

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

WRIT PETITION NO.485 OF 2022

GRAM SANSAD KARYALAY, PALKHED, THROUGH IT'S
SARPANCH ANIL GORAKNATH PATIL WANI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. S.S. Thombre
AGP for Respondents 1,2 : Mr. S.G.Sangle
Advocate for Respondents 3-6 : Mr. V. M. Vibhute
Advocate for Respondent 8 : Mr. V.M. Vibhute

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CORAM : NITIN W. SAMBRE & S. G. CHAPALGAONKAR, JJ.

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Reserved on : March 28, 2023
Pronounced on : April 06, 2023

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ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The village Panchayat at Palkhed, Tq. Vaijapur, District Aurangabad through its Sarpanch approached this Court under Article 226 of the Constitution of India seeking directions against respondent nos. 3 to 6 to stop the construction work of Sanskrutik Sabhagraha at land gat no.502. The petitioner further seeks directions against respondent nos.3 to 6 to complete the construction work of Sanskrutik Sabhagraha as per estimate, administrative sanction in the premises of Shri Kshetra Pareshwar Mandir (Temple) at village Palkhed. Petitioner further seek direction against respondent no.3 /
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Chief Executive Officer to take appropriate action against respondent no.8/contractor for illegally carrying out the construction work at the site different than mentioned in the work order.

2. Contention of the petitioner is that, the Sub-Divisional Engineer (Z.P.) prepared an estimate for construction work of 'Sanskrutik Sabhagraha' at Shri Kshetra Pareshwar Temple premises at village Palkhed under D.P.C. (General) Regional Tourism Development Programme, 2021. The District Planning Committee sanctioned the proposal. E-tender was issued for construction of the work. Respondent no.8 has been allotted the construction work as per the work order.

3. According to petitioner, respondent no.8 is executing the work at Gat no.502 instead of the identified site within the premises of Pareshwar Temple. The land gat no.502 is Government Gayran Land and also Grave Yard of village Palkhed. If, the construction work is allowed to be continued, the purpose of the construction would be frustrated.

4. Mr. Siddheshwar Thombre, learned advocate appearing for the petitioner invited attention of this Court to the work order dated 17.2.2021. He would submit that, without verification of availability of the land and fixing its boundaries, work has been undertaken. He would invite attention of this Court to administrative sanction, particularly, clause no.5 that mandates compliance of requisite procedure before issuance of the work order. He would submit that representations are made by the Grampanchayat to respondents pointing out aforesaid discrepancy, however, respondent authorities have failed to act upon representations.

5. Mr. Sangle, learned AGP appearing for respondent nos.1 and 2 and Mr. Vinod Vibhute learned Advocate appearing for respondent nos.3 to 6 would submit that the construction work had been progressed more than 40% till the date of filing of the affidavit-in-reply. They would submit that by now the work in question is advanced towards completion. Mr. Vibhute, learned advocate appearing for respondent nos.3 to 6 invited attention of this Court to Namuna No.8 of Pareshwar Mahadev Mandir issued by Grampanchayat Palkhed depicting availability

of sufficient land for raising construction. He points out site plan where construction is undertaken.

6. Mr. Sangle, learned AGP would submit that the proposal for construction of Sanskrutik Sabhagruha in the premises of Shri Kshetra Pareshwar Temple has been sanctioned after due verification of the availability of the land.

7. We have heard learned Advocates appearing for the respective parties and perused record with their assistance.

8. It appears that in pursuance of proposals, on 17.2.2021 administrative sanctions were accorded to various development works. The budgetary allocation of Rs 30 lakh is made for construction of Sanskrutik Sabhagruha at Pareshwar Temple. The site plan is part and parcel of the proposal. On perusal plan, construction site appears to be abutting to the Temple. Respondent nos.3 to 6 filed affidavit-in-reply along with certificate issued by the village Development Officer regarding the proposed site of construction and its boundaries. According respondents, construction has been raised at the site indicated in the certificate. The respondent no.2-District Planning Officer, Aurangabad has filed affidavit-in-reply
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confirming that the administrative sanction has been granted on the basis of the proposal indicating availability of the Government land.

9. Although, the petitioner is trying to contend that construction site is different than as indicated in the work order, except bare statement nothing has been brought on record before this Court. By filing re-joinder affidavit, the petitioner is trying to contend that there is mistake in data entry of panchayat record pertaining to the properties. The Preshwar Temple property no.748 is wrongly recorded/manipulated in Namuna No.8. However, in our considered view such allegations cannot be appreciated without recording of evidence.

10. It is trite, disputed questions of facts cannot be gone into in the writ jurisdiction. Apparently, the site plan along with affidavit of respondent nos.3 to 6 shows that the construction work is being carried out in the premises of the Pareshwar Temple. In that view of the matter, we are not inclined to exercise writ jurisdiction in the matter, resultantly we pass following order.

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ORDER:

- A. Writ petition stand dismissed.
- B . Petitioner shall be at liberty to pursue the representations filed with the respondent authorities or even to take up any alternate remedy as permissible under law, without influenced by observations made in this order.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

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