

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.10872 OF 2022**

MOHAMMAD NURDDIN MOHAMMAD FASIYODDIN AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND
OTHERS

...

Mr. Shailesh P. Bhrahme, Advocate for the
Petitioners.

Mr. S. G. Karlekar, AGP for Respondents-State.

Mr. S. B. Deshpande, Advocate for Respondent Nos.2
and 3.

...

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATED : 18th OCTOBER, 2022.

PER COURT:-

1. This matter was heard for some time in the
light of prayer Clauses 'C', 'D' and 'E', which
read as under:

"C. This Hon'ble Court may be pleased to
quash and set aside the notice dated
13.10.2022 which is at Exhibit-'K' issued by
the respondent no.3.

D. This Hon'ble Court may be pleased to
restrained respondent no.2, 3 and any officers
subordinate to them from initiating any action
of removal of alleged encroachment or removal
of unauthorized constructions of CTS No.14814/
A belonging to the petitioners.

E. Pending hearing and final disposal of
this writ petition, the effect, operation and
execution of impugned notice dated 13.10.2022
issued by the respondent no.3 which is at
Exhibit-'K' be stayed."

2. The learned counsel for the petitioners sought a pass over.

3. After the matter was called out, it is submitted that since there was no permission for installing the tin sheets fencing to protect the property of the petitioners in CTS No.14814/A, that the fencing will be removed within ten days from today. The petitioners would voluntarily remove the fencing at their own cost. Thereafter, they would independently apply to the Municipal Corporation for permission to erect the fencing so as to protect their own property.

4. The learned advocate for the Corporation submits that this petition is restricted only to the Notice dated 13.10.2022 issued by the Corporation under Section 478(2) of the Maharashtra Municipal Corporation Act, 1949. Once the fencing is removed, the issue is closed. If the petitioners independently apply for a permission to erect a fencing, the Corporation would consider the said request on its own merits. The Corporation reserves its right to inquire into the claim of th

petitioners that there are two properties with CTS Nos.14814/A and 15854/A.

5. The learned advocate for the petitioners submits that, earlier, a reply was tendered on 03.10.2022. If the Corporation desires, they may take a hearing on the said notice and the reply and the petitioners would represent themselves in such a hearing and assist the Corporation.

6. This petition is disposed off by recording the statement made to the Court, in paragraph 3. The petitioners would not resile from the statement made and the Corporation shall follow the due procedure laid down in law, if the petitioners seek a fresh permission for erecting a fencing around CTS No.14814/A. So also, a hearing on the notice dated 26.09.2022, that was issued under Section 260 of the Maharashtra Municipal Corporation Act, may be conducted by the Municipal Corporation by the following due procedure laid down in law. Needless to state, all the stakeholders concerned with the said property would be granted opportunity of hearing.

7. After the fencing is removed by the petitioners within 10 days, as assured to the Court the impugned notice dated 13.10.2022, which is restricted to the fencing, shall lose its efficacy. Needless to state, the Corporation is at liberty to undertake the inquire if there are two properties with the CTS Nos.14814/A and 15854/A.

(SANJAY A. DESHMUKH)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE