

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16377 OF 2024

Mehernigar Altaf Husein Baig
Versus
The Collector And Ors

...Petitioner
...Respondents

Adv. Misbaah Solkar a/w Sejal Jain, i/b Adv. Amin Sokas, for the Petitioner.
Adv. Sagar Batavia, for the Respondent No. 3.
Adv. P.J. Gavhane, AGP for State.
Mr. Tushar Shinde, Tahsildar, Palghar present.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 11 FEBRUARY 2025

P.C.:

1. We have heard the learned counsel for the parties. This petition under Article 227 of the Constitution of India is filed praying for the following substantive relief:-

“a) That this Hon'ble Court be pleased to pass an appropriate writ, order and directions to the Respondent Nos. 1 & 2 to conduct enquiry and take actions against the illegal construction on the in the land bearing Mauje Manor, at Palghar, Manor Village Panchayat, Boundary Land Survey No.22A, Plot No.35, Area 416.25,Sq. mtrs, as per T.I.L.R. Area 544.00 Sq. mtrs, on East-Plot No.36, On West-Open Land, North and South-Road constructed by the Respondent No. 3 in any manner thereof;”

2. On 29 January 2025 when we heard the learned counsel for the petitioner and respondent No. 2 -State and when Respondent No. 3 despite notice was not represented, we passed following order:-

*“1. The learned AGP would take instructions as to why action so far is not taken under the order dated 8 December 2022 passed by Shri Sunil Shinde, Tahsildar, Palghar under the order dated 8 December 2022 passed by him in regard to the illegal construction being undertaken by respondent on plot of land 22/A, plot N.35 situated at Manor, District Palghar.
2. Accordingly, list the matter on **3 February 2025 (HOB)**.
3. In the meantime, the Tahsildar, Palghar is not precluded from taking any action and making a report of the same to this Court.”*

3. Thereafter on 3 February 2025 a detailed order came to be passed noting the order dated 8 December 2022 passed by the Tahsildar, Palghar allowing the petitioner’s application in regard to the demolition of the unauthorized structure in question as put by respondent no.3. The proceedings were adjourned to 11 February 2025 to be heard at 2:30 p.m., thereby awaiting further appropriate action of demolition being taken by the Tahsildar and a report to that effect to be placed on record of the Court. The said order dated 3 February 2025 required to be noted here, which reads thus:

“1. By the order dated 8 December 2022 the Tahsildar, Palghar after hearing the petitioner is also respondent no.3 has taken following decision:-

(Translation of a photocopy of a marked portion of an Order, typewritten in Marathi)

ORDER

- 1) *Application of the Complainant is allowed.*
- 2) *The holder of the unauthorized structure should obtain construction permission in respect of the said unauthorized structure or should get the said structure*

regularized from the Collector, Palghar, as per the provisions of the Maharashtra Land Revenue Code, 1966, within the period of 6 months from the date of receipt of this Order.

- 3) If he fails to get the said structure regularized within the period of 6 months from the date of this Order then, appropriate action shall be taken as per the provisions of the Maharashtra Land Revenue Code, 1966.*
- 4) No Order as to costs.”*

2. The grievance of the petitioner is that the illegal construction as undertaken by the respondent no.3 which is on the petitioner's land has neither been regularised nor the same is in any manner approved. As on date i.e. after the period of more than 6 months of the aforesaid order being passed by the Tahsildar the illegal construction has not been removed. His contention is that the Collector/ Tahsildar is not taking any action and it is for such reason the petition has been filed by the petitioner being aggrieved by his rights guaranteed under Article 300A of the Constitution of India read with Article 14 of the Constitution of India.

3. The new incumbent Tahsildar is present in the Court. Ms. Gavhane, learned AGP on his instructions states that as he has recently taken charge hence he could not take immediate action. Considering the nature of the order dated 8 December 2022 passed by the Tahsildar, we expect that the Tahsildar needs to proceed to take action in accordance with law and implement his own order.

4. Respondent no.3 despite service is not represented. It also appears that respondent no.3 has no legal right and is owner of land of the petitioner. As seen from the record, there is no prohibition in law for an appropriate action to be taken by the Tahsildar, Palghar. Respondent nos.1 and 2 are not taking any action the only inference which can be drawn is that respondent nos.1 and 2 are indirectly supporting the illegality of respondent no.3 which cannot be countenanced.

5. In this view of the matter, awaiting further appropriate action be taken of demolishing the illegal construction, we adjourn the proceeding to 11 February 2025 to be taken at 2.30 pm.

6. Let the report on the action taken in accordance with law, be placed before the Court.

7. Parties to act upon an authenticated copy of this order.

*8. Stand over to **11 February 2025 at 2.30 pm.***”

4. The respondent No. 3 thereafter has appeared in the present proceedings and is represented by Mr. Sagar Batavia. We were fairly told that respondent no. 3 moved a writ petition being writ petition No. 1912 of 2025 in regard to the regularization of the illegal unauthorized construction. The said petition was considered by a coordinate Bench of this Court and stated to have been dismissed by order dated 7 February 2025 passed by this Court, a copy of the order is not available.

5. Ms. Gavhane, learned AGP on behalf of the Tahsildar has stated that the demolition action is already in progress and some portion of the illegal construction has been demolished. The Tahsildar is present in the Court, he has prepared a report of the further developments taken in that regard on the progress of the demolition in his letter dated 10 February 2025 addressed to the learned Assistant Government Pleader, a copy of which is taken on record along with the photographs. The report indicates that despite clear notice to respondent no. 3 to remove the unauthorized construction on or before 9 February 2025, no action was taken and as a consequence thereof, the Tahsildar has under police protection has started demolition of the unauthorized

construction on 10 February 2025 with all care and caution being exercised, in the interest of the existing adjoining buildings.

6. We have noted the contents of the said report/letter we have also perused the photographs which shows the ground floor, first floor and also second floor being demolished and the portion of the third floor resting on the columns would now be demolished. Thus, the demolition has substantially progressed.

7. As the construction is fully unauthorized, let the demolition be completed as scheduled and the final report in that regard be placed on record of this Court.

8. In this view of the matter, further adjudication of the petition is not called for, it is accordingly disposed of.

9. List the matter on **21 February 2025 'High on Board'** for a final report to be placed on record/for compliance.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]