

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 7403/2022

Indumati Shankar Raut and anr. .vs. Chief Executive Officer, Municipal Council,
Deulgaon Raja, Dist. Buldhana.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N. M. Kolhe, Advocate for petitioners.

CORAM : A. S. CHANDURKAR & ANIL L. PANSARE, JJ.
DATE : 30.11.2022

The petitioner has challenged notice dated 23.11.2022 issued by the Chief Officer, Municipal Council, Deulgaon Raja, calling upon the petitioners to remove the alleged encroachment till 29.11.2022. It has been further stated that on failure to do so, the said encroachment would be removed by today.

It is seen that the petitioners have challenged the notice under Section 53 of the Maharashtra Regional and Town Planning Act, 1966, dated 19.07.2022 by filing Regular Civil Suit No.91/2022. The application for temporary injunction came to be rejected on 18.11.2022. Pursuant thereto, on 23.11.2022, the impugned notice calling upon the petitioners to remove the encroachment has been issued.

We find that since the petitioners have already approached the civil court by raising challenge to

the impugned notice it would be necessary for them to pursue that remedy.

We are therefore not inclined to entertain the writ petition. It is however seen that the impugned notice states that the alleged encroachment would be removed by today. With a view to permit the petitioners to avail of the remedy of appeal against the order passed by the trial court, we are inclined to grant time of three days to the petitioners so that they can prefer an appeal against the said order.

Hence, if the encroachment has not been removed by 01:00 pm today, the same shall not be removed till 03.12.2022. Within the aforesaid time, the petitioners are free to approach the appellate court to challenge the order passed by the trial court. It is clarified that this court has not examined the merits of the challenge and the appellate court shall decide the proceedings on their own merits.

This direction shall cease to operate at the end of 03.12.2022 and the Municipal Council, Deulgaon Raja, is free to act in accordance with the rules thereafter.

The writ petition is disposed of. No order as to costs.

(Anil L. Pansare, J.)

(A. S. Chandurkar, J.)

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Digitally signed by YOGESH
ARVIND KAHALE
Signing Date: 30.11.2022
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