

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

910 WRIT PETITION NO.586 OF 2022

SUJATA BHAGWANRAO WAGHMARE THROUGH GPA HOLDER AND
SONOF PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners :Mr. Ghatol Patil Shahaji B.

AGP for Respondents State: Mr. S. B. Pulkundwar

CORAM : A.S. GADKARI & S. G. MEHARE, JJ.

DATE : 13th January, 2022

ORDER:

1. By the present petition, the petitioner(original Plaintiff in RCS No.133/2017) inter alia is calling upon this Court to execute the Order dated 15.11.2017 passed in RCS No.133/2017 by the Second Joint Civil Judge, Senior Division, Nanded. By the said order, the learned trial court has granted injunction in favour of the petitioner against the respondent Corporation. The said injunction is in force and is not either modified or varied by any court till today.

2. In this background, it is the contention of the petitioner that respondent No.3 has issued a notice dated 26.21.2021 which he allegedly received on 06.01.2022. By the said notice, respondent no.3 has directed the petitioner to remove unauthorized construction carried out by her and as has been more specifically mentioned in the said notice dated 26.11.2022.

Record indicates that, the petitioner thereafter submitted a letter dated 07.01.2022 to respondent No.3 pointing out the injunction granted by Civil Court in his favour. It is the further contention of the petitioner that, despite the said letter, the Officers of the Corporation are intending to demolish her structure by violating the Orders of Civil Court dated 15.11.2017.

3. Order 39 Rule 2-A of the Code of Civil Procedure (for short 'CPC') specifically provides remedy in case of breach of Order passed under Order 39 Rule 1 of CPC. We fail to understand, instead of approaching the concerned Court who had granted injunction in favour of the petitioner, which is situated at Nanded itself, why the petitioner has rushed to this Court by filing a petition under Article 226 of the Constitution of India for execution of the order dated 15.11.2017 passed by the Trial Court. It appears to us that the petitioner has been ill advised to file the present petition.

4. In view of the above, petition is dismissed in limine.

(S. G. MEHARE, J.)

(A.S. GADKARI, J.)

JPC