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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

9 WRIT PETITION NO. 15594 OF 2023

MANISHA RAVINDRA MODI AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

Mr.A.D.Gade, Advocate for the Petitioners.
Mr.A.B.Girase, Govt.Pleader for Respondent Nos. 1, 2 and 4.
Mr.P.D.Suryawanshi, Advocate for the Respondent/Zilla Parishad, Beed.

**(CORAM : RAVINDRA V. GHUGE AND
Y.G.KHOBRADE, JJ.)**

DATE : JANUARY 8, 2024

PER COURT :

1. The Petitioners have put forth prayer clause C, D, E and F as under :-

“C. This Hon’ble Court may kindly be pleased to hold and declare that the action of Respondent No.4 – Executive Engineer, P.W.D. Ambajogai in causing markings for demolition of writ property belonging to Petitioners viz. House No.Old 8-458, New 8-558 total admeasuring 402 Sq.Mtrs.situated at Survey No.611 Ambajogai, Dist.Beed alongwith Hotel Nilam or any part thereof situated thereon without issuing any notice is bad in law and void ab-initio.

D. This Hon’ble Court may kindly be pleased to issue a writ of mandamus or any other appropriate writ, order or direction thereby

directing the Respondent No.4 – Executive Engineer, PWD, Ambajogai to forthwith stop their activities of demolishing the structure or taking possession of Hotel Nilam or any part thereof bearing House No.Old 8-458, New 8-558 total admeasuring 402 Sq.Mtrs. Situated at Survey No.611 Ambajogai, Dist.Beed owned by the Petitioner No.1 under the guise of removing the encroachment for purported widening of Shivaji Chowk to SRTR Medical College and Hospital Road, Ambajogai.

E. Pending hearing and final disposal of this Writ Petition, this Hon'ble Court may kindly be pleased to restrain the No.4-Executive Engineer, PWD, Ambajogai or its agents, servants or anybody acting on its behalf from :

i) interfering in the possession and enjoyment of the Petitioners over the writ property and

ii) from carrying out any sort of activities like marking, measurements as regards the writ property for purported widening work of Shivaji Chowk to SRTR Medical College and Hospital Road, Ambajogai.

F. In the alternate, the petitioners humbly pray this Hon'ble Court to direct the respondent authorities to initiate appropriate proceedings of acquisition in case the respondents want to utilize the House No. Old 8-458, New 8-558 total admeasuring 402 Sq.Mtrs. Situated at Survey No.611 Ambajogai, Dist.Beed alongwith Hotel Nilam or any part thereof and structure or part thereof owned by the petitioners for the proposed road widening work going from Shivaji Chowk to SRTR Medical College and Hospital Road, Ambajogai.”

2. We have heard the learned Advocates for the respective sides.

3. The learned Govt.Pleader draws our attention to a sketch map, which is placed on record for the assistance of the Court. The same is marked as **X-1** for identification. He submits that the shaded portion marked as **A and B** belong to the Petitioners. The width of the road is apparently 100 ft. From the center point, 50 ft. have been indicated on each side. The shaded portion marked '**C**' was the encroachment by the Petitioners, which has already been removed.

4. He then draws our attention to the fact that the Petitioners have preferred RCS No.448/2023 for perpetual injunction against the Respondents so as to protect the encroached property mark 'C' in X-1. By an order dated 10.11.2023, the learned Trial Court has rejected Exh.5 application. While doing so, the Trial Court has concluded that the encroached portion has already been removed. That portion does not belong to the Petitioners. With the removal of the said portion, the road is clear for widening and not an inch of land of the Petitioners would be acquired.

5. The learned Advocate for the Petitioners submits on instructions that the Petitioners can point out some portion on their land, which would be utilized for widening of the road. The learned

Govt.Pleader submits on instructions that the Pakka structures of the Petitioners are not being touched and only the shaded portion 'C', which is an encroachment and is removed, would be utilized.

6. We are of the view that such disputed issues cannot be dealt with by this Court. If the Petitioners move an appropriate application for appointment of Court Commissioner and ultimately establish that their lands have been utilized for the widening of the road, they would be at liberty to seek a direction to the Competent Authority to prepare a proposal for such acquisition. If required, the Petitioners may approach the Trial Court for seeking amendment and addition of reliefs in the pending suit.

7. In view of the above, **this Petition is disposed off.**

8. Needless to state that, as regards the markings on the structures of the Petitioners, we have no doubt that the Respondents Authorities would follow the due procedure laid down in Law by giving an opportunity to the Petitioners to establish their right, title and interest with regard to the areas covered by the red arrow marked.

(Y.G.KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)