



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4166 OF 2024

MOHAMMAD WASEEM M FAHEEM FAROOQUI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY AND
OTHERS

...
Advocate for the Petitioner : Ms. Pooja S. Mundhe holding for
Mr. Pavan P. Uttarwar
AGP for Respondents : Smt. A. S. Mantri
...

CORAM : S. G. MEHARE, J.
DATE : 23-04-2024

PER COURT :-

1. Heard the learned counsel for the petitioners.
2. The petitioners have a case that they owned a private property, they have purchased long back in 1982. They have constructed building after obtaining sanction plan from Municipal Council, Biloli. They have followed the rules of construction. However, suddenly respondent No.4 issued a notice for removal of their construction which allegedly came on the road. In 2012, similar notice was issued and appropriate orders were passed. They have not violated construction rules. However, if the Government intends to expand the road, it should acquire their property. They are running their businesses in the suit premises. However, respondent No.2 did not consider the facts and law correctly and hastily decided the appeal. Hence, *interim* protection may be granted.

3. Perused the papers.

4. It seems that there is history of allegations of the encroachment. In 2012 also, similar dispute arose. However, there is no evidence, whether in 2012, the encroachment was removed. However, *prima facie*, it appears from the record that Municipal Council, Biloli has sanctioned lay out map and construction has been done accordingly. The question is, whether the Government is the owner of the land, where the alleged construction is raised. The petitioners are enjoying their property since long. Whether the measurement of the property of the petitioner and road is taken, is also another question.

5. Normally, for finding the encroachment, a joint measurement is required to be done. These are the material issues involved in the case. *Prima facie*, the petitioners are enjoying the property. They were constructing house by obtaining sanction plan. The substantial issue appears to have been involved in the petition.

6. Hence, there shall be *interim* stay to the order of District Collector, Nanded, dated 20.03.2024, till the next date.

7. Issue notice to respondents. Learned A.G.P. waives service of notice for the respondents.

8. Stand over to 20.06.2024.

(S. G. MEHARE)
JUDGE