



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

50 WRIT PETITION NO. 8670 OF 2018

Mohammed Abdul Khaleq Abdul Razzak Through Lrs Mohammad Imran
M A Khaleq And Others

VERSUS

The State Of Maharashtra And Others

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Advocate for the Petitioners : Mr. Pathan Hamzakhan I.

AGP for Respondents: Mr. D. R. Korde

Advocate for Respondent No.2 : Mr. Ingole R. K.

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 10.04.2026

PER COURT :

1. Heard the learned counsel for the respective parties.
2. The petitioners are aggrieved by the order dated 20.06.2018 passed by the learned Joint Civil Judge, Senior Division, Nanded below Exhibit-125 in Regular Civil Suit No.632 of 2004, whereby the application filed by the petitioners for framing of additional issues came to be rejected.
3. Learned counsel for the petitioners, Mr. Pathan submits that the petitioners (original plaintiffs) have filed Regular Civil Suit No.632 of 2004 for perpetual injunction contending that they are the owners and possessors of the suit house bearing old Municipal No.1/6/531 and 1/6/886, now new House No.1/6/1011, CTS No.8875. It is further submitted that the suit property was purchased by the father of the



petitioners from a housing society and thereafter construction was carried out. The petitioners are residing therein with their family members. According to the petitioners, the respondent–Municipal Corporation, on the pretext that the petitioners have encroached upon a road, is attempting demolition of the suit house, and therefore, the suit for perpetual injunction has been filed.

4. It is contended that though the respondent has alleged encroachment to the extent of 3 meters on the public road, no proper issue regarding encroachment has been framed by the Trial Court. Therefore, an application for framing of additional issues was filed, which has been rejected without assigning proper reasons.

5. Per contra, Mr. Ingole, learned counsel for respondent No.2 supports the impugned order and submits that upon measurement it was found that the petitioners have encroached upon the public road. It is submitted that in a suit for perpetual injunction, the burden lies upon the plaintiffs to establish their possession and title, and therefore, no interference is warranted.

6. Having considered the submissions and upon perusal of the plaint, written statement, and the issues framed, it appears that the suit is one for perpetual injunction filed against the Municipal Corporation. The Trial Court has framed necessary issues in the context of the pleadings. The question of encroachment is incidental to the main relief and can be adjudicated on the basis of the existing issues.



7. In view of the above, I do not find any reason to interfere with the impugned order. The application below Exhibit-125 has been rightly rejected.

8. Hence, the writ petition is dismissed. No order as to costs.

9. Petitioners are permitted to withdraw the amount deposited along with interest accrued thereon.

[SIDDHESHWAR S. THOMBRE]
JUDGE