

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

991 WRIT PETITION NO.13360 OF 2021

JYOTI TARACHAND CHAVAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. M. U. Shelke
AGP for Respondents State : Mr. K.N. Lokhande
...

**CORAM : S.V. GANGAPURWALA &
R.N. LADDHA, JJ.**
DATED : 03/12/2021.

PER COURT :

. The petitioner seeks direction against respondent Nos. 3 to 5 to act in pursuance of their order and to remove/demolish the illegal construction over the plot No. 54 in New Shanti Niketan Backward Housing Co-operative Society, Garkheda, Aurangabad.

2. Mr. Shelke, learned advocate submits that plot No. 54 is owned by the petitioner. On the said plot owned by the petitioner, the illegal construction has been made by the developer. The grandfather of the petitioner had entered into an agreement with the developer. After taking necessary permission, he was supposed to make construction, but the developer has partly constructed the building without seeking construction permission from the Municipal

Corporation. The learned counsel for the petitioner submits that upon complaint made by the petitioner, the Commissioner of Municipal Corporation had also issued notice to him to remove the construction and had also directed the authority to take necessary action within seven days. However, no action has been taken by the authority. The notice was also issued by the Municipal Corporation to the developer under section 53 (1) of the Maharashtra Municipal Corporation Act as yet no action has been taken. Mr. Shelke, learned counsel submits that the developer has constructed the ground floor and alienated to the other persons and on the first floor the petitioner's family is residing.

3. Their appears to be a dispute between the petitioner and the developer. Agreement seems to have been entered in to by the grandfather of the petitioner with the developer. Pursuant thereto it appears that the developer has made construction on plot No. 54 at New Shanti Niketan Backward Housing Co-operative Society, Garkheda, Aurangabad.

4. The dispute is a private dispute between the parties emanating from an agreement entered into by the petitioner's grandfather in favour of the developer. The parties are at liberty to get

the dispute settled before appropriate Court.

5. Mr. Shelke, learned advocate relied on the judgment of the Division Bench of this Court in the case of **Sandeep Sharad Chandra Thakur Vs. State of Maharashtra reported as 2013 (5) ALL MR 573** to submit that if no action is taken by the planning authority as against unauthorised and illegal construction, this Court can invoke its jurisdiction under Article 226 of Constitution of India.

6. In the case of **Sandeep Sharad Chandra Thakur** (*supra*) the matter was filed in public interest. The construction was not made on private property owned by the individual. If on a public property the illegal construction is made, that would cause nuisance, certainly the Court would invoke its jurisdiction under Article 226 of Constitution of India.

7. In the present matter, the private dispute exists between the petitioner and the alleged developer. Contractual agreement has been entered into between the grandfather of the petitioner and the alleged developer. Writ jurisdiction under Article 226 cannot be invoked for redressal of the private dispute. The petitioner has remedy

before the Civil Court or before the appropriate forum as may be permissible under the law. Moreover, the alleged developer who had made the construction is not party to the petition.

8. For the aforesaid reasons, we are not inclined to entertain the writ petition. The writ petition is disposed of. The petitioner may avail the remedy as may be permissible under law. In that event all contentions are kept open. No costs.

[R.N. LADDHA, J.]

[S.V. GANGAPURWALA, J.]

ssc/