

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

WRIT PETITION NO.6706 OF 2019

Laxman Govind Amrutwar

.. Petitioner

Versus

The State of Maharashtra and ors.

.. Respondents

Mr A.V. Patil (Indrale), Advocate for petitioner

Mr S.B. Yawalkar, Addl.G.P. for respondents no.1 and 2

Mr P.K. Lakhotiya, Advocate for respondent no.3

Mr B.G. Deshmukh, Advocate for respondent no.4

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 11th February 2020

ORAL ORDER :

1. The order passed by the Collector directing the petitioner to remove the unauthorized construction from plot Nos. 20-A and B is impugned.

2. According to the learned Counsel for the petitioner, the Collector does not have power to pass such an order.

3. The learned Counsel for respondent no.4 submits that the Collector has exercised power under Section 308 of the The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred as "the Act"). Under the said provision, all the powers that vest with the Municipal Council also vest with the Collector. If the Municipal Council is not performing its duty, the collector can pass the orders. Learned Counsel relies on the judgment of the learned Single Judge of this Court in case of **Shalikram Ganeshlal Jaiswal & anr. Vs. Director Municipal Council & Ors.**, reported in **2009 (2) Mh.L.J. 562**.

4. We have also heard the learned A.G.P.

5. Section 308 of the Act permits the Collector to pass any orders which, in the opinion of the collector, the execution of any order or resolution of a Council, or the doing of any thing which is about to be done or is being done by or on behalf of a Council, is causing or is likely to cause injury or annoyance to the public or is against public interest or to lead to a breach of the peace or is unlawful.

6. In the present case, the Municipal Council has not passed any order or resolution. According to the learned Counsel for respondent no.4, the respondent no.4 had approached the Municipal Council, however, the Municipal Council did not take action against the unauthorized construction. Then, respondent no.4 approached the Sub-Divisional Officer. The Sub-Divisional Officer directed the Municipal Council to take action. The Municipal Council did not take any action. Then he approached the Collector and the Collector exercised his powers under Section 308 of the Act and has rightly passed the orders.

7. The same would not be in consonance with Section 308 of the Act.

8. If the construction is unauthorized, then certainly the Municipal Council has powers to take action against unauthorized construction and if the Municipal Council is not taking any action, the respondent has also got the powers to approach the competent Civil Court or such of the competent Court. However, the Collector could not have exercised jurisdiction in respect of the private property on the ground that the construction is unauthorized, more particularly when the petitioner is also relying on construction permission. It is for the Municipal Council to take action in accordance with law or the respondent also has a right to approach the competent Court of law if his rights are affected.

9. In light of that, the impugned order is set aside. The parties are at liberty to take proceedings in accordance with law before the competent Court or forum. All contentions are kept open.

10. Writ Petition accordingly disposed of. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V. GANGAPURWALA, J.)

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