2026:BHC-AUG:46998

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13447 OF 2026

AMBADAS KACHARU KAMBLE AND OTHERS
VERSUS
THE MUNICIPAL COUNCIL SHIRDI THR CHIEF OFFICER
...
Advocate for Petitioners : Mr. Kulkarni Sanket S.
Advocate for Respondent : Mr. A.V. Hon
...
CORAM : MANJUSHA DESHPANDE, J.
DATE : 01ST OCTOBER, 2026

PER COURT :

1. The Petitioners are challenging the order dated 19.09.2026, passed by the District Judge-1, Rahata, District Ahmednagar, rejecting the Miscellaneous Civil Appeal no. 07/2025, filed by the Petitioners against the order of the learned Civil Judge, Senior Division, Rahata, dated 08.04.2025, refusing the relief to the Petitioners in Application at Exhibit 5.

2. The Petitioners have filed a suit i.e. Regular Civil Suit no. 90/2025, seeking a declaration that the notice issued to the Petitioners dated 14.02.2025, for removal of the unauthorized constructions made by them is illegal. During the pendency of the suit the Petitioners have filed Exhibit 5 Application seeking stay to the notice.

3. The learned Advocate Mr. Sanket Kulkarni, for the

Petitioners contended that the notice dated 14.02.2025, is a defective notice, since it lacks specification as to what extent encroachment is made by the Petitioners. The notice is issued under Sections 179 and 189 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 as well as Sections 52 to 55 of the Maharashtra Regional and Town Planning Act, 1966.

4. According to the learned Advocate for the Petitioners, the notice only states that there are encroachments on the land under Reservation No. 11, which is reserved for a garden, as well as on the 9 meter and 15 meter Development Plan roads. It does not specify anything except the encroachment made by them. It is further submitted that they are in possession of the portion of property on which they have constructed their houses since last more than 50 years and they have also filed their regularization applications pursuant to the government resolution dated 25.03.2026.

5. In view thereof, according to him, considering that the notice is defective, a *prima facie* case is made out by the Petitioners, and since they have been in possession for the last 50 years, the balance of convenience also lies in their favour. In support of his submission, he has relied upon the decisions of this Court of the co-ordinate bench dated

24.01.2020, in Second Appeal no. 41/2006 in case of ***Liyakat Ali Ismail Muniwale Versus Chief Officer, Municipal Council and Others,*** as well as dated 27.02.2026 in Writ Petition no. 1697/2026 in case of ***Satish Madhavrao Pingle Versus The State of Maharashtra and Others*** along with other Writ Petitions.

6. After going through the said order passed in Writ Petition no. 1697/2026 by this Court, I find that the facts in the present case and the facts in the aforementioned Writ Petition are totally different. Since the Petitioners in that Writ Petition are the owners and possessors of the land on the basis of registered sale deed which is executed in their favour, whereas in the present case, the Petitioners are the encroachers of the land of the Municipal Council.

7. Per contra, learned Senior Advocate Mr. Hon, appearing for the Respondent/Municipal Council submitted that in fact, it is the burden on the Plaintiffs to give the details of the property along with the sketch map of the land which is possessed by them, which is not given in the plaint itself. He submits that in fact, the Municipal Council has received certain funds for carrying out the development work which is to be completed before the Kumbh Mela festival, which is held at Nashik. He submits that even though reliance is placed on the government resolution,

providing for regularization of the encroachers in the government land, the Applications filed by the Petitioners for such regularization has already been turned down vide communication dated 03.06.2026. Therefore, there is no question of any regularization. He also pointed out from the order passed by the learned Civil Judge, Senior Division, Rahata, that the Petitioners have alternate lands and a list of the lands owned by them is already produced on record of the Court at Exhibit 26. Therefore, the balance of convenience would not lie in their favour. In fact, if such encroachments are continued, it would cause prejudice to the government and the development work of the city would be hampered. He also pointed out from the order passed by the Appellate Court that the Court has made an observation that *prima facie*, it appears that the Plaintiffs along with plaint have not given rough sketch map of specific area of each Plaintiffs of the tin sheds or huts and it is also observed that the Petitioners have not taken any permission for construction which has been carried out by them i.e. the huts and the sheds. These are the unauthorized construction which creates hurdle in the implementation of the development scheme as per the development plans sanctioned for Shirdi. The encroachment made is on the reservation for garden and road. Therefore, it is a responsibility of the Municipal Council to remove such encroachments.

8. Both the Courts have taken into consideration whether or not, *prima facie* case is made out by the Petitioners and held that no, *prima facie* case is made out by the Petitioners and balance of convenience also does not lie in his favour.

9. After hearing the parties and going through the orders passed by both the Courts below, I do not find any case for interference is made out by the Petitioners as they are not able to point out any error apparent from the orders which warrants interference of this Court. The law in this regard is settled. The law in this regard is settled in the decision of the Hon'ble Supreme Court in the case of ***Wander Limited Versus Antox India Private Limited, reported in 1990 supp SCC 727***. In case of grant of injunction, merely because some other view is possible than the one taken by the Courts below, this Court cannot interference in the orders passed by the Courts below which is discretionary relief.

10. In my view, I do not find any ground or error that has been made out by the Petitioners. As such Writ Petitioner deserves to be dismissed and is accordingly, dismissed.

(MANJUSHA DESHPANDE, J.)

SPC