

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15345 OF 2024

1. Summayya Education Health
and Sport Prasarak Mandal,
Solapur (Through Hajimalang
Gaibusab Hulkund)
R/o. Survey No.223/2B,
Majrewadi, Solapur.
 2. Hajimalang Gaibusab Hulkund,
Age: 49 Years, Occu.: Service,
R/o. Survey No.223/2B,
Majrewadi, Solapur.Petitioners
- Vs.
1. City Engineer, Solapur,
Municipal Corporation,
Permission of Construction Division,
Solapur.
 2. Joint Town Planning Director,
Solapur Municipal Corporation,
Solapur.
 3. Solapur Municipal Corporation,
Solapur (Notice be served to the
Municipal Commissioner, Solapur),
Res. No.1 to 3 R/o. Indra Bhavan,
Railway Line, Solapur.
 4. Summayya Nagar Plot Holder
Kalyankari Sanstha, Solapur,
Register No.MAH/317/2019,
Through Chairman Akilahamad
Mohammad Nalwar, Age: 61 Years,

Occu.: Business, R/o. Plot No.8,
Summayya Nagar, Block No.B,
Majrewadi, Solapur.

.....Respondents

Mr. Valmiky Narvekar, (Through VC) i/b. Mr. M. S. Mulla, for the
Petitioners.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 13th OCTOBER 2025

JUDGMENT :-

1. Present Writ Petition takes exception to order dated 9th January 2024 passed by learned District Judge, Solapur in Miscellaneous Civil Appeal No.106 of 2021, thereby upholding Judgment and order dated 19th November 2021 passed by Civil Judge, Senior Division, Solapur below Exhibit 5 in Regular Civil Suit No.102 of 2021, whereby application moved by Petitioners/plaintiffs for grant of temporary injunction against defendants has been declined.

2. Petitioners/original plaintiffs instituted Regular Civil Suit No.102 of 2021 seeking declaration that notice dated 28th December 2020 issued by Respondent No.2-Municipal Corporation is invalid and perpetual injunction to not to act upon such notice or demolish construction of plaintiffs in pursuance to such notice. Plaintiffs have filed application under Order 39 Rule 1 of Code of Civil Procedure

below Exhibit 5 seeking temporary injunction restraining defendants from demolishing suit property. In short, it is case of plaintiffs that suit property is part of Survey No.223/2/B alongwith its construction having area about 3000 sq.ft. According to plaintiffs, Summayya Nagar Plot Dharak Kalyankari Sanstha is the owner of property and that has been given to plaintiff No.1-Trust for carrying out social activities. On 23rd December 1990, then Gram Panchayat Majrewadi granted construction permission. Eventually, construction of Function Hall admeasuring 50 feet x 60 feet with tin shed has been raised. After extension of limit of Municipal Corporation, Solapur, suit property came within jurisdiction of Solapur Municipal Corporation.

3. In the year 2004, the officers of Municipal Corporation visited suit site and asked for the construction permission. They suggested the plaintiffs to obtain the permission from corporation and also accepted the construction/development charges from plaintiffs. It is further contended that Respondent-Corporation has issued notice dated 28th December 2020 directing Petitioners to remove construction. Notice is purported to be issued under Section 53(1)

(a) of Maharashtra Regional Town Planning Act, 1966 (For short, '**MRTA Act**'). According to plaintiffs, notice is illegal.

4. The Trial Court issued notices to Respondents. They filed their written statement/reply. After hearing the parties, the trial Court rejected application filed vide order dated 19th November 2021. The same order is confirmed by learned District Judge, Solapur vide its Judgment and Order dated 9th January 2024 passed in M.C.A.No.106 of 2021. Hence, this Petition.

5. The perusal of impugned order depicts that Petitioners/ plaintiffs could not demonstrate their right to hold property. No documentary evidence has placed on record to show that plaintiffs have put in authorized possession of suit property by its owner. Secondly, plaintiffs could not prove that construction at the site is legal. Although, plaintiffs are contending that construction permission was granted by Gram Panchayat, no document is pressed into service indicating such permission. On the other hand, plaintiffs appear to have deposited the development charges with the Corporation. However, at no point of time, construction permission has been granted to them nor construction has been regularized.

6. In this background, the Corporation has issued notice under Section 53(1) of MRTP Act directing Petitioners to remove construction within a period of 24 hours. Petitioners have filed present suit with principal prayer seeking declaration that notice issued by Corporation is invalid.

7. Section 53 of MRTP Act empowers the Planning Authority to serve the owner, Developer or occupier a prior notice of 24 hours requiring him to restore the land to the condition existing before said development took place, if such development has been carried out without permission required under the Act or inconsistent with permission granted or when any such permission for construction has been revoked. Therefore, *prima facie*, this Court finds that plaintiffs could not bring any material on record to demonstrate that notice issued by Respondent-Corporation is without authority under law or invalid for any other reason. The plaintiffs have not specified the reason as to why they branded such notice as invalid.

8. The most important aspect of matter is that Section 149 of MRTP Act states that every order passed or directions issued by State Government or order passed or notice issued by any Regional Board,

Planning Authority or Development Authority under the Act shall be final and shall not be questioned in any civil suit or other legal proceedings. The aforesaid bar would preclude the plaintiffs from claiming any declaration against the notice issued under Section 53(1) of MRTP Act by filing civil suit. It is true that when there are exceptional circumstances, to hold notice as invalid or it has been issued without following fundamental procedure or the requirements which are vital in nature, suit can be entertained. However, mere pleadings that notice is invalid would not be sufficient in such cases and plaintiffs require to specify the reason indicating fundamental infraction in the procedure, required to be followed before issuing the notice. In this case, *prima facie* adequate reasons are not made out in plaint to accept contention of plaintiff.

9. In that view of the matter, this Court do not find any reason to enter into other factual aspects raised in the Petition. Apart from the aforesaid fact, it can be observed that present Writ Petition is filed on 1st July 2024. The delay in filing the present Writ Petition is not properly explained. Apart from that, no interim orders are in existence since 9th January 2024, thereby protecting the interest of Petitioners since last 21 months.

10. In that view of the matter, no case is made out for interference under Article 227 of the Constitution of India. Writ Petition stands rejected.

(S. G. CHAPALGAONKAR, J.)

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signed by
RAJU
DATTATRAYA
GAIKWAD
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