



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8965 OF 2022

Sajid Shaikh Shafi Shaikh And Another
VERSUS
Mohd. Ameen Abdul Ahad Shaikh And Others

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Mr. S. V. Natu, Advocate for the Petitioners
Mr. P. C. Mayure, Advocate for Respondent Nos. 1 and 2
Mr. A. B. Kadethankar, Advocate for Respondent No. 3
Mr. B. A. Shinde, AGP for Respondent No. 5

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CORAM : R.M. JOSHI, J
DATE : JUNE 20, 2024

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. This Petition takes exception to the concurrent findings recorded by the trial Court as well as District Court refusing interim relief to the Plaintiffs in RCS No. 63/2020. Petitioner/Plaintiff filed suit restraining Defendant Nos. 1 and 2 from erecting mobile tower. It is alleged in the plaint that said erection is contrary to the provisions of law and without obtaining permissions from the concerned local authority. Corporation is also made party to the proceedings.

3. Learned Counsel for the Petitioner submits that the Municipal Corporation i.e., Defendant No. 4 has filed written statement making allegations against Defendant Nos. 1 and 2 of continuing with the erection work in contravention with the terms and conditions imposed by the permission dated 12.08.2020. It is, therefore, his submission that the said written statement of the Defendant is sufficient to indicate that the erection is not in accordance with law.

4. Learned Counsel for the Respondents supports the impugned orders.

5. Admitted facts on record indicate that Defendant nos. 1 and 2 are the owners of the property wherein the erection of mobile tower is being done. It is not the case of the plaintiff that his esementary rights are likely to be affected in any manner whatsoever by said construction. Defendant Nos. 1 and 2 are carrying out erection contrary to the provisions of law and without obtaining appropriate permissions from the local authorities. Written statement filed by the Defendant No. 4 Corporation shows that the construction

permission was granted on 12.08.2020. There is no dispute about the fact that the said permission is not revoked till date. Merely because Corporation makes certain allegations against Defendant No. 2 and non-compliance of the conditions therein, it will not become a ground to injunct the Defendant Nos. 1 and 2 from continuing with the work. There may not be any presumption that the contention of the Defendant No. 4 Corporation with regard to the non-compliance is correct. If it was so, the Corporation would have taken action for revocation of the permission or prevented Defendant from proceeding further with work. Except for issuance of show cause notice as back as on 06.10.2020, nothing further done in the matter. This Court, therefore, finds no perversity in the impugned orders rejecting the interim relief. Hence, Petition stands dismissed.

6. Needless to say that it is open for the Plaintiff to pursue his cause with Corporation.

(R. M. JOSHI, J.)

Malani