to the respondents.

12. In light of the above, the action of the respondents of demolishing the compound wall and the gate constructed by petitioner is erroneous.

13. There is also another facet to the case. The petitioner had filed the writ petition challenging the impugned notice on 06.06.2019. The matter was kept for hearing on 11.06.2019. According to the petitioner the copy of the petition was also served upon respondents. In the interregnum on or about 07.06.2019, the respondent no.2-Corporation demolished the construction. It had acted with the jet speed as against an authorized and legal construction, which normally it is expected to do in respect of the illegal construction.

14. In light of the above, we set aside the impugned notice. The petitioner is entitled to restore the position of the compound wall and the gate as per the construction permission.

15. As far as the loss and damages sustained by the petitioner is concerned, the petitioner may avail the remedy before the Civil Court as against the erring persons.

16. Writ Petition is disposed of. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/March-2020