

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 05126 of 2001

District : Latur

Raghunath s/o. Waghoji Bansode,
Age : 35 years,
Occupation : Business,
R/o. Neelraj Typewriting,
Nanded Road, Latur.

.. Petitioner.

versus

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai - 32.
2. The Collector, Latur,
District Latur.
3. Town Planning Officer,
Town Planning Office,
Branch at Latur.
4. The Chief Officer,
Municipal Council, Latur,
District Latur.
5. Dayanand Education Society,
Barshi Road, Shivaji Chowk,
Latur, Dist. Latur,
Through its President.

.. Respondents.

.....

*Mr. Pradeep G. Deshmukh, with
Mr. H.A. Joshi, Advocate, for the petitioner.*

*Mr. A.R. Kale, Asst. Government Pleader, for
respondent nos.01 to 03.*

*Mr. V.D. Hon, Senior Advocate, for
respondent no.04.*

*Smt. Anjali Dube (Bajpai), Advocate, for
respondent no.05.*

.....

**CORAM : R.M. BORDE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 09TH NOVEMBER 2017

ORAL JUDGMENT [Per R.M. Borde, J.] :

01. The instant petition is presented seeking directions to respondent nos.01 to 04 to demolish the illegal construction of shopping complex in open space bearing Survey No.58 and City Survey No. 5475 situated at Latur, by issuing writ of mandamus.

02. After presentation of instant petition, this Court by virtue of interim order dated 06-02-2002, restrained respondent no.05 - institution from constructing further stages of shopping complex and from allotting shops on lease basis during the pendency of the petition. Civil Application No. 02816 of 2016 was presented seeking modification of the order. It was pointed out that by virtue of Government Resolution dated 02nd January 2002, the public institutions included in public / semi-public zone are permitted to use maximum up to 15 % of built up area for commercial use. It is contended that the construction raised by respondent no.05 is within the permissible limit of 15 % of the total built up area owned by the institute on subject site. The Society sought permission of Municipal Council for

regularization of 63 rooms which were to be used for commercial purpose as shopping complex on the subject site. The municipal authority by its letter dated 18-11-2008 informed the educational Society that in view of the policy formulated by the Government and as per the development control regulation, the institutes included in public - semi-public zone can be permitted to use 15 % of the area for commercial purposes. It was pointed out that since the draft revised development scheme is pending for final approval before the Government, after securing final approval, the Society can be permitted to use said 63 rooms for commercial purpose. This Court permitted the institution to put shutters and complete the remaining construction on tendering an undertaking by the Society, that on completion of construction, remaining 23 shops would be used for academic purpose till further orders of the court or till final approval of the Latur city Revised Draft Development plan. In view of the undertaking tendered by respondent no.05 - institution, permission was accorded to put shutters on the shops in question and the institution was permitted to use the shopping complex for academic purpose. Liberty was also granted to the Municipal Council or the Town Planning authorities to take action in accordance with law, if it is noticed that the construction contravenes any of the building regulations or any other statutory provisions.

03. Respondent no.05 - institution presented

Writ Petition No. 06717 of 2015 seeking relief in respect of the commercial complex raised by the institution. After presentation of the petition, a communication was received by respondent no.05 herein from Town Planner of Latur Municipal Corporation (previously Municipal Council) in respect of permissibility of use of 15 % of the open space and in view of the said communication, said writ petition came to be disposed of.

04. Learned Counsel appearing for respondent no.05 - institution states that since the development plan for Latur Municipal Corporation has been approved by the State Government, it is permissible to put to use 15 % of the area for commercial purpose. The learned Counsel submits that there is no contravention of any regulation or statutory provision and the construction raised by respondent no.05 - Educational Society for commercial purpose can be retained.

05. In view of the developments referred to above, occurred during pendency of the petition, the instant petition can be disposed of by keeping option of the planning authority and the Town Planning Department open to take appropriate steps as permissible in law, in the event, any contravention of any regulations, policy prescribed by the State Government or statutory provisions is noticed.

06. With the liberty as aforesaid, the writ

petition is disposed of. Rule discharged. There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

(R.M. Borde)
JUDGE

.....