

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

910 WRIT PETITION NO.11788 OF 2023

SHAIKH ZAKER MEHBOOB AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA
THROUGH THE SECRETARY AND OTHERS

...

Advocate for Petitioners : Mr. Tungar Hrishikesh V.
AGP for Respondents State: Mr. P. S. Patil
Advocate for Respondent No.2 : Mr. G. K. Naik-Thigale

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

DATE : 27th September, 2023

ORDER:

1. The Petitioners have put forth prayer clauses (B) and (C) as under:

(B) By issuing appropriate writ or order or direction in the like nature, the respondent No.2 may kindly be directed to stop the construction commenced by the respondent No.3 over the open space in lay out of Sy. no 89 Taraf Khod Beed.

(C) Pending the hearing and final disposal of the writ petition, the respondent no.3 may kindly be directed not to proceed with the construction over the open space in lay out of Sy. no 89 Taraf Khod Beed.

2. The learned Advocate for the Petitioners submits on the basis of the records and the law that the open space can be utilized only to the extent of 10% for construction of the proposed Marriage Hall of the concerned community. Beyond 10%, the law would not permit the community to construct any permanent structure. The grievance is

that the Municipal Council is turning a blind eye to the construction which is under way.

3. The learned Advocate representing the Municipal Council submits that the Petitioners have two remedies. Firstly that they can approach the statutory authority, if they are aggrieved by the construction permission granted by the Municipal Council. Secondly, that their pending representations can be considered after giving a reasonable opportunity of hearing to all the stakeholders within a reasonable timeline.

4. The learned Advocate for the Petitioners submits that the Petitioners would pursue the second option.

5. In view of the above, **this Petition is disposed off.**

6. Let the Municipal Council deal with the representation of the Petitioners dated 10.12.2022 by granting reasonable opportunity of hearing to all the stakeholders and by following the due procedure laid down in law. Let such exercise be completed within a period of 150 days. If the Municipal Council finds any deviation or violation, it would be at liberty to initiate appropriate steps as is permissible in law.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan