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

27 WRIT PETITION NO.6950 OF 2021

MADHAV SHESHRAO PAWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. S.V. Suryawanshi, Advocate for petitioner;
Mr. K.N. Lokhande, A.G.P. for respondent nos.1 to 3;
Mr. R.S. Shinde, Advocate for respondent no.4

**CORAM : A.S. GADKARI
AND
S. G. MEHARE, JJ.**

DATE : 24th January, 2022

P.C.

1. By the present petition, the petitioner has prayed for following reliefs:-

“(A) That this Hon’ble Court may be pleased to issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Writ of Mandamus or any other appropriate Writ, Order or Direction under Article-226 of the Constitution of India directing Respondent Nos.1 to 3 to issue necessary direction to Respondent No.4 to follow

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up the due process of law more particularly prescribed in LA Act and MC Act while carrying out the improvement work of the Pandan road as well as Drainage Line.

(B) This Hon'ble Court may be pleased to issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Writ of Mandamus or any other appropriate Writ, Order or Direction under Article 226 of the Constitution of India, directing Respondent No.1, the State of Maharashtra and / or Respondent Nos.2 and 3 to initiate appropriate action against the concerned officers of Respondent No.4, who are responsible for allowing the improvement work of the Pandan Road as well as Drainage Line without following due process of law."

2. Record indicates that, the petitioner had filed Regular Civil Suit No.212 of 2020 in the Court of Civil Judge Senior Division, Bhokar, District Nanded for various reliefs including a prayer for injunction, to restrain the respondents herein from interfering into his possession over the land

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admeasuring 270 Sq. Mtrs. on Bhokar-Borgaon pandan in Taluka Bhokar, District Nanded. Petitioner had also filed application below Exh.6 under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure for injunction against the respondents and in particular respondent no.4 herein. The Trial Court by its Order dated 22.12.2020 was pleased to reject the said application by observing that, though the petitioner had contended that the said pandan road was of 15 ft. width, the documents on record reveal that, it was and is in fact, 10 Mtrs. wide, i.e. 33 ft. wide pandan road. Respondent no.4 Municipal Council has submitted before the Trial Court that the said respondent was going to re-construct the said road of an earlier width of area only, i.e. 33 ft. only and therefore the question of acquiring additional space for re-construction of said pandan road did not arise. The Trial Court has recorded a categorical finding that, prima facie it appeared to it that, respondent no.4 herein was not encroaching over the suit property of the petitioner. That on the contrary, it was found in Regular Civil Suit No.80 of 2012 which was filed by the persons from the said vicinity against the petitioner and other persons, that the petitioner

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had attempted to encroach upon the said road and therefore the case of the petitioner herein was shrouded with the clouds of doubt. It is thus clear that, after not getting favourable Order from the Civil Court and rejection of his application filed below Exh.6 as noted above, the petitioner as and by way of an afterthought has filed the present petition for same and similar reliefs. It is a matter of fact on record that said Regular Civil Suit No.212 of 2020 filed by the petitioner is still pending for final adjudication.

3. In view of the above, we find that the present petition is filed only to pressurize the respondents to succumb to the demands of the petitioner and nothing else.

4. Petition being *de hors* of merits is accordingly dismissed.

(S. G. MEHARE, J.)

(A.S. GADKARI, J.)

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