



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13388 OF 2024

- 1] Shatrughan S/o Bhagwandas Kalda,
Age : 56 years, Occupation : Business
- 2] Kanhaiyalal Bhagwandas Kalda
Age : 59 years, Occupation : Business
- 3] Ritesh S/o Bhagwandas Kalda,
Age : 36 years, Occupation : Business

All petitioners Residents of : Plot No. 151,
Sindhi Colony,
Chhatrapati Sambhajinagar (Aurangabad)

.. Petitioners

Versus

- 1] The Administrator & Commissioner,
Chhatrapati Sambhajinagar Municipal Corporation,
Town Centre, Chhatrapati Sambhajinagar
- 2] Shaikh Mujtaba Maz @ Shaikh Mujtaba Rafique
Being the Power of Attorney for Respondents no. 3 to 6
Age : 32 years, Occupation : Nil,
Resident of : Times Colony,
Chhatrapati Sambhajinagar (Aurangabad)
- 3] Mohammad Nuroddin S/o Mohammad Fasiyoddin,
Age : 54 years, Occupation : Business
- 4] Aziza Anjum S/o Mohammad Fasiyoddin
Age : 50 years, Occupation : Business
- 5] Mohammad Jabihuddin Athar S/o Mohammad Fasiyoddin
Age : 49 years, Occupation : Business
- 6] Mohammad Usmanoddin S/o Mohammad Fasiyoddin
Age : 48 years, Occupation : Business

Respondents no. 3 to 6 Residents of Karim Nagar,
Talangana State

[Respondent no.2 is the Power of Attorney for
Respondents no. 3 to 6 and hence notice to
Respondents no. 3 to 6 be served upon
the respondent no. 2]

.. Respondents

...
Advocate for petitioners : Mr. Amit A. Yadkikar and Mr. Akshay D. Kulkarni
Advocate for the respondents no. 3 to 6 : Mr. Devdatta P. Palodkar i/by
Mr. Rohit R. Kakani
...

**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 11 DECEMBER 2024

ORDER (MANGESH S. PATIL, J.) :

We have heard both sides.

2. The petitioner is claiming following reliefs :

- “(A) This Hon'ble Court may kindly be pleased to call for the record and proceedings of the Order dated 14.11.2024 bearing outward no. Ja.Kra. / MaNaPan / NaRaVi. / Usa.Na.Ra/ 2024/ 2527 passed by the Administrator and Commissioner, Chhatrapati Sambhajinagar Municipal Corporation with respect to the properties bearing City Survey No.15854/A and City Survey No.14814/A.*
- (B) By way of a Writ of Certiorari or any other Writ, this Hon'ble Court may kindly be pleased to quash and set aside the Order dated 14.11.2024 bearing outward no. Ja.Kra. / MaNaPan / NaRaVi. / Usa.Na.Ra /2024/2527 passed by the Administrator and Commissioner, Chhatrapati Sambhajinagar Municipal Corporation with respect to the properties bearing City Survey No. 15854/A and City Survey No. 14814/A.*
- (C) By way of a Writ of Mandamus or any other Writ, this Hon'ble Court may kindly be pleased to direct the Respondent Authority to remove the encroachment made by the other Respondents upon the property of the Petitioners bearing City Survey No. 15854/A situated on the right side of the road running from Amarpreet Hotel to Shahnoor Miyan Dargah within the municipal limits of the Chhatrapati Sambhajinagar Municipal Corporation.”*

3. Mr. Yadkikar would narrate the checkered history. He would submit that the petitioner is the owner of city survey no. 15854/A, whereas respondents no. 2 to 6 are the owners of property bearing city survey no. 14814/A. The petitioners received building permission for erection of a compound wall around their property from respondent no. 1 – municipal corporation on 05-07-2022. Respondent no. 2, with a mob, barged into the petitioners' property and removed the petitioners' board and installed a tin fencing around it. Respondent no. 1 issued notices under section 260 and section 478(2) of the Maharashtra Municipal Corporations Act, 1949 ("**Act**"). Respondents no. 2 to 6 filed writ petition no. 10872 of 2022. Respondents made a statement that they would remove the tin fencing erected by them around the property. By recording the statement, the petition was disposed of on 18-10-2022. However, since it was not removed, respondent no. 1 again served those other respondents with notices under section 260 for removal of the encroachment. These respondents again filed another writ petition no. 13257 of 2022. This Court was made to believe that pursuant to the undertaking / statement recorded in the order dated 18-10-2022, the objected structure was removed and still the notice under section 260 was served. A statement was made on behalf of respondent no. 1 – municipal corporation that the respondents would be given an opportunity of being heard.

4. Mr. Yadkikar would then submit that another notice under section 478(2) was served to respondents no. 2 to 6 on 10-04-2023. They challenged it by filing writ petition no. 4690 of 2023. A statement was made before this Court on their behalf that their structure was not standing on the property bearing city survey no. 15854/A and it was open for the respondent no. ,1 to adopt appropriate action in respect of the structure.

5. Mr. Yadkikar would submit that under the garb of undertaking an enquiry pursuant to the observations of this Court dated 18-10-2022, respondent no. 1 took initiative, got some measurement done through the office of the Land Survey Department behind petitioners back and by the impugned order, pursuant to the opinion expressed by the surveyor that the alleged structure was a part of the city survey no. 14814/A and in accordance with that measurement dated 14-06-2024 submitted by respondents no. 2 to 6, the concerned department to accord permission for erection of fencing.

6. Mr. Yadkikar submits that respondent no.1 had no power and jurisdiction to issue any such direction. It was merely a matter of obeying the directions in the light of the order of this Court dated 18-10-2022 which were pursuant to the proposed action under section

478(2) of the Act and the order travels beyond it and being illegal, the petitioner is praying for its quashment.

7. Learned advocate Mr. Palodkar for respondent no. 2 tenders across the bar affidavit in reply. It is taken on record. He would not dispute the sequence of the events. However, he submits that the petitioners ought to have co-operated and should have remained present at the time of the measurement, in the absence of which, pursuant to the directions of this Court, respondent no. 1 had directed measurement to be carried out by the Survey Department and pursuant to the result of such measurement, issued the directions finding that the disputed structure is a part of the respondents' property.

8. Mr. Palodkar would further submit that it is a long standing dispute in respect of six properties which were earlier owned by *Nizam* of Hyderabad. An offence has been registered against the petitioners in respect of appropriation of some such properties. Respondents have filed a civil suit bearing Regular Civil Suit no. 27 of 2024, in which petitioners are defendants no. 2 to 4. The petitioners filed their written statement and after hearing both the sides, the civil Court has allowed their temporary injunction application, whereby the petitioners have been restrained from obstructing respondents' possession over the city survey no. 14814/A.

9. We have considered the rival submissions and perused the papers.

10. As can be appreciated, there are many factual disputes and this Court in exercise of powers under Article 226 of the Constitution, would not be able to address and decide those, as those would require evidence.

11. Admittedly, the parties are already before the civil Court. It is clearly a matter in the nature of right and title over the disputed plot / structure. Both the sides have not been seriously disputing each others title over their respective properties. The issue is clearly, as to whether site in question is a part of petitioners' property or is it that of the respondents' property. Any amount of enquiry in the present matter will have limitation and it would be appropriate for both the sides to agitate and get decided their rights through the civil Court.

12. True it is that the impugned order / decision has been passed / taken by the respondent no.1 – Commissioner in purported obedience of the directions of this Court. However, one cannot lose sight of the fact that the contesting respondents had approached this Court having been served with notice under section 478(2). In the peculiar circumstances since they had undertaken to remove the structure that the respondent no. 1 was directed to take appropriate

decision by extending opportunity of being heard. Even if the order of this Court dated 18-10-2022 did not expect permission for erection, which is being seriously objected to by the petitioners, the last direction of the order merely indicates a course to be followed. If at all the impugned decision is not in accordance with the law, it would be for the petitioners to approach the civil Court independently or even in the pending suit and make out their case.

13. In our considered view, undertaking any exercise of examining sustainability of the impugned decision, even if it is pursuant to the directions of this Court, would not result in deciding substantial rights of the respective parties, which a civil Court would be able to do.

14. In the light of above, keeping open all the issues and with liberty to the petitioners to resort to the appropriate remedies, as are available to them in law, including approaching the civil Court, the writ petition is disposed of.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/