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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

13 WRIT PETITION NO. 237 OF 2025

OMSHANKAR MAHADEV SWAMI AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA THROUGH DEPARTMENT OF URBAN
DEVELOPMENT AND OTHERS

WITH

CIVIL APPLICATION STAMP NO.2503 OF 2025

(Kumar Rajshekhar Guru Dr.Shivling Shivacharya Vs. The State of
Maharashtra)

Mr.Sanket S.Kulkarni, Advocate for the petitioners.
Mr.M.M.Nerlikar, Addl.G.P for the respondent/State.
Mr.U.R.Awate h/f Talekar and Associates for the applicant in CA.

(CORAM : MANGESH S. PATIL AND
PRAFULLA S. KHUBALKAR, JJ.)

DATE : JANUARY 20, 2025

PER COURT :

1. The petitioners are taking exception to the action of the respondent/Municipal Council initially granting them permission for construction and subsequently refusing to explain it by impugned communication dated 07.08.2024.

2. We have heard the learned Advocate for the petitioners as also the learned Advocate who tenders across the bar an application for

intervention on the premise that it is on his complaint that the impugned communication was issued to the petitioners.

3. The learned Advocate for the petitioners submits that the Chief Officer has no power and jurisdiction to embark upon the building permission once it was granted to the petitioners under any provisions of the Maharashtra Regional and Town Planning Act, 1966. Only for this reason, the petitioner are taking exception to the communication under challenge.

4. The learned Advocate for the intervenor submits that the issue regarding right, title and interest in the self same property in respect of which the petitioners were granted building permission was subject matter of enquiry by the Office of the Charity Commissioner. The Assistant Charity Commissioner had held that the property belongs to a Public Trust and directed an entry to be taken in the Public Trust Register. The order was challenged by the petitioners before the Joint Charity Commissioner, but even that was turned down and they are now before the Single Judge of this Court, challenging the order passed by the Joint Charity Commissioner.

5. Whether and to what extent a building permission granted under the provisions of the MRTTP Act, can be stalled / revoked, is a matter, which according to us, cannot be adjudicated at this crucial juncture, when it is evident that there is a serious dispute about right and title to the same property. Merely because the building permission was granted and now impugned communication seeks to cancel it only on the ground of pendency of the matter making a vague reference, would not make the petitioners entitled to question the impugned communication.

6. As is being pointed out and which position even the learned Advocate for the petitioners fairly clearly concedes that the title to the property is a subject matter of a parallel litigation, which now has reached this Court before the learned Single Judge.

7. In these peculiar circumstances, when the issue regarding title, right and interest in the property is still to reach finality, no inquiry into sustainability of the impugned communication can be undertaken by resorting to Article 226 of the Constitution of India.

8. Needless to state that depending upon the fate of the matter in respect of the title to the property, the petitioners may have a remedy in the future, of once again questioning sustainability of the impugned communication.

9 Granting the petitioners such liberty to resort to the appropriate remedy at an appropriate stage, depending upon the enquiry into the title reaching finality, the petition is disposed of.

10. In view of the above, the civil application stands disposed of.

(PRAFULLA S. KHUBALKAR, J.)

(MANGESH S. PATIL, J.)