

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

21 WRIT PETITION NO. 558 OF 2021

OMER FAROOQUI MUSHTAQUE FAROOQUI AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Sushant V. Dixit
AGP for Respondent No. 1: Ms. R.P. Gaur
Advocate for Respondent No. 2 : Mr. G.K. Naik Thigale
Advocate for Respondent Nos. 3 to 7 : Mr. Shaikh Mazhar A. Jahagirdar

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**CORAM : RAVINDRA V. GHUGE AND
S. G. DIGE, JJ.**

DATE : 4th APRIL, 2022

PER COURT :-

1. On 14-01-2021 this Court (Coram : S.V. Gangapurwala and Shrikant D. Kulkarni, JJ.) had passed following order:

“ The learned counsel for the petitioners submits that representations are given by the petitioners to stop the illegal construction on the open space at the behest of respondent Nos. 3 to 7, but no cognizance has been taken by the Municipal Council.

2. Issue notice to respondents, returnable on 11-03-2021. The learned A.G.P waives notice for the respondent No. 1.”

2. The learned Advocate representing respondent Nos. 3 to 7 places before us an order passed by this Court on 17-02-2022 in Public Interest

Litigation No. 149 of 2016, filed by Mukram Jan Gul Mohamad Khan Pathan (Tadvi) versus the State of Maharashtra and others, which is as follows:

“1. In terms of the order dated 21.01.2021 passed by this Court in this Public Interest Litigation Petition, the Chief Officer, Municipal Council, Beed has filed an affidavit. We have read the said affidavit. It is revealed that due inspection was carried out for the purpose of measurement by the Chief Officer with the Town Planning Officer on 22-01-2021. It is stated in paragraph 5 of the said affidavit as follows :

“5. The deponent further submits that, the part of the said construction is found on open space to the extent of 69.40 sq. mtr. However, the area of 157.25 sq. mtrs is found on the layout Road itself. The deponent states and submits that, the deponent has already cancelled the building permission and FIR is also lodged against that delinquent developers/applicants. The violations of the erstwhile building permission are very gross and serious in nature. The deponent undertakes to take all statutory actions in accordance with law and subject to various court orders operating in the field, within stipulated period of three months. The deponent further states that, the deponent is duty bound to comply with further directions of the Hon’ble Court in the matter.”

2. In view of the aforesaid contents, it would have been proper to direct the Municipal Council to proceed in accordance with law. However, we are informed that a writ petition bearing Writ Petition No. 5363 of 2017 at the

instance of the respondent No. 4 viz Omer Farouqi Mustaq Farouqi, is pending before this Court, with a subsisting interim order restraining the respondents from taking any adverse action.

3. Since, prima facie, the respondent No. 4 has been found to indulge in acts amounting to violation of the building permission, this Public Interest Litigation petition ought to be heard along with Writ Petition No. 5363 of 2017 and disposed of as expeditiously as possible. We accordingly direct that this Public Interest Litigation petition be tagged with Writ Petition No. 5363 of 2017 and placed before the appropriate Bench, subject to appropriate order being obtained from the Chief Justice on the administrative side.”

3. By this petition, the petitioners have putforth prayer clauses “A”, “B”, “C” and “D” as under:

“(A) For writ of mandamus order or direction in the nature of mandamus directing respondent No. 2 to stop unauthorized development, remove of unauthorized development, remove of unauthorized development already made on open space, situated in Survey No. 27-A, Taraf Balguzar, Beed.

(B) For writ of mandamus order or direction in the nature of mandamus directing respondent No.2 to take appropriate action against respondents Nos. 3 to 7 and other persons involved in unauthorized development on open space, situated in survey No. 27-A, Taraf Balguzar, Beed as per provisions of law.

(C) Pending hearing and the final disposal of the present writ petition, respondent No. 2 be directed by mandatory injunction to stop illegal and unauthorized development and construction on open space situated in Survey No. 27-A, Taraf Balguzar, Beed.

(D) Pending hearing and the final disposal of the present writ petition, respondents Nos. 3 to 7, their servants, or anybody claiming through them be restrained by an order of injunction from constructing, developing or changing nature of open space adm. 1840 sq. mtrs. Situated in Survey No. 27-a, Taraf, Balguzar Beed in any manner whatsoever.”

4. The learned Advocate for the respondent - Municipal Council submits that 10% of the open space can be utilized for any activity, including construction of a structure. The Municipal Council has given construction permission to Nusarat Bahuuddeshiya Seva Bhavi Sanstha Beed, on 19-07-2020.

5. Considering the above and in the light of the facts, several disputed questions are being raised and the Municipal Council contends that it has granted permission to the Sanstha for carrying out the construction. We do not find that such disputed issues could be dealt with by this Court. This petition, is therefore, disposed off.

6. Since the petitioners desire to pursue their representation dated 24-06-2020 addressed to the Chief Officer, Municipal Council, Beed, we direct the Chief Officer to consider the said representation and pass an appropriate reasoned order in the light of the grievance set out by the petitioners.

7. We make it clear that we have not expressed any view or opinion about merits of the case and the Chief Officer shall decide the same on it's own merits, by considering the relevant laws applicable, in view of it's stand that the concerned Sanstha has been legally allotted the portion of the said land.

(S.G. DIGE)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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