

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

PUBLIC INTEREST LITIGATION NO.149 OF 2016

**MUKRAM JAAN GUL MOHD KHAN PATHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
WRIT PETITION NO.5363 OF 2017**

**OMER FAROOQUI MUSHTAQUE FAROOQUI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioner in PIL : Shri Sawant Amol S.
Advocate for the Petitioner in WP : Shri Ankush N. Nagargoje
AGP for the Respondents/State : Shri V.M. Kagne
Advocate for Respondent 3 in PIL and for Respondents 2 and 3
in WP : Shri G.K. Naik Thigle
Advocate for Respondent 4 in PIL : Shri S.V. Dixit

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

DATE :- 19th August, 2023

Per Court :-

(a) Writ Petition No.5363/2017:-

1. The Petitioner has directly approached this Court against a mere show cause notice dated 10.04.2017 issued by the

Chief Officer, Municipal Council, Beed, calling upon him to explain as regards the amalgamation of plots and further acts committed by him. Instead of approaching the Municipal Council with a reply, the Petitioner has approached this Court by filing this petition in which, the first order passed on 20.04.2017 grants him protection against adverse action. Thereafter, Rule was issued in the petition on 12.06.2017.

2. It is undisputed that if any adverse order is passed against the Petitioner in the hearing before the Chief Officer under the provisions of the Maharashtra Regional and Town Planning Act, 1966, a statutory remedy is available to the Petitioner.

3. Having heard the learned Advocates for the respective sides and since the interim order protecting the Petitioner is in operation for almost six years, we deem it appropriate to dispose off this Writ Petition by directing the Municipal Council to consider the reply of the Petitioner and by following the law applicable, pass appropriate orders. If the Petitioner is aggrieved, he would be at liberty to avail of the statutory remedy as is permissible in law rather than approaching this Court by filing a writ petition.

4. The Petitioner shall tender a detailed reply to the show cause notice dated 10.04.2017 along with all documents on which he desires to place his reliance, on or before 08.09.2023. Thereafter, the Municipal Council shall follow the procedure as is laid down in law and shall give an opportunity of hearing to all the stakeholders including the complainants, if any, and after concluding the hearing in the proceedings, pass an appropriate order within 90 (ninety) days from today.

5. In the event, the Petitioner is aggrieved by any adverse order, he would be at liberty to avail of a statutory remedy and the adverse order, would not be implemented for a period of 30 days from the date of such order in order to enable the Petitioner to avail of a statutory remedy.

6. In view of the above directions and in the light of the judgments of the Honourable Supreme Court in ***Genpact India Private Limited vs. Deputy Commissioner of Income Tax and another, 2019 SCC Online SC 1500*** and ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others vs. Tuticorin Educational Society and others, (2019) 9 SCC 538***, this Writ Petition is disposed off. Rule is discharged.

(b) **Public Interest Litigation No.149/2016:-**

7. When this PIL was registered in this Court, the learned Registrar (Judicial) had presented a report in the form of an order dated 20.10.2016 in which, it was recorded in paragraphs 2 and 3 as under:-

- "2. *The petitioner allege that, as per the approved lay out, 6 meter road is running north-sought direction between the plot Nos.13, 14 and 15. In the said road, the respondent No.4 carried out illegal construction. Because of illegal construction by respondent No.4, the construction permission has been also cancelled by the Nagar Parishad, Beed. The respondent No.4 is also directed to remove the illegal construction, but till today there is no removal of construction of building upon the road.*
3. *The petitioner by this petition, is seeking direction to the respondents to remove the illegal construction carried out and encroachment committed upon the 6 meter road in Survey No.27 by the respondent No.4."*

8. In view of the orders passed by this Court, more specifically the order dated 21.01.2021 [Coram : Dipankar Datta, CJ (as His Lordship then was) and Ravindra V. Ghuge, J.], the Chief Officer, Municipal Council, has tendered the report before us dated 22.01.2021 at page 170 along with a certified map at page 173. The report indicates certain deviations and violations

on the part of Respondent No.4 as well as few other persons.

9. Insofar as Respondent No.4 in this PIL is concerned, we have passed an order today in Writ Petition No.5363/2017, which he had filed in this Court. We have issued effective directions for granting an opportunity of hearing to the said Petitioner/ Respondent No.4 in this PIL as well as the PIL Petitioner before us, who claims to be a whistle blower and a person who has exposed many encroachments in the Beed town. One more PIL filed by the PIL Petitioner has been favourably considered and effective orders have been passed for satisfying the purpose for which that PIL was filed.

10. Considering the report of the learned Registrar (Judicial), our order dated 21.01.2021 and the order passed today in Writ Petition No.5363/2017, the purpose for which this PIL was filed, has been achieved.

11. However, we are in agreement with the learned Advocate for the PIL Petitioner that the Municipal Council needs to be directed to commence a survey in the entire Beed town to identify the areas where there are encroachments or deviations/ violations in constructions/temporary structures and by following the due procedure laid down in law and by granting adequate

opportunity of hearing to each of those alleged encroachers/ violators, the orders as are permissible in law need to be passed, subject to any legal permissible procedure if adopted by the Municipal Council or the State Government for regularization of such deviations/ violations. We, therefore, order accordingly.

12. In view of the above, **this PIL is disposed off.**

13. Nevertheless, if the Petitioner finds that our orders are not complied with in letters and spirit, he would have liberty to voice his grievance.

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(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)