



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.929 OF 2024

- 1) Kavita d/o Narayanrao Solunke,
Age-45 years, Occu:Legal Practitioner,
R/o-Municipal House No.4-40-101,
Plot No.55-A, Main Road, N-4,
CIDCO, Jaibhawani Nagar,
Chhatrapati Sambhajnagar (M.S.),
- 2) Sarita d/o Narayanrao Solunke,
Age-43 years, Occu:Legal Practitioner,
R/o-Municipal House No.4-40-101,
Plot No.55-A, Main Road, N-4,
CIDCO, Jaibhawani Nagar,
Chhatrapati Sambhajnagar (M.S.),
- 3) Narayanrao s/o Rangnath Solunke,
Age-83 years, Occu:Legal Practitioner,
R/o-Municipal House No.4-40-101,
Plot No.55-A, Main Road, N-4,
CIDCO, Jaibhawani Nagar,
Chhatrapati Sambhajnagar (M.S.),
- 4) Chandrakala w/o Narayanrao Solunke,
Age-73 years, Occu:Household,
R/o-Municipal House No.4-40-101,
Plot No.55-A, Main Road, N-4,
CIDCO, Jaibhawani Nagar,
Chhatrapati Sambhajnagar (M.S.),
- 5) Seema w/o Santosh Rai,
Age-32 years, Occu:Service,
R/o-Flat No.10, Kawi Paras Building,
Gajanan Maharaj Mandir Road,
Chhatrapati Sambhajnagar (M.S.),

- 6) Santosh s/o Gyanilal Rai,
Age-35 years, Occu:Service,
R/o-Flat No.10, Kawi Paras Building,
Gajanan Maharaj Mandir Road,
Chhatrapati Sambhajnagar (M.S.),
- 7) Hema d/o Narayanrao Salunke,
Age-45 years, Occu:Legal Practitioner,
R/o-Municipal House No.4-40-101,
Plot No.55-A, Main Road, N-4,
CIDCO, Jaibhawani Nagar,
Chhatrapati Sambhajnagar (M.S.).

...PETITIONERS

(Orig. Complainant Nos.1 to 7)

VERSUS

- 1) Deepak s/o Purushottam Kulkarni,
Age-Major, Occu:Retired,
Ex-Assistant Director of Town Planning,
Municipal Corporation, Chh. Sambhajnagar,
R/o-Manisha Colony, Behind District &
Sessions Court, Chh. Sambhajnagar (MS).,
- 2) Ravindra s/o Prabhakarrao Nikam,
Age-59 years, Occu:Retired,
Ex-Deputy Commissioner,
Municipal Corporation, Chh. Sambhajnagar,
R/o- Paro Beer Bar, N-6, CIDCO,
Chh. Sambhajnagar (MS).,
- 3) Avinash s/o Bhaskarrao Deshmukh,
Age-Major, Occu:Service,
Deputy Engineer,
Municipal Corporation, Chh. Sambhajnagar,
Chh. Sambhajnagar,
- 4) Mr. Bhagwat s/o Dinkar Phad,
Age-Major, Occu:Deputy Engineer,
Gunthewari Section, Municipal Corporation,
Chh. Sambhajnagar, R/o-Gunthewari Section,
Chh. Sambhajnagar Municipal Corporation,
Chh. Sambhajnagar,

- 5) Mr. Ayyub Khan Noorkhan Pathan,
Age-Major, Occu:Retired,
Ex-Head of Encroachment Section,
Municipal Corporation, Chh. Sambhajinagar,
R/o- Near Madani Chowk, Roshangate,
Chh. Sambhajinagar (MS).,
- 6) Mr. Mahavir s/o Manikchand Patani,
Age-Major, Occu:Ex-Administrative Officer,
Ex-Assistant Director of Town Planning,
Municipal Corporation, Chh. Sambhajinagar,
R/o- Near Tap Grocery Super Market,
Arihant Nagar, Sindhi Colony,
Near Jain Mandir Road, Chh. Sambhajinagar,
- 7) Mr. Vinod s/o Ganesh Pawar,
Age-Major, Occu:Service,
Ex-Building Inspector, E-Ward,
Municipal Corporation, Chh. Sambhajinagar,
R/o-Building Inspector, E-Ward,
Municipal Corporation, Chh. Sambhajinagar,
- 8) Mr. Gangadhar s/o Vitthalrao Bhangе,
Age-Major, Occu:Service,
Ex-Junior Engineer, Gunthewari Section,
Municipal Corporation, Chh. Sambhajinagar,
R/o-Ex-Junior Engineer, Gunthewari Section,
Municipal Corporation, Chh. Sambhajinagar,
- 9) Mr. Natha Y. Jadhav (deceased),
Former Police Inspector,
PSO, Mukundwadi, Aurangabad,
- 10) The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32,
- 11) The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai-32,

12) The Chair Person,
Human Rights Commission,
Maharashtra State,
9, Hazarimal Somni Marg,
Opp. Chhatrapati Shivaji Maharaj
Terminus, Mumbai-400001.

...RESPONDENTS
(Orig. Respondents)

...
Mr. Chandrakant S. Tembhurnikar Advocate for Petitioners.
Mr. A.M. Phule, A.P.P. for Respondent Nos. 10 and 11.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 12th AUGUST, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Petition has been filed to quash and set aside the order and Judgment dated 4th September 2023 passed by Hon'ble Maharashtra State Human Rights Commission in Case No.1828 of 2016 and to direct the Government to conduct the inquiry and take action against respondent Nos. 1 to 8 for illegally demolishing the three storied building erected on Plot No.55-A, Municipal House No.4-40-101, Jaibhavani Nagar, Aurangabad, on 1st October 2015. The petitioners have also prayed for initiating action and inquiry under section 340 and 195 of the Code of Criminal Procedure against respondent Nos. 1

to 8 for filing false affidavit. Other consequential reliefs are also prayed.

2. Heard learned Advocate for the petitioners and learned APP for respondent Nos.10 and 11. Respondent No.9 has expired. It is not even necessary to issue notice to respondent Nos.1 to 8 and 12.

3. It has been vehemently submitted on behalf of the petitioners that petitioner No.1 is the owner and possessor of the said plot. She was allotted the said plot by the concerned housing society in 1994. She had constructed a three storied R.C.C. building. Concerned housing society has given her no objection certificate. Petitioner No.1 was residing in the said building along with her family members, who are petitioner Nos.2 to 7. It is contended that respondent Nos. 1 to 8, for no reason and without giving any legal notice under Section 478 of the Maharashtra Municipal Corporation Act, 1949 and without following due procedure, demolished the entire building on 1st October 2015. The said action was carried out between 10.00 a.m. to 6.00 p.m. Valuable articles, ornaments, cash amount from the building have been stolen. Petitioner No.3

lodged the First Information Report with Mukundwadi Police Station. Due to the demolition of entire structure, the petitioners have been rendered homeless. Their constitutional rights have been breached. It is also contended that one Motilal Verma had filed Writ Petition No.1493 of 2011 before this Court seeking direction for removal of encroachment and widening of the road from Shivaji Chowk to Mukundwadi Railway Station, Aurangabad. The construction of the petitioners was not affecting in any manner the D.P. Road. The construction by the petitioners was not at all illegal and therefore, the petitioners knocked the doors of the Maharashtra State Human Rights Commission. However, by the said order their complaint has been rejected. It has been wrongly held that the decision taken by the Corporation that the complainant i.e. petitioner No.1 encroached on the public road was correct. As wrong decision has been given, it is challenged by way of this Writ Petition.

4. The first and foremost point to be noted is that disputed facts appear to be involved in the matter in view of the fact that respondent Nos.1 to 8 were contending that the construction made by the petitioners was byway of encroachment on the public road. Further, it can be seen that present petitioner No.1

and others had preferred Writ Petition No.8995 of 2015 before this Court challenging the action taken by the Corporation, wherein this Court, by order dated 3rd September 2015, observed as under:-

“Heard. We do not propose to go into the factual controversy raised before us. However, we deem it appropriate to relegate the petitioners to Assistant Director of Town Planning, who is present before the Court. The Memorandum of petition shall be considered as a representation of the petitioners and the concerned authority, after extending an opportunity of hearing to the petitioners, may take appropriate steps in accordance with the provisions of law.”

5. It was also observed in the said order dated 3rd September 2015 that, it was informed by the Advocate, who was representing the Municipal Corporation that the hearing would be extended to the petitioners on 8th September 2015. It appears that the Deputy Director of Town Planning, passed an order on 16th September 2015 holding that petitioner No.1 has encroached on the road itself. The Corporation demolished the unauthorized construction on 1st October 2015.

6. Now, the question is, when already Deputy Director of Town Planning had passed an order on 16th September 2015, the petitioners ought to have contemplated the action that would

have been taken and would have agitated their rights before the appropriate forum. They have not knocked the doors of the Civil Court, which would be the appropriate authority to consider the status of the building. It appears, instead of that they approached this Court by filing Writ Petition No. 9670 of 2015. The Division Bench of this Court passed an order on 30th September 2015 that, on instructions of the petitioner, the petition is withdrawn. Leave was granted, while withdrawing the petition, to keep the option of alternate legal remedies open for the petitioner.

7. Now, it has been submitted that when the Division Bench of this Court had passed said order on 30th September 2015, on the next day itself the demolition work has been undertaken. Again we reiterate that since beginning this Court has taken a view that it will not go into the disputed facts. Therefore, it was for the petitioners to approach the appropriate Court. Now also, without resorting to any appropriate remedy and in the background that now already the demolition has taken place, the petitioners have approached this Court to challenge the order passed by the Maharashtra State Human Rights Commission.

8. Taking into consideration the facts of the case, we are of the opinion even at the initial stage that the case is not made out for taking any action by exercising the writ jurisdiction of this Court under Article 226 of the Constitution of India. The Petition suffers from delay and laches.

9. The Writ Petition stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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