

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

WRIT PETITION NO.3697 OF 2022

**PRADIP NIVRUTINATH KULKARNI
VERSUS
THE JALGAON CITY MUNICIPAL CORPORATION AND OTHERS**

...
Advocate for Petitioner : Mr. T.K. Sant h/f. Mr. Kishor Chandrakant Sant

...

CORAM : MANGESH S. PATIL, J.

DATE : 10.06.2022

PER COURT :

I had heard the learned advocate Mr. K.C. Sant for the petitioner yesterday. When it was expressed that this Court was not inclined to grant any relief, he had sought time for a day to take instructions. Mr. T.K. Sant holding for Mr. K.C. Sant solicits the order today.

2. The petitioner is the original plaintiff who has filed a suit against the respondents for various reliefs pursuant to the order passed by a division bench of this Court in the Public Interest Litigation No.71/2013 at the Principal Seat. The petitioner is seeking to exercise a right under Section 63 of the Maharashtra Municipal Corporation Act, 1949 against the respondent Corporation.

3. While the suit is still at a preliminary stage, the petitioner submitted an application (Exhibit-21) purportedly under Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 and called upon the trial court to

undertake an inspection of the roads in Jalgaon City in presence of the parties to the suit and with the assistance of three experts. By the order under challenge, the application has been rejected.

4. True it is that in an appropriate case a trial court does have a power under Order XXXIX Rule 7 of the Code of Civil Procedure to issue directions in tune with the provision including undertaking a spot inspection. Conspicuously, the petitioner is seeking to enforce the order passed in a Public Interest Litigation, albeit, he has a power under the aforementioned provision of the Maharashtra Municipal Corporation Act, 1949. The question here is as to the propriety and relevance of the trial court exercising the power.

5. Going by the recitals in the application (Exhibit-21), it has been vaguely averred that the petitioner has been keen to see to it that the directions issued by this Court in the Public Interest Litigation are implemented which are primarily concerning the condition of the roads in the City. However, once having decided to take over the burden to enforce whatever rights the petitioner has, it is expected of him to collect the material/evidence to demonstrate that he is indeed entitled to the relief claimed in the suit.

6. Apparently, the petitioner is intending that even the Court should become a party to the suit by visiting the spot and ascertaining condition of the roads. The trial court has rightly expressed that he will have to and he can establish these facts independently as well. When for the

reasons mentioned in the order, the trial court has refused to exercise the power under Order XXXIX Rule 7 of the Code of Civil Procedure for the plausible reasons, by no stretch of imagination the order could be said to be either perverse, arbitrary or capricious so that this Court can cause any interference and substitute its own discretion in place of the discretion exercised by the trial court judiciously.

7. The Writ Petition is dismissed.

(MANGESH S. PATIL, J.)

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