



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

53 WRIT PETITION NO. 2933 OF 2025

KAMALBAI DAGDUSINGH THAKUR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS

...
Advocate for the Petitioner : Mr. Swami Sandeep C.
AGP for Respondents: Mr. R.K. Ingole

...
CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR , JJ.
DATE : 04.03.2025

PER COURT : (MANGESH S. PATIL, J.)

Heard.

2. The petitioners are coming with following prayer :

“A) This Hon’ble Court may kindly be pleased to issue writ of mandamus or any other writ and may kindly be pleased to direct the respondent No. 2 and 3 to demolish the illegal construction of respondent no. 4 house as per the Maharashtra Regional and Town Planning Act.”

3. The learned advocate for the petitioner submits that respondent no. 4 has carried out unauthorized construction over plot No. 8 from Survey No. 178 and in spite of prosecution launched against him by respondent no. 2-Municipal Corporation under Section 52 of the Maharashtra Regional and Town Planning Act, 1966, the Corporation has not been removing the unauthorized construction and is soliciting a writ of mandamus in aforementioned terms.

4. We have considered the submissions and perused the papers. As is evident from the annexures, though *ex facie* the petitioners are seeking a writ against the Municipal Corporation for demolition of some unauthorized

construction allegedly carried out by respondent no.4, there are circumstances to indicate that under the guise of such mandamus, in fact the petitioners are trying to recover possession of the property circuitously, without resorting to the civil remedy of filing a suit.

5. Respondent no. 4 is none other than real brother of the petitioners. The property belongs to their mother Sushilabai. Respondent no. 4 had obtained an heirship certificate by filing Misc. Civil Application No. 844/2021, by the order dated 03.09.2021. By filing Misc. Application (Revocation) No. 1695/2022, the petitioners succeeded in obtaining an order for recalling the heirship certificate obtained by respondent no. 4. Pertinently, the dispute, even in those matters are pertaining to the right to the self-same plot No. 8. It is thus evident that respondent no. 4 is in actual possession of the property and has even carried out some construction stated to be unauthorized one, for which he is also facing a prosecution.

6. Taking into account the aforementioned state of affairs, when this attempt by the petitioners is to seek demolition of the construction carried out by respondent no. 4, when there are rival claims in respect of same property, it would be appropriate for the petitioners to file a civil suit seeking appropriate relief.

7. In the circumstances, keeping open the avenue for the petitioners to resort to the appropriate remedy, we refuse to exercise the powers under Article 226 of the Constitution of India. The writ petition is disposed of.

(PRAFULLA S. KHUBALKAR J.)

(MANGESH S. PATIL, J.)

mkd/-