

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1097 OF 2020

Rais Mohammad Tahasildar Chaudhary & Ors. ... Petitioners

Versus

Sham Narayan Shevale and Ors. ... Respondents

Mr. Subhash Jha i/b Law Global for the Petitioners.

Mr. Sandip Mishra, for Respondent Nos. 1 to 5.

Mr. Akash Warang, for Respondent Nos. 7 to 9.

Mr. Jagdish G. Aradwad (Reddy), for Respondent-Corporation.

Mr. R.M. Shinde, AGP, for Respondent-State.

**CORAM : A. A. SAYED &
 V. G. BISHT, JJ**

DATED : 30th JULY, 2021

P.C.:

The Petition has been filed seeking the following reliefs:

(a) that this Hon'ble Court may be pleased to issue a writ of mandamus and/or any other appropriate writ, order and/or directions in exercise of the powers vested with this Hon'ble Court under Article 226 of the Constitution of India and direct the Respondent No. 11 to forthwith cause demolition of the structures which are in the nature of godowns/rooms of permanent nature constructed by the Respondent Nos. 7 to 9 without seeking permission of the Municipal Corporation in flagrant violation of the provisions contained under Maharashtra Municipal Corporation Act as well as MRTP Act on a plot of agricultural land admeasuring 46R-7P, Survey No. 177, Hissa No. 4, situated at village Shil, Talati Saja Shil, Tal & Dist. Thane which are per se illegal;
(b) that this Hon'ble Court may be pleased to direct the Respondent Nos. 10 to 11 to take appropriate action against the erring personnel of Thane Municipal Corporation as well as Daighar Police station on the

administrative side for the massive illegal construction carried out by the Respondent Nos. 7 to 9 and which are still under construction on agricultural land admeasuring 46R-7P, Survey No. 177, Hissa No. 4, situated at Village Shil, Talati Saja Shil Tal. & Dist. Thane.

2. The Petitioners claim to be the owners of agricultural land admeasuring 46R-7P, Survey No. 177, Hissa No. 4, situated at village Shil, Talati Saja Shil, Tal & Dist. Thane ('the said property' for short).
3. An Affidavit-in-Reply has been filed by the Respondent-Corporation. Paragraph Nos. 6 to 8 of the said Affidavit-in-Reply reads as follows:

6. I say that after the notices were issued by this Hon'ble Court on 12.02.2020 in the above petition, the office of the answering Respondent took necessary action of demolition of the said unauthorized and illegal structure on the subject property i.e. Suvey No. 117, Hissa No. 4, admeasuring 30 X 10 sq.ft on 25.02.2020 and also on 27.02.2020. Even to that effect detailed report has been prepared by the Designated Officer of the TMC. Hereto annexed and marked as Exhibit A is a copy of the said report of the designated officer of the TMC.

7. I say that even the office of the answering Respondent has taken photographs after demolition of the said unauthorized construction. Hereto annexed and marked as Exhibit B are the photographs of the property after demolition carried out by the TMC.

8. I say that in view of the above facts which clearly show that the office of the answering Respondent has already taken action against the unauthorized and illegal construction made by the Respondent No. 7 to 9 on the subject property by carrying out

demolition, the present petition filed by the Petitioner has become infructuous and the same is therefore liable to be disposed of it having become infructuous.

4. There is no Affidavit-in-Rejoinder filed by the Petitioners disputing the aforesaid facts. We find that the Respondent-Corporation has taken necessary steps for demolition of the unauthorized constructions on the said property. According to the Petitioners, the Respondent Nos. 7 to 9, who are wrongly claiming to be the owners of the said property, have carried unauthorized constructions. In the Affidavit-in-Reply filed by the Respondent No. 7, however, it is pointed out that the Respondent Nos. 7 to 9 have sold the said property to the various purchasers as mentioned in Table annexed as Annexure A to the said Affidavit-in-Reply. The said purchasers have not been made party Respondent in the present Petition. There are interse disputes between the Petitioners and the Respondent No. 7 to 9 and the Petitioners have also filed a suit in the Civil Court at Thane. There are several disputed questions of facts involved.

5. Inasmuch as the Petitioners claim to be the owners of the said property, it is always open for them to file a suit in respect of the alleged unauthorized construction to protect the said property.

6. In our view, this is not a fit case warranting the exercise of the extraordinary writ jurisdiction of this Court and entertain the Petition. Leaving the remedy of the Petitioners to file a suit open, we dismiss the Petition.

(V. G. BISHT, J.)

(A. A. SAYED, J.)