

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14328 OF 2021

RUSHIKESH SHIVAJI AKOLKAR
VERSUS
THE COMMISSIONER AND OTHERS

...

Advocate for Petitioner : Mr. Shyam C. Arora
Advocate for Respondent No. 3 : Mr. D.P. Palodkar

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**CORAM : S. V. GANGAPURWALA AND
S. G. DIGE, JJ.**

DATE : 20th DECEMBER, 2021

PER COURT :-

1. Mr. Arora, learned counsel for petitioner submits that after raising objection by the petitioner, stay was granted to the construction permission of respondent No. 3 by the authority. Abruptly, without opportunity of hearing to the petitioner, the stay has been vacated and construction permission is restored. The same is illegal and violative of the principles of natural justice. Respondent No. 3 was directed to carryout the measurement. He did not carry out the same. Still the impugned order is passed without hearing the petitioner.

2. The learned counsel for petitioner submits that though in July 2021 stay was granted to the construction permission, however, under the impugned order dated 1st December, 2021 the stay has been vacated without hearing of the petitioner.

3. The objection of the petitioner appears to be that respondent No.3 has encroached upon his land and the aspect of encroachment will have to be considered by the Civil Court in appropriate proceedings. For the said purpose, measurement map would be required. The petitioner will have to prove the extent of encroachment, if any. The said would be within realm of the Civil Court.

4. It appears that earlier stay was granted to the construction permission and under the impugned order the same has been vacated.

5. Learned counsel for respondent No. 3 submits that in July 2021, objection of the petitioner was rejected. A reliance is placed on the judgment of the Division Bench of this Court in the case of ***Shree Sai Reality Through Partner Shri Sandeep Dindyal Aagarval and others Versus State of Maharashtra and others*** delivered at Principal Seat, ***on July, 15, 2019 in writ petition No. 7485 of 2019.***

6. Be that as it may, we are not entertaining the matter on merits. If construction is carried out by respondent No. 3 on the land of petitioner, then petitioner has avenue open to raise dispute before the Civil Court. Parties are at liberty to take steps. In that event, all the contentions are kept open.

7. Writ petition stands disposed of. No costs.

(S.G. DIGE)
JUDGE

(S.V. GANGAPURWALA)
JUDGE