

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

WRIT PETITION NO. 1962 OF 2021

SHAIKH UMAR SHAIKH CHAND
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. Mukul S. Kulkarni, Advocate for the petitioner,
Mr. S. G. Karlekar, AGP for the respondents-State
Mr. Ameet R.Vaidya, Advocate for respondent No.3-Corporation

CORAM : RAVINDRA V. GHUGE, &
 Y. G. KHOBRAGADE, JJ.

DATE : 8th June, 2023

ORDER:

1. This matter was not on board.
2. On 01.02.2021, this Court [Coram: S.V. Gangapurwala(as His Lordship then was) & Shrikant D. Kulkarni, JJ] had passed the following order:

"1. Keeping the point of maintainability vis-a-vis the alternate remedy open, issue notice to respondents, returnable on 08.03.2021. The learned A.G.P waives service of notice for respondent nos.1 and 2.

2. We would not protect the petitioner if the petitioner is encroacher. In case, the petitioner is not encroacher over any public property or public road or the construction thereon is not against any Development Control Rules, then the

respondents may not dispossess the petitioner till the next date. However, this protection would not be available to the petitioner if the writ construction is against the Development Control Rule and/or is on encroached portion . "

3. Thereafter, notices were served on the parties. Considering the Covid pandemic, the matter was not listed. Today, the learned Advocate for the petitioner intimated the learned Advocate for the Corporation and moved a motion for urgent hearing at 10.30. a.m. Considering the reasons cited, this petition was taken on the production Board.

4. Since the dispute raised appears to be contentious and would require a proper adjudication by the civil court having jurisdiction, the learned Advocate for the petitioner submits that the protection granted by this Court earlier may be continued for a period of eight weeks to enable the petitioner to prefer a suit and seek temporary injunction.

5. The learned Advocate for the Corporation submits that the Corporation has today removed the unauthorized constructions and rest of the constructed residential house is kept intact.

6. In view of the above, this petition is disposed off with liberty to the petitioner to prefer a civil suit as per provisions of law. The interim protection granted by this Court vide order dated 01.02.2021 would continue for a period of 45 days from today.

7. If the petitioner prefers an application for temporary injunction, the same would be considered expeditiously on its own merits without being influenced by the fact that this Court had protected the petitioner vide order dated 01.02.2021.

All contentions of the litigating parties are kept open.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan