



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

WRIT PETITION NO. 14741 OF 2023

1. Gulamdastgir Kayyum Shaikh
Age: 65 years, Occu. Agril.,
2. Shaikh Hameeda Maheboob
Age: 70 years, Occu. Household

Both R/o at Post Supa, Tq. Parner,
District Ahmednagar

... PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Principal Secretary
Public Works Deptt.,
Mantralaya, Mumbai – 400 032
2. The District Collector,
Ahmednagar
3. Executive Engineer, PWD,
Ahmednagar
4. Sub-Divisional Engineer, PWD,
Sub-Division, Ahmednagar
5. Sub-Divisional Officer,
Shrigonda, Parner Sub-Division,
Old Collectorate Office, Ahmednagar
6. Tahsildar, Parner,
Dist. Ahmednagar

... RESPONDENTS

....
Mr. S. S. Thombre, Advocate for Petitioner
Mr. S. K. Tambe, AGP for Respondent - State
....

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

**RESERVED ON : 07.12.2023
PRONOUNCED ON : 22. 12.2023**

ORDER (Per:- Y. G. Khobragade, J.) :-

1. By the present Petition, the Petitioners are challenging the notice dated 31.10.2023 issued by Respondent No.4 – Sub Divisional Engineer, P. W. D., thereby directing both the Petitioners to remove their unauthorized structure within the period of 15 days, failing which it would be removed and costs would be recovered from them.

2. The learned Counsel appearing for the Petitioner canvassed that, the Petitioners are the owners and possessors of their respective land bearing Gut No.192 (Old), new C. T. S. No.544, situated at village Supa, Taluka Parner, District Ahmednagar.

3. The learned Counsel for the Petitioner submits that, the Petitioners intended to carry out construction of various shops on

12.10.2006. The Petitioners submitted an application seeking permission to construct shops and submitted proposed building plan and in pursuance of said proposal, the Village Development Officer granted permission for construction in favour of the Petitioners. The Petitioners contend that, their properties are situated adjacent to the Bus Stand, Supa. The property of the Petitioners was measured on 29.12.2020 in presence of the representatives of revenue authorities and officers of the MSRTC. According to the Petitioners, the Supa Bus Stand is situated adjacent to Gut No.192 and they have allowed for arrival and departure of S. T. Buses of MSRTC and it's passengers. While measurement of the property, the boundaries of Gut No.192 were fixed by the officers of Deputy Superintendent of Land Records, Parner. However, on 31.10.2023, Respondent No.4 issued the impugned notice erroneously and directed to demolish the structure on the ground that the Petitioners raised unauthorised construction at the area of 9.80 meters from the Center Line of Supa - Parner State Highway No.69 (Old Highway No.64), which is contrary to the provisions of Section 23(1) of the Bombay Highways Act, 1955.

4. The learned Counsel appearing for the Petitioner canvassed that, as per Government Resolution dated 09.03.2001, the State Government prescribed the distances as regards the building line and control line in order to bring uniformity in road side regulations. As per the said Government Resolution, the distance of building line and control line as well as central line has been prescribed. However, on 31.10.2023, Respondent No.4 issued an impugned notice thereby threatening the Petitioners for removal of their structure contrary to the Highway Act as well as Government Resolution dated 09.03.2021, hence prayed for quashing and setting aside of the same.

5. Shri S. K. Tambe, the learned AGP vehemently canvassed that, as per Section 21 of the Maharashtra State Highways Act (Bombay Act) No IV of 1955, the construction or encroachment on any highway within the highway boundaries, is not permissible. So also, no temporary or Pakka construction is permissible within highway boundaries.

6. The learned AGP submitted that on 02.07.1987, the State Government issued a circular for construction of road to connect

villages under the road development scheme. Parner to Supa is on the State Highway, which is 24 meters wide. On 24th April, 2012, the State Government issued the G.R., and decided to develop the roads in Maharashtra to connect Cities to Villages, Industrial Centers, Religious and Tourist places. Therefore, Respondent no. 1 may intend for widening of the Road and any type of construction within 9.80 meter from Center Line of State Highway, is not permissible. If any person constructs any type of construction, it would be unauthorised. Since the petitioners have started construction within limit of state Highway, therefore, they, are served with the impugned notice, which is legal and, hence, prayed for dismissal of the petition.

7. Needless to say that, the petitioners have contended that, they are the owners of land old Gut No.192 (new CTS No. 544) admeasuring 6 Gunthas, which is adjacent to Parner to Supa State Highway. The Respondents Authorities have not marked boundary line on either side of the said Highway. It is further contended that, Bus Stand of Supa is adjacent to their land and through some portion of their land, they allowed the arrival and departures of ST Buses. Since, they are owners and possessors of land, they intended to carry out construction of shops. Therefore, on 12-10-2006, they obtained

necessary permission for construction from the Village Development Officer, Gram Panchayat Supa and started construction of Shops abutting the said Road. According to the petitioners, they have not raised any construction within 9.80 meter from centre line of Supa-Parner State Highway No.69. Therefore, impugned notice dated 31-10-2023 is illegal, bad in law, hence, prayed for quashing and setting aside the same.

8. Section 21(1) of the Maharashtra Highways Act, prohibits any person from occupying or encroaching on any highway within the highway boundaries without prior permission in writing from the highway authorities. Sub-section (2) of Section 21 authorised the highway authority or an officer authorised by the highway authority to permit any person to place a temporary encroachment on any highway in front of any building owned by him or make a temporary structure over the highway or to put up a temporary awning or tent, pandal or other similar erection or a temporary stall or scaffolding, subject to safety and convenience of the traffic, on any such condition as may be imposed, as per the rules. Section 23 (1) of the Maharashtra Highways Act provides as under:-

“23. Prevention of encroachment- (1) When as a result of check of highway boundaries made or otherwise it transpires that an encroachment has taken place on a highway the Highway Authority or the officer authorized under sub-section (1) of section 21 shall serve a notice on the person responsible for the encroachment or his representative requiring him to remove such encroachment and restore the land to its original condition before the encroachment within the period specified in the notice.”

Section 24 of the Highways Act provides an appeal against a notice served under sub-section (1) of Section 23, before the Collector.

9. In the case in hand, the Petitioners are served with the impugned notice dated 31.10.2023 on the ground that the Petitioners have started raising unauthorised construction within highway boundaries 9.80 meter from the central line of Supa – Parner State highway and are directed to remove the said unauthorised construction within a period of 15 days. Therefore, to our considered view, the Petitioners have a statutory efficacious remedy to file an appeal under Section 24 of the Maharashtra Highways Act, for challenging the impugned notice. In view of above, **this Petition is dismissed** with liberty to the Petitioners to avail the statutory remedy as is permissible in law.

10. Needless to state that, taking into account the threat of demolition of structure, this Court passed an interim order on 04.12.2023 and directed the Respondent Authorities not to carry out the demolition of the structures till the next day and also directed the Petitioners not to construct even a brick until further orders.

11. As such, since we have concluded that, the petitioners have an efficacious statutory remedy u/s 24 of the State Highway Act, 1955, it would be just and proper to continue the said ad-interim order for 45 days, until the interim order is passed in the Appeal, if preferred by the present Petitioners within 30 days from today.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

SMS