

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3335 OF 2023

Minakshi Ramchandra Kadam & Anr.	...Petitioners
<i>Versus</i>	
Naresh Vasant Morge And Ors.	...Respondents

Ms. Aradhana V. Latne, for Petitioners.
Ms. Sushma S. Bhende, AGP for State.
Mr. N.V. Walawalkar, Senior Counsel a/w. Mr. Jeetendra Sachdev
i/b. JS Legal, for Respondent No.1.

CORAM : R.D. DHANUKA &
GAURI GODSE, JJ.

DATED : 24th March, 2023

P.C. :

. This matter was on board on 17.03.2023, when the learned AGP on instructions from Respondent No.3, who was present in the Court had made a statement that, a temporary structure would be constructed by Respondent Nos.2 to 4 at their own costs. This Court accepted the said statement as and by way of undertaking to this Court.

2. Learned AGP tendered photographs for consideration of this Court and submitted that Respondent Nos.2 to 4 have already taken steps to carry out the construction of the temporary shed as directed by this Court and construction

would be completed during the course of the day. Statement is accepted.

3. Learned counsel for the Petitioners states that her clients have already applied for regular permission to Respondent Nos.2 to 4 for carrying out the construction of the structure in accordance with the law on 21.03.2023. The Authority has fixed the date as 29.03.2023 for hearing on the said application made by the Petitioners. Mr.Walawalkar, learned senior counsel for Respondent No.1 states that since this Court has directed Respondent Nos.2 to 4 to consider the application made by the Petitioners for the construction of a new structure in accordance with law in view of the offending structure being demolished and since Respondent No.1 had made the complaint that the offending structure was unauthorised, Respondent No.1 shall also be granted an opportunity of being heard by Respondent Nos.2 to 4 while considering the application made by the Petitioners for carrying out the construction of the new structure. We are inclined to accept the request made by the learned senior counsel. Copy of the application made by the Petitioners shall be served upon learned Advocate on record for Respondent No.1 by 5 pm tomorrow.

4. Respondent No.3 Tahsildar who is present in the Court states that after hearing the Petitioners and Respondent No.1, she would submit a report to the learned Collector for passing a final Order. Statement is accepted.

5. Both parties are directed to remain present before Respondent No.3 Tahsildar on **29.03.2023 at 12.30 pm**. Learned Tahsildar shall submit a report after considering arguments of both parties to the learned Collector within two weeks from the date of granting personal hearing. Learned Collector to pass an appropriate Order on the application made by the Petitioners within one week thereafter.

6. It is made clear that till such time the application is heard by the learned Tahsildar and Order is passed by the Collector and for a period of four weeks from the date of communication of the Order, if the order is against the Petitioners, the temporary shed constructed by Respondent Nos.2 to 4 shall not be demolished. Petitioners shall not create any third-party rights in any way in the temporary shed constructed by Respondent Nos.2 to 4 and shall not carry out any alteration or further construction in the said temporary shed.

7. If the Order is adverse against the Petitioners by the Order that would be passed by the Collector, the Petitioners would be at liberty to file appropriate proceedings as permissible in law and shall implead Respondent No.1 as a party Respondent and also serve a copy of the proceedings as well as notice as and when the matter is moved before an appropriate Court.

8. If the Order is passed in favour of Petitioners, Respondent No.1 would be at liberty to file appropriate proceedings as permissible in law.

9. Writ petition is disposed off in aforesaid terms. Other directions issued by this Court on 15.03.2023 and 17.03.2023 should form part of this Order. No order as to costs.

10. Parties to act on the authenticated copy of this order.

(GAURI GODSE, J.)

(R.D. DHANUKA, J.)