

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

2 WRIT PETITION NO.6054 OF 2020

SHAIKH QADEER SHAIKH HASAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
AND

WRIT PETITION NO. 3044 OF 2020
ISMAIL YUSUF KHAN PATHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
AND

WRIT PETITION NO. 6005 OF 2020
SAYYED HABIB SAYYED KAREEM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
AND

WRIT PETITION NO. 6056 OF 2020
SAYYED PASHAMIYA HUZURSAHAB
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
AND

WRIT PETITION (STAMP) NO. 9567 OF 2019
ABDUL SATTAR SAYYED SANDU
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. Saeed S. Shaikh, Advocate for the petitioners.
Mr. S.B.Yawalkar, A.G.P. for respondent Nos.1 to 4.
Mr. A.P. Bhandari, Advocate for respondent Nos. 5 to 7.

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CORAM : **RAVINDRA V. GHUGE &
AVINASH G. GHAROTE, JJ.**

DATE : 28-06-2021.

ORDER :

1. In all these petitions, the petitioners have put-forth identical prayer clause with regard to house properties, below Clause-B, which reads as under :

“B- By issuing writ of certiorari or any other writ, order or directions in the like nature, the Respondent Nos. 5 to 7 be directed as not to demolish the house/property/construction of the Petitioner bearing Plot No. 5 B-5, out of Survey No. 18802 situated at Silkmills Colony, Beed bypass, Aurangabad admeasuring 1443 Sq. Ft. (134.05 Sq. Mtr.) without following due procedure of Law and also file an undertaking to that effect before this Hon’ble Court”.

[property details are mentioned in each petition]

2. We have heard the learned Advocate for the petitioners, the learned A.G.P. for respondent Nos. 1 to 4 and Shri Bhandari, the learned Advocate on behalf of respondent Nos. 5, 6 and 7.

3. Since we noticed that identical petitions have been decided earlier by this Court in several cases, we requested Shri Bhandari, who normally represents the Aurangabad Municipal Corporation, to render his assistance to the Court in these matters. For the said purpose, we granted a pass-over to these matters which were called out post lunch session.

4. There is no dispute that the petitioners do not have a valid construction permission and their constructions are illegal in relation to the properties at issue. It is also undisputed that their constructions have now been demolished by the Corporation. As such, the only grievance of the petitioners that could be looked into in these petitions is that they apprehend that their properties at issue

are likely to be grabbed by the Corporation for expansion of road and that too without payment of any compensation.

5. Shri Bhandari, submits on the basis of an order dated 26th March 2019, in Writ Petition No.3614 of 2019 filed by Rajendra Pralhad Rathod vs State of Maharashtra and others and several other connected matters in which several similar orders have been passed on different dates, that the then Commissioner, Municipal Corporation, Aurangabad Shri Nipun Vinayak had entered an affidavit on 23rd March 2019 in Writ Petition No. 3637 of 2019.

Paragraph – 5 of the said affidavit reads as under :

“5. I say that possession of lands on which construction is / was standing is not taken by the answering respondent. For taking over possession, in case such contingency arises, Municipal Corporation Aurangabad will take appropriate action in accordance with the provisions of Maharashtra Regional and Town Planning Act, 1966, development control and Promotion Regulations (DCPR), as applicable to the area and the provisions of Maharashtra Municipal Corporation Act”.

6. In the light of the assurance of the Municipal Corporation in the above reproduced paragraph, this Court has dismissed several petitions refusing protection to the illegal structures erected by the petitioners. At the same time, by recording the statement made in paragraph-5 reproduced above, it was recorded that the Corporation would follow the due procedure of law if they intended to acquire the land of the petitioners.

7. In view of the above, all these petitions are dismissed to the extent of the protection sought by the petitioners as against their illegal constructions, which have already been demolished as on

date. To the extent of their apprehension that their properties are likely to be utilized by the Corporation without following the due process of law, we find that the assurance given by the Municipal Corporation to the High Court as is recorded in paragraph – 5 reproduced above, is sufficient and no further order is required to be passed since the interest of the rightful title holders of the properties has been protected.

8. Shri Bhandari assures the Court that those petitioners who have legal title to the properties at issue, need not be under any apprehension as the Corporation would follow the due procedure of law in the event of their properties being acquired.

9. Hence, all these petitions are disposed off.

(AVINASH G. GHAROTE)

(RAVINDRA V. GHUGE, J.)