

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.56 OF 2023

**DINKAR SHANKARRAO PATIL AND OTHERS
VERSUS
THE COLLECTOR OSMANABAD AND ANOTHER**

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Mr. V. D. Salunke, Advocate for petitioners

Mr. A. S. Shinde, AGP for respondent No.1

Mr. Sudhir K. Chavan, Advocate for respondent No.2

Mr. P. S. Dighe a/w Mr. V. R. Dhorde, Advocates for Dr. Sheshrao
Shankarrao Patil

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**CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**

DATE : 04.01.2023

PER COURT :-

Leave is granted to correct the nomenclature of
respondent No.2. Amendment be carried out forthwith.

2. Heard the learned advocate Mr. Salunke, the learned
AGP as also Mr. Chavan, who suo-moto appears for respondent
No.2. We have also heard Mr. P. S. Dighe along with Mr. V. R.
Dhorde for one Dr. Sheshrao Shankarrao Patil.

3. The petitioners are primarily aggrieved by the order passed by the Collector on 22.11.2022 directing the respondent No.2 to implement and execute his decision purportedly taken under Section 52A of the Maharashtra Regional and Town Planning (M.R.T.P) Act, 1966.

4. Learned advocate Mr. Salunke submits that the petitioners were never served with any notice or even the order passed under Section 52A, which is stated to be of 05.02.2021. He also submits that the Collector even did not issue any notice to the petitioners before passing the impugned order. It is in violation of principles of natural justice and the order is *non est*.

5. The learned AGP submits that though the impugned order does not specifically refer to, apparently the Collector has exercised the powers under Section 55 of the M.R.T.P Act.

6. Mr. P. S. Dighe along with Mr. V. R. Dhorde, learned Advocates submit that though the Collector has passed the impugned order on a complaint of his client, he has not been made party to this petition.

7. *Ex-facie*, the impugned order does not mention about the Collector having followed the principles of natural justice. It does not mention about any notice having been issued to the petitioners or any opportunity of being heard having been extended to them. There are certain other issues involved by an order passed under the provisions of the Maharashtra Town Planning (Compounded Structures) Rules, 2017 framed under Section 158(1) of the M.R.T.P. Act, the petitioners' alleged illegal construction has been compounded by receiving money, but the order is sought to be recalled. We need not undertake the scrutiny in that respect on merits at this juncture.

8. We are only concerned and inclined to interfere, since the Collector has passed the order in purported exercise of the powers under Section 55 of the M.R.T.P. Act., *prima facie* without following the principles of natural justice.

9. We, therefore, without expressing anything on merits of the rival claims and disputed questions, quash and set aside the order dated 22.11.2022 and direct the parties to go back before the Collector who shall now extend the opportunity of being heard to the

petitioners as also the other stakeholders/complainants and pass fresh order.

10. All the issues including the powers and jurisdiction of the Collector under Section 55 of the M.R.T.P. Act or any other provisions of the law, are kept open.

11. The writ petition is disposed of.

[S. G. CHAPALGAONKAR, J.]

[MANGESH S. PATIL, J.]

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