

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 734 OF 2022

Ajim Maniyar

...Petitioner

V/s.

The State of Maharashtra & Ors.

...Respondents

Mr. Amit Karve, for the Petitioner.

Mr. V. S. Gokhale, B Panel Counsel, A.G.P. for the Respondent /
State.

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**CORAM : PRASANNA B. VARALE AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 15 JUNE 2022

P.C.

. Not on board. Taken on board.

2. The learned counsel for the Petitioner has claimed urgency in the petition. The learned counsel for the Petitioner submitted that it is the grievance of the Petitioner that inspite of an order passed by Respondent No.5 Tahsildar Murbad, the Respondent No.6 is indulged in an act of illegal construction over certain land.

3. We have gone through the material placed on record. The Petitioner himself has placed on record the documents at Exh.A indicating that certain construction was carried out at the instance of one Mr. Sujit Ganpat Thole on an area of land situated in Survey No.106/1 and this construction was carried out without obtaining necessary permission namely non agricultural permission as well as necessary building permission from Gram Panchayat.

4. In the said communication forwarded to the Collector, Thane, the Petitioner himself states that there was a dispute about the partnership and this dispute led the parties to file civil suit and Civil Suit No.45/2019 is pending in the Civil Court, Murbad. Then order passed by the Tahsildar and the Executive Magistrate, Murbad dated 1 October 2020 is placed on record.

5. The caption of the order indicates that order was passed by the Competent Authority exercising its power under Section 45 of the Maharashtra Land Revenue Code, 1966, for grant of change of user, subject to certain conditions. Now interestingly, this order was subjected to an appeal preferred by the Petitioner before the Sub Divisional Officer, Murbad Sub Division and the appeal was partly allowed. Without referring to the details of the order, it can safely be said that the Sub Divisional Officer subject to certain conditions permitted to change of user. It seems that again the Petitioner approached the Collector by submitting the

complaint application dated 1 January 2021 reiterating his grievance. On receipt of the complaint application, the office of the Collector called for the report through Sub Divisional Officer, Kalyan. It seems that certain documents were submitted before the Tahsildar. The Tahsildar on the backdrop of pendency of the proceedings in the nature of complaint application submitted to the office of the Collector by the Petitioner, directed the Circle Officer to take appropriate steps for stopping the construction activities. The Tahsildar also informed the Circle Officer to submit an action taken report. It is the grievance of the Petitioner that inspite of a communication issued by the office of Tahsildar, the activity of construction is still carrying out. On these submissions, the Petition is filed with following principal prayer.

Prayer b) That, the Hon'ble Court by issuance of any appropriate writ be pleased to stay the illegal construction still going on the said land without the approval and permission.

6. In view of the material placed on record and referred by us in the above part of our order, we are of the opinion that the petition cannot be entertained for the prayers sought for in the Petition. At the cost of repetition, we may state that the documents placed on record makes a reference to the civil suit, the order passed by the Competent Authority in the matter of change of user and the complaint application submitted by the

Petitioner to the Collector.

7. Thus, firstly, there are disputed question of facts involved in the petition. Secondly, the communication from the office of the Tahsildar clearly indicates that in view of complaint application filed by the Petitioner to the Collector, the Tahsildar sought for the verification report and the action taken report. The Tahsildar by the very communication directed the Circle Officer to take appropriate action for stopping the activity of construction. It is very clear from the perusal of the communication of Tahsildar that this direction is an interim direction subject to the final outcome of the complaint application submitted to the Collector. Now, any direction by this writ Court for implementation of interim direction to the Tahsildar acting this Court as if an Executing Officer or Implementing Authority, is not expected exercise of the powers of the writ Court. Thirdly, the Petitioner had approached the Collector. At this stage, the learned counsel for the Petitioner submits that recently, the Petitioner had approached the Collector requesting the Collector to initiate action on his grievance.

8. Now, considering this Application of the Petitioner, we deem it appropriate to dispose of the petition with only direction to the District Collector, Thane to consider the said application dated 23 March 2022 and pass appropriate orders. We further expressed our displeasure on the tenor of application submitted

by the Petitioner to the Collector. There cannot be any dispute that the citizen is entitled to approach the Government Authorities by raising their respective grievance and the Government Authorities are in turn duty bound to consider these grievances and to pass appropriate orders. But while availing such remedy, the citizen is not expected to exert threat on the Government officials and in the communication dated 23 March 2022, the application concludes with a statement that majority section of certain community members will proceed on indefinite fasting to death. We expect that the parties while approaching the Authority shall not extend such threats only to bring some pressure on the Authority. Accordingly, with these observations, the petition is disposed of.

9. Authenticated copy of the order be supplied to the counsel for the Petitioner as well as to the learned A.G.P. Learned A.G.P. to communicate the order to the Collector Thane.

(SHRIKANT D. KULKARNI, J.) (PRASANNA B. VARALE, J.)