

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7782 OF 2019

SHARIF HAJI ABDUL MEMON
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Mr. Shaikh Mazhar A. Jahagirdar
AGP for Respondent Nos. 1 to 3 : Mrs. V.N. Patil – Jadhav
Advocate for Respondent No. 4 : Mr. V.R. Dhorde

**CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, JJ.
DATE : 8 JULY, 2022.**

ORDER :-

The petitioner by this petition is seeking direction to the respondent Nos. 3 and 4 to initiate action for removal of encroachment of a hand cart in front of the medical shop of the petitioner under section 179 and 180 of the Maharashtra Municipalities, Nagar Panchayats and Industrial Townships Act, 1965.

2. The respondent – Municipal Council has filed an affidavit in reply dated 18.1.2022 stating that the encroachment has been removed in respect of which certain photographs and record of removal of encroachment submitted by the Anti Encroachment Division of the Municipal Council have been produced on record. It is, therefore, contended that the grievance of the petitioner already

stands redressed.

3. The learned counsel for the petitioner, however, submitted on the basis of certain photographs obtained in July, 2022 showing that the hand cart “Ruchira Omelet-Pav” has again re-surfaced in front of the medical store of the petitioner.

4. We find that the petition involves disputed questions of fact and at any rate, would require continuous superintendence and monitoring which cannot be done in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. However, we expect the authorities to exercise their statutory powers in the event such encroachments are noticed on the public land/space/roads and take appropriate action for removal of the same. There are instances where such encroachments are removed and may re-surface after some time. Here also, it is for the statutory/local authorities to ensure that the public spaces are left open and accessible and such encroachments are removed from it. We also find that if there is any lapse on the part of the authorities the petitioner may avail of any other remedy, including the remedy before the civil court for removal of private/public nuisance. Subject to this, we decline to entertain the petition which is accordingly disposed of.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.

grt/-