

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

PUBLIC INTEREST LITIGATION NO.68 OF 2019

**SHAIKH AFSAR SHAIKH YASIN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Petitioner : Murkute J.M. For Petitioner
AGP for Respondents 1 to 4, 6 : Shri S.G. Sangle
Advocate for Respondent 8 : Shri A.T. Jadhavar
Advocate for Respondents 15, 18 and 19 : Shri R.R. Karpe
...

**CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.**

DATE :- 27th January, 2023

Per Court :-

1. Considering the pleadings in this petition, the report of the learned Registrar (Judicial) was called for and vide his report dated 05.03.2019, he has recorded that this petition would constitute a public interest. In view of the said report, the petitioner was directed to deposit Rs.50,000/- in this Court and he has deposited the said amount.

2. After the pleadings were complete, this Court appointed a retired District Judge Shri A.T.A.K. Shaikh, in a way as a Court Commissioner, by order dated 13.03.2020. Relevant documents were supplied to him. His fees were quantified and he was called upon to carry out an inspection. By order dated

20.09.2022, this Court requested Shri Shaikh to carry out the inspection and submit a report.

3. The report dated 09.11.2022, in a sealed cover, was opened in the Court today. The report runs into four pages accompanied with a hand prepared sketch and four pages of notes of inspection. These nine pages are taken on record and collectively marked as “X-1” for identification.

4. The notes on legal position put forth by the third party Shri Shaikh are not considered by this Court and the same shall not be a part of this order or record since we had never asked the said person to submit his opinion on the legal position. However, he has voluntarily opined on the legal position, which opinion was never asked for by this Court.

5. Be that as it may, though there are certain structures or tin sheds, it is stated in the report that there is no encroachment. In this backdrop, the pleadings in the petition and the report of the third party, would practically amount to “word against word”. So also, there cannot be an exercise of testing the legality of the conclusions arrived at by the third party in the said inspection report.

6. The Ashti Municipal Council has tendered its affidavit in reply dated 10.10.2019, in which, it is stated that the Municipal Council has control over the lands within its custody.

Some portion of the land is made available on lease agreement to some persons like some of the respondents. This was aimed at generating revenue. There is no concrete construction or permanent structure erected on the government land.

7. In the above disputed settings, we deem it appropriate to conclude that this PIL can be disposed off as there is a categorical statement made by the Ashti Municipal Council as well as the third party, who carried out inspection, that there is no RCC permanent structure on the government land or public road. If such permanent structure is erected by any person, the Ashti Municipal Council or the District Collector, as may be provided for in law, would adopt appropriate steps and follow a procedure as is prescribed in law and accordingly, initiate steps for removal of the permanent structures or tin sheds amounting to encroachments, which are said to be illegally erected.

8. Needless to state, in the event of any statutory authority initiating any process with regard to removal of illegal structures, the report placed before us by the third party, will not influence any authority or any proceedings before the judicial forum and would not be cited.

9. In view of the above, this Public Interest Litigation is, accordingly, disposed off.

10. The amount of Rs.50,000/- deposited by the

petitioner in this Court, shall be returned to the petitioner on an application seeking withdrawal and upon due identification by the learned advocate for the petitioner. By consent of the learned advocate and the petitioner, the accrued interest, if any, is donated to the High Court Advocates' Association, Aurangabad Bench.

kps (SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)