

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

Digitally signed by
VASANT
ANANDRAO IDHOL
Date: 2022.11.24
18:29:56 +0530

WRIT PETITION NO.14384 OF 2022

Afsar Yunus Shaikh & Ors.

...Petitioners

V/s.

State of Maharashtra & Ors.

...Respondents

Mr.Sandeep Mishra i/b Mr.Alok Kumar D. Mishra for the Petitioners.

Mr.Vasant S. Gokhale, "B" Panel Counsel for the State – Respondent
Nos.1 to 3.

CORAM : R.D. DHANUKA &

S.G. DIGE, JJ.

DATE : 23RD NOVEMBER, 2022.

P.C. :-

1. The short grievance of the petitioners is that without passing any order on the notice issued under section 50(3) of the Maharashtra Land Revenue Code, 1966 (for short the said "MLR Code"), the respondent no.2 has carried out demolition of structures of the petitioners illegally. Mr.Mishra, learned counsel for the petitioners states that if any order would have been passed by the Deputy Collector, the petitioners would have a right of filing an appeal in accordance with the provisions of the MLR Code including the right of filing the proceedings before the Civil Court within a period of 6 months from the date of the final order.

2. Statement made by the petitioners that no such order as contemplated under section 50(4) of the MLR Code has been passed by the respondent no.2 is accepted.

3. We are not inclined to accept the submission made by the learned counsel for the petitioners that any order was contemplated under section 50(4) of the MLR Code on such notice. A perusal of the said provision clearly indicates that section 50(4) of the MLR Code empowers the Collector to pass an order for payment of penalty or fine at the discretion of the Collector. In this case the Collector has not exercised any such power under section 50(4) of the MLR Code for levy of penalty or fine though the petitioners did not remove the offending structures in pursuance of the notice issued under section 50(3) of the MLR Code.

4. Learned counsel for the petitioners admitted before this Court that the said notice annexed at Exhibit "E" to the petition was pasted on the offending structures on 5th November, 2022 and the offending structures have been substantially demolished on 15th November, 2022 as prescribed in the said notice. Though it is the case of the petitioners across the bar that the petitioners had carried out the construction of the offending structures 10 years ago, learned counsel for the petitioners fairly agreed that his clients are not in a position to produce any permission to show that the offending

structures were constructed after obtaining prior sanction of the Municipal Corporation or that the said structures were existing since last 10 years.

5. We do not find any infirmity in the action taken by the respondents in carrying out demolition of the offending structures. The structures were clearly unauthorized and are thus rightly demolished. The respondents are directed to demolish the remaining structures within one week from today.

6. The writ petition is dismissed. There shall be no order as to costs.

(S.G. DIGE, J.)

(R.D. DHANUKA, J.)