

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 383 OF 2025
WITH
INTERIM APPLICATION NO. 7444 OF 2025

1. Vikas Education Society, Chopadi, Taluka
Sangola, Dist. Solapur

2. Shri. Sunil Anandrao Babar

....Petitioners

Vs.

1. The Grampanchayat Chopadi, Tal. Sangola,
District Solapur

2. Gramsevak, (Gramvikas Adhikari), Grampanchayat
Chopadi, Tal. Sangola District Solapur

3. The Block Development Officer, Panchayat Samittee
Sangola Tal. Sangola, Dist. Solapur

4. The District Collector, Solapur

5. The Chief Educative Officer, Zilla Parishad Compound,
Solapur.

6. The District Superintendent of Police Solapur.

7. The Sub Divisional Police Officer, Magalwedha,
Dist. Solapur.

8. The Special D.I.G. Kolhapur Range.

9. The State of Maharashtra through
Department of Home, Mantralaya.

....Respondents

Mr. Ambaji R. Rayani for the Petitioner.

Mr. Rupesh Bobade for Respondent Nos.1, 2 and 5.

Mr. Bhushan Walimbe for the Applicant in IA/7444/2025.

Mr. Kedar B. Dighe, Addl.G.P. a/w P. J. Gavhane, AGP for State.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
RESERVED ON : 21 APRIL 2025
PRONOUNCED ON : 08 MAY 2025

JUDGMENT (PER ADVAIT M. SETHNA, J.):

1. This petition as filed under Article 226 of the Constitution of India praying for the following substantial reliefs:-

“a) Rule be issued.

b) The Hon’ble Court be pleased to issue the writ of mandamus, orders, directions or any other order, directions of appropriate writ in the nature of mandamus, directing the respondent No.1 and 2 forthwith to restore the demolished building of the laboratory of the petitioners school and junior college alongwith all the necessary equipments and facilities.”

2. Rule. Returnable forthwith. With the consent of parties, heard finally.

3. We have heard Mr. Ambaji Rayani, learned counsel for the petitioner. Mr. Rupesh Bobade, learned counsel for respondent Nos.1, 2 and 5. Mr. Kedar Dighe, Adl.G.P. for the state and Mr. Bhushan Walimbe for the Intervenor. With the assistance of the learned counsel for the parties, we have perused the record.

4. In the present proceedings the Court is called upon to exercise its writ jurisdiction on disputed questions/issues of facts qua the petitioners’ possession of the subject structure/building as also the legality of the construction which is

asserted to be unauthorized under an order passed by the Deputy Superintendent, Land Records Sangola.

Submissions:-

5. Mr. Rayani has limited submissions. He would first submit that the petitioner-trust started a school in the year 1972 on a property bearing No.237A, 237B now being Nos.405 and 406, city survey No.35 and 233 respectively (“**subject property**”) are handed over by the respondent No.1 vide a resolution dated 11 July 1973 in favour of the petitioner-trust. However, there is no resolution or record in these proceedings. The petitioner claims to be in possession of the subject property since then. It is asserted that the trust imparts education to the poor and needy students at village Chopadi, Solapur and to adjacent villagers since the year 1972 until date and also runs a junior college. On the other hand, the respondents would contend that after construction of the new school at survey No.233 that the petitioner shifted its entire school along with laboratory to such building located at survey No.233. Since 1996 the old school building at survey No.35 was not maintained and thereby ran into a state of complete disrepair. Such condition according to the petitioner would necessitate its demolition on the basis of several complaints from villagers to Grampanchayat that it posed as a safety hazard for the villagers in the locality.

6. Mr. Rayani would then contend that it is on one fine morning of 29 July 2024 that the respondent Nos.1 and 2 illegally demolished the said

building/structure located on land bearing survey No.35 (laboratory building) which housed the laboratory of the school run by the petitioner-trust, without due intimation or notice to the petitioner, thereby destroying the valuable equipments in the said building. The petitioner would contend that the act of demolition of the petitioner's property was sudden, highhanded and arbitrary inasmuch as the petitioner was not put to any notice and/or given any opportunity of hearing before such demolition. Thus, the petitioner is aggrieved by such illegal demolition of its laboratory building which has caused grave and serious prejudice to the petitioner. Pursuant to such demolition, the petitioner lodged an FIR bearing No.0587 of 2024 dated 8 August 2024 against the respondent Nos.1 and 2.

7. Mr. Rayani would submit that the demolition by the respondent Nos.1 and 2 of the laboratory building of the petitioner-trust is shocking and deplorable. Moreover, it is contrary to all the known principles of natural justice and also was an act prejudicial not just to the petitioner trust, but also against the interest of the students for whose benefit such building was used for.

8. Mr. Rayani would thus urge that the illegal demolition of the laboratory building be set right and the respondent Nos.1 and 2 be forthwith directed to restore demolished laboratory building of the petitioner-trust along with all the necessary equipments and facility. This according to Mr. Rayani would be the demand for justice, for which he has approached this Court.

9. Mr. Bobade, learned counsel for the respondent Nos.1 and 2 would strongly oppose the petition. He would refer to the affidavit-in-reply dated 20 March 2025 on behalf of the said respondents filed by Mr. Machhindra V. Misal, Gramsevak, Solapur. He would at the very outset urge that the petitioner has made false assertions regarding the ownership and possession of the subject property and thus has not approached this Court with clean hands.

10. It is the case of the respondent that the subject property was not in use by the Grampanchayat and for such reason the petitioner-trust requested the Grampanchayat to allow the use of the said structure for purpose of a laboratory for the school. It was in the year 1972 that such permission was granted to the petitioner-trust for using the building as a laboratory. However, there was clearly no transfer of any ownership rights whatsoever in favour of the petitioner in respect of the subject property, including the laboratory in the building under survey No.35. The respondents would contend that since 1996-97 the petitioner had not paid any Grampanchayat tax pertaining to the said laboratory building.

11. Mr. Bobade would submit that the laboratory building had become dilapidated as it was constructed in the year 1936 by using stone and mud and since then due to lack of maintenance, it had become dangerous for use and occupation. The Grampanchayat received letters with requests from the villagers to demolish the said structure as it posed a serious threat to the safety and security to the villagers. Accordingly, the subject of demolition was discussed in the gram sabha of

the village Chopadi, and it was unanimously decided to demolish the said structure in view of public safety and security. It was the immediate threat of collapse of the dilapidated structure that an immediate decision for demolition had to be taken in the larger interest of the villagers.

12. Mr. Bobade would refer to a resolution dated 31 July 2024, passed by the gram sabha of the village Chopadi making out a sufficient cause for urgent demolition of the said dilapidated structure of the laboratory building. The said resolution reads thus:-

“COPY OF A RESOLUTION PASSED BY THE GRAM SABHA

On the date 30.05.2024, the Gram Sabha of the Grampanchayat of Village Chopdi, Taluka - Sangli commenced at 10:00 O'clock in the morning, under the Chairmanship of the Hon'ble Sarpanch, at opposite the office of the Grampanchayat. The relevant proceeding pertaining to the said Meeting are as mentioned hereinbelow:

Point No. 6: To consider the extempore items.

1) To demolish the dilapidated and dangerous tin-sheet building located on the land bearing C. S. No. 35.

Resolution: 166/1. The Tin-sheet building located in the chowk within the boundary of Village Chopdi Gaothan has become very dilapidated and dangerous. The said land was owned by the Grampanchayat. However, pursuant to the decision dated 25.10.1989 of the D. S. L. R., Pune, the name of Government of Maharashtra came to be entered in the column of owner in place of Grampanchayat, as owner. The Grampanchayat had constructed the said building for Sarvodaya Society, from out of the Public contribution. After passage of time,

the Sarvodaya Yojana came to an end. Thereafter, the said building was allotted to Balasaheb Desai Vidyalaya for running its laboratory as it did not have a sufficient space in its building. However, as an adequate premises was thereafter became available for the Institution, the said building is not in use for last 25 to 26 years. Thereafter, the said building remained in the possession of the Grampanchayat. However, as the said building is an old structure, it has become dilapidate and dangerous. As the said building is located at the centre portion of the Village, a possibility of loss to life cannot be ruled out and therefore, it is unanimously resolved to demolish the said tin-sheet building.

Proposed by: Dagadu Govind Babar.

Seconded by: Sachin Mohan Khalage.

The Resolution is passed unanimously.”

13. Mr. Bobade would submit that there is nothing on record to show that the above resolution is disputed and/or challenged by the petitioner. He would urge that in the given facts and circumstances, there was nothing irregular, arbitrary, let alone illegal, in demolishing the said tin-sheet structure which posed a serious threat to the safety and security of the villagers in the said area. For such reason, the petitioner who has no legal right of ownership or otherwise in the subject property including the laboratory building has no cause to approach this Court and that too in a writ petition against such demolition which is the need of the hour, in larger public interest. He would refer to certain photographs to show the dilapidated nature of the said structure which warranted immediate demolition.

14. The petitioner has filed an affidavit-in-rejoinder of Mr. Sunil Anandrao Babar which is on record. Mr. Rayani placing reliance on such rejoinder

affidavit would reiterate that the demolition of the laboratory building is illegal and carried out in a manner unknown to law. According to him, it is falsely submitted by the respondents that there has been non-payment of property taxes since 1997 in regard to the said building and that the laboratory is in the disputed property which is used for the students for their practical assignments. As stated in the rejoinder the laboratory building is in a good condition, very much in the possession of the petitioner and does not require any demolition, much less there is no emergency that has arisen to warrant such demolition. Mr. Rayani would strongly dispute that the said building, structure is in dilapidated state as submitted by the respondents and would contend to the contrary. He would reiterate that the illegal demolition of the laboratory building has caused grave prejudice to the school run by the petitioner-trust and as it is carried out illegally, the laboratory building ought to be restored by the respondent authorities.

15. We have also heard Mr. Bhushan Walimbe for the intervenor. We have perused the intervention application dated 15 April 2025 on which the parties before us are also heard.

16. The intervention application is filed on behalf of the villagers and residents of the Grampanchayat, village Chopadi, Solapur where the laboratory building is situate. Mr. Walimbe would first submit that such intervention in the writ petition is warranted in the light of factually incorrect statements made by the petitioner and the petition is based on a false foundation. Mr. Walimbe submits that

the issues raised in the interim application would have a direct bearing on the lis as it affects the interest of the villagers of the said Grampanchayat whose interest the applicants represent. Referring to the averments on the intervention application, he would reiterate the respondents' stand that the laboratory building is in fact on the land belonging to the State of Maharashtra and the petitioner has no ownership and/or legal right in respect to the same. According to Mr. Walimbe, the laboratory building was a dilapidated structure for the last 25-26 years. It is at the behest of the villagers who made complaints against such structure which posed a safety hazard for the people of the village where the laboratory building is situated. Relying on the photographs on record he would submit that it is clear that the laboratory building is in shambles as the tin roof of the structure is rusted and without proper fasteners and is in a complete dilapidated state. It is at the behest of the villagers some of whom, Mr. Walimbe would represent, who made written complaints to the Grampanchayat to demolish the said laboratory building in the interest of the villagers and their children.

Analysis:-

17. At the very outset we may note that the *prima contentio* of the petitioner is in regard to the illegal demolition of the laboratory building, which according to the petitioner was at all times in the possession of the petitioner. However, before delving into the rival contentions we may observe that the respondents would deny this position on affidavit to the effect that the petitioner as claimed is in possession of the demolished laboratory building. Since 1997, the

petitioner ceased to be in possession, occupation and use of the said structure. In fact, the school building of the petitioner was shifted to a bigger building from land under survey No.35 to survey No.233 to which the petitioner also moved such laboratory to the new building/structure. It is since then that the petitioner has not been using the said building i.e. survey No.35 for the purpose of laboratory of the school. These facts as placed on record by the respondent in their affidavit-in-reply are not specifically controverted in the rejoinder of the petitioner. Be that as it may, these are issues which would necessitate an inquiry into disputed questions of fact which under settled law is totally outside the ambit and purview of writ jurisdiction. It is pertinent to note that the case of the respondents on affidavit that the petitioner has suppressed material facts and not come to the Court with clean hands is not controverted by the petitioner. The petitioner has not placed on record any document/material in the nature of any requisite permission from the competent authority to support its stand in these proceedings.

18. We may advert to an order dated 4 November 1985 (Exhibit-E to the petition) passed by the officer under the Deputy Superintendent Land Record, Sangola. Such order was in the nature of inquiry into the trust of the petitioner situated at village Chopadi, Solapur. The relevant portion of the order reads thus:-

“It cannot be accepted on this basis that the Grampanchayat has given the ownership rights of the property bearing Chalta Number - 11 of Graph Number 2 and Chalta Number 280 of Graph Number 3, situated at Village Chopdi, Taluka

- Sangola, to Vikas Education Society, Chopdi, by passing its Resolution and that the said property is in your possession and under your management.

2)

3)

4)

5)

6)

7)

Therefore, it is proved that the said properties are not of the private ownership of Vikas Education Society, Chopdi, Grampanchayat Chopdi or of Bhanudas Balu Babar and Bapu Anna Babar. Hence, it is declared that the said property is a Gaonthan, exempted from levying tax, Holder - Government of Maharashtra and that the same is in an unauthorized possession and management of Vikas Education Society, Chopdi, Taluka – Sangola.”

The above order categorically refers to the fact of the petitioner being in unauthorized possession and management of the subject trust. This order is not challenged by the petitioner. Such findings would again give rise to disputed questions of fact, *inter alia*, relating to the possession of the petitioner being unauthorized or otherwise which would require evidence to be lead. The pleadings in the proceedings and the submissions advanced by the parties, brings to the fore several disputed questions of fact which would have to be tested on the parameters of evidence. Given such complexion of disputes that cannot be gone into and/or would not fall within the purview of a writ petition under Article 226 of the Constitution of India.

19. We have perused the photographs of the laboratory building as placed on record by the respondents. A bare perusal of the same with a tin roof would indicate its dilapidated condition. However, we refrain from delving into details as such factual disputes for the reasons as noted by us above. In such view of the matter, we are not in agreement with the submissions of Mr. Rayani who attempts to espouse a cause and seek relief which do not fall within the confines of writ jurisdiction.

20. We have considered the intervention application filed on behalf of some of the villagers. Having heard Mr. Walimbe and perused the application, it was the complaint of the villagers which insisted on demolition of the laboratory building as it was causing a safety hazard to them. Mr. Walimbe for the intervenor would also support the case of the respondent-authorities that the petitioner is in unauthorized possession of the said laboratory building/structure. In this view of the matter, as also considering the declaratory nature of reliefs sought by the petitioner, we are certain that this writ petition cannot be maintainable and/or entertainable, under Article 226 of the Constitution of India.

21. Our conclusion is fortified by the decision of the Supreme Court in ***Roshina T. Vs. Abdul Azeez K. T.***¹ on the issue of disputed questions of fact, the relevant portion reads thus:-

1 (2019) 2 SCC 329

“14. The remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of statutory authority is alleged. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This Court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant. (See Mohan Pandey v. Usha Rani Rajgaria [Mohan Pandey v. Usha Rani Rajgaria, (1992) 4 SCC 61] and Dwarka Prasad Agarwal v. B. D. Agarwal [Dwarka Prasad Agarwal v. B.D. Agarwal, (2003) 6 SCC 230].)

17. In our opinion, the High Court, therefore, while so directing exceeded its extraordinary jurisdiction conferred under Article 226 of the Constitution. Indeed, the High Court in granting such relief, had virtually converted the writ petition into a civil suit and itself to a civil court. In our view, it was not permissible.”

Adverting to the aforesaid principles of law when a remedy is available to the petitioner under the general law, the petitioner cannot take recourse to the extraordinary remedy approaching this Court in the present proceedings under Article 226 of the Constitution of India.

22. In light of the forgoing discussion, we pass the following order:-

ORDER

- i. The writ petition is rejected. However, the petitioner is at liberty to approach the Civil Court and/or pursue any other remedy as available to him in law. If

the petitioner desires to pursue such remedy, all rights and contentions of the parties in such proceedings are kept open.

ii. No costs.

23. In view of the disposal of the writ petition, the captioned interim application does not survive and the same is accordingly disposed of.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]