



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

920 WRIT PETITION NO. 2222 OF 2021

Aasman Ramrao Gayke & others

....Petitioners

VERSUS

The State of Maharashtra & others

.....Respondents

.....

Mr. Aditya Lokhande, Advocate holding for Mr. S. S. Tope, Advocate for the Petitioners.

Mr. P. R. Bharaswadkar, AGP for the State.

Mr. R. A. Joshi, Advocate for Respondent No. 6.

**CORAM : ALOK ARADHE, C.J. &
RAVINDRA V. GHUGE, J.**

DATE : 19th MARCH, 2025.

PER COURT :

1. With the consent of the learned counsel for the parties, the Writ Petition is heard finally at admission stage.

2. In this Writ Petition, the Petitioners *inter alia* seek a direction to Respondent Nos. 3 to 5, to initiate appropriate action to remove the encroachment over Survey No. 65 on major district road No. 26 (Revki to Daithan), made by Respondent No. 6.

3. The learned Counsel for the Petitioners submits that the Petitioners have submitted several applications to the various authorities, but the same were not considered and no action has been taken to remove the encroachment.

4. On the other hand, the learned AGP opposed the Petition contending that the abovesaid submission made on behalf of the Petitioners is baseless and without any justification and there is no encroachment by Respondent No. 6 on the land belonging to the public.

5. We have considered the rival submissions made by the learned counsel for the parties. Undoubtedly, no individual has a right to encroach on a public road. However, whether or not an individual has encroached on a public road is a question of fact, which is disputed in the facts and circumstances of the case. This Court, in exercise of inherent jurisdiction under Article 226 of the Constitution of India, cannot determine the disputed question of facts.

6. However, in the peculiar facts of the case, we deem it appropriate to issue the following directions :-

- i. The Chief Officer of Beed Municipal Council, shall issue notice to the Petitioners as well as to the unofficial Respondents and every other person who may be in occupation of the subject land.
- ii. The Chief Officer shall carry out a survey to ascertain the encroachment on the subject land.
- iii. The Chief Officer shall thereupon afford an opportunity of hearing to all the parties, and to submit the documents in support of their claim.
- iv. In case, the subject land is found to be a government land, the District Collector, Beed, shall initiate an action for removal of encroachment in accordance with law.
- v. The aforesaid exercise by the District Collector, Beed, shall be carried out within a period of four weeks from today.
- vi. The learned AGP undertakes that assistance of police shall be provided to the District Collector, Beed, for removal of encroachment from the subject land, if found to be a government land.
- vii. Needless to state that any person aggrieved by the order directing removal of the encroachment, shall be at liberty to take recourse to such remedy as may be available to them in law.

7. It is clarified that, this Court has not expressed any opinion on the merits of the case.

8. Accordingly, Writ Petition is disposed off.

(RAVINDRA V. GHUGE, J.)

(CHIEF JUSTICE)

dyb