

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

**PUBLIC INTEREEST LITIGATION 111 OF 2016
WITH CIVIL APPLICATION NO.3336 OF 2017**

Quadri Sayyed Tabishuddin
s/o Fasihuddin
Age 27 years, Occu Business
R/o Siraj Manzil, Azam Colony,
Near Sadat Masjid, Aurangabad
Taluka and District Aurangabad
PAN No.AAHQPQ3983D
Cell No.8888921910
Bank A/c No.62105971632 (S.B.H.). PETITIONER.

Versus

1]The State of Maharashtra
Through the Secretary,
Town Planning Department,
Mantralaya, Mumbai-400032
(Copy to be served on the
Government Pleader,
High Court of Judicature at
Bombay,Bench at Aurangabad.

2]The Divisional Commissioner
Aurangabad Division, Aurangabad

3]The District Collector,
Dist.Aurangabad,Aurangabad.

4]Municipal Corporation
Aurangabad
Through its Commissioner.

5]The Town Planning Officer
Town Planning Department,

Municipal Corporation
Aurangabad.

.. RESPONDENTS

Mrs.Kazi Sabahat T., Advocate for petitioner.
Mr.D.R.Kale , AGP for Respondent Nos. 1 to 3
Mr.Deelip Patil Bankar, Advocate for respondents 4 and 5.
Mr.C.V.Thombre, Advocate for applicants-Intervenors in C.A.

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.
DATE : 02/08/2017**

PER COURT :

The Petitioner has filed this Petition in public interest. The petitioner claims that the Aurangabad Municipal Corporation, which is respondent no.4, its officers, servants and agents so also the respondents no.1 to 3, have uptill now neglected to pay any attention to the grievance and complaint that a existing road is required to be widened. The petitioner states that alongwith many residents in the vicinity several representations have been addressed and in those representations, the essential grievance is Mohalla Azam Colony, Roshan Gate and Katkat Gate, are the points and which are on the public road. As per the development plan maps, this road is 12 meters in width. However as of now and today, the road is of 5 to 6 mtrs. wide and at some places, it is 9 mtrs wide. In the representations, communications from 15/6/2016, it is alleged that there are several encroachments and made by construction of houses as

also shops. The petitioners and others derived information under the Right to Information Act, 2005 and pointed out that on account of reduction in the width of the road, no emergency service like Ambulance can be parked or can pass through safely, even the fire brigade vehicles find it difficult to reach the site. The accidents occurred because of these encroachments. School going children who have to walk on the road, face great risk. There is a risk to everybody's life. Upon such representations, and after inviting the attention of the authorities, to the FIR, which has been registered on 13/7/2016, at the instance of one of the complainants Tasneema Begum, that it was requested to take steps to ensure that the road width is maintained.

2] When there was no response, the present PIL has been filed. There is a reply affidavit on behalf of the respondent no.4 Corporation, after it was served. While admitting that the subject matter of the Petition is the road from Roshan Gate to Katkat Gate, from north to south and admitting that it is an old road of city, assertion is that the existing width is 9 meters. It is admitted that the road has been proposed to be of 12 meters wide in the development plan sanctioned by the respondent-municipal corporation. However, widening of the road would be subject to acquisition of affected properties. Thus, for the D.P. Road to be widened or constructed, it is necessary that the properties have to be acquired. Apart there from, even when maintaining the existing width of 9 meters, an encroachment removal programme has been undertaken. The encroachment department plans to remove temporary encroachments in

February 2017 and such steps would be taken and completed.

3] This is an affidavit filed on 7/2/2017. Then there is another affidavit filed by Avinash Bhaskarrao Deshmukh, working as Assistant Director of District Planning (Incharge) Aurangabad Municipal Corporation. That is an affidavit filed on 8/2/2017 which is more or less on identical lines.

4] The Deputy Municipal Commissioner of the Aurangabad Municipal Corporation Mr. Ravindra S/o Prabhakar Nikam filed additional affidavit in reply on 6/3/2017 and claimed that removal of temporary encroachments is highly sensitive matter, to avoid untoward incident, the concerned designated officer of the Corporation was instructed to request the local police station for police protection but during the elections of Aurangabad Zilla Parishad and Panchayat Samiti, all over Maharashtra, so also for the further process, the police machinery was engaged.

5] Then there was public announcements made, appealing to the vegetable, grocery vendors and other concerned, who have erected temporary structures on the existing 9 meters road, to remove them. A personal request was made but that was not adhered to, the encroachment removal programme was announced. It is stated that with the help of the encroachment staff and the machinery, some encroachments have been removed. Reliance is placed upon news item in that behalf. The rest of the encroachment would be duly removed. This is an additional affidavit in reply of 6/3/2017.

6] In this petition, there is a Civil Application No.3336/2017 and moved by about 19 intervenors. They are saying that the P.I.L. petitioner is not a public spirited citizen. He has a personal interest in the matter. It is stated that he is builder and developer by profession. The representations made were motivated. The allegations in that behalf are to be found in para 9 of the Civil Application. Proceeding on these allegations, it is then further pointed out that the existing 9 meters road is sufficient to meet the requirement of traffic on that road. There is no traffic jam as alleged by respondents. The problem is due to widening of main road. The present width of the road is sufficient. In such circumstances, this Court should not countenance at all the request of the PIL petitioner and others but proceed to dismiss the Petition.

7] On the above materials, we have heard the learned counsel appearing for parties.

8] This Court on 30/6/2017 directed the 4th respondent municipal corporation to file additional reply, indicating what is the action taken so far for widening of the road, from 9 to 12 meters and the encroachment removal.

9] Though no additional affidavit is filed, we have found that the pleadings till date, are sufficient to dispose of this Petition.

10] During the course of arguments, Mr.Thombre, learned advocate, appearing for the intervenors, at our suggestion, took instructions from the intervenors and stated that the intervenors

are ready and willing to cooperate with the authorities. They would hand over the portions, which are allegedly termed as encroachment. They would do so voluntarily. The Maharashtra Municipal Corporation Act is an Act, to amend and provide for the establishment of municipal corporations for larger urban area, except Mumbai, in the State of Maharashtra.

11] At the outset, we must indicate that there are provisions in the Act, which are on par with the Mumbai Municipal Corporation Act, 1888. There can be some differentiation and distinction but the core law is that the municipalities have now a constitutional status. Article 242 of the Constitution of India onwards, the constitution has been amended, by introducing in part IX the Panchayats and in part IX-A Municipalities. Article 243(P) contains definitions, Article 243(Q) provides for constitution of municipalities, whereas Article 243(R) deals with the composition of municipalities, Article 243 (S) provides for constitution and compensation of wards committees etc., Article 243(T) deals with reservation of seats, by Article 243 (U) a duration of the municipalities is prescribed, Article 243 (V) inacts the disqualifications for membership and then comes Article 243 (W) which reads as under :

“243W. Powers, authority and responsibilities of Municipalities, etc.- Subject to the provisions of the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such

conditions as may be specified therein, with respect to -
 (i) the preparation of plans for economic development and social justice;
 (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
 (b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibility conferred upon them including those in relation to the matters listed in the Twelfth Schedule.”

12] A perusal of this Article would indicate that subject to the provisions of the Constitution, legislature of a State may by law endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-Government. The law has to be enacted, to achieve, fulfil this constitutional mandate and to perform functions and to implement schemes, as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule. Article 243(X) confers power to impose taxes by, funds of the Municipalities and then, there is a provision of Finance Commission to be set up in terms of Article 243 (Y). There are other matters covered from Article 243 (Z) onwards. There is a committee for District Planning, metropolitan planning and then what is material for us, is the Twelfth Schedule to the Constitution. Twelfth Schedule which is referable to Article 243(W) at Clause (a) Sub Clause (ii) at item no.4 provides for roads and bridges. Thus this is a function and responsibility of municipality. It has to take such steps, as are necessary in law, so that the provisions of all the above items in Twelfth schedule are made.

13] We therefore, cannot be unmindful of the status and position of the municipal corporations. Atleast after the Constitutional amendment, none should argue that, as an institution of self-government and on the level at which it is placed, it is its paramount duty to comply with the constitutional mandate. The provisions of the Maharashtra Municipal Corporation Act therefore, must receive a interpretation consistent with the object and purpose, set out in the Preamble to that Act as well as the provisions and mandate of Part IX-A of the Constitution. In that regard even if one peruses the provisions of M.M.C.Act, then by Section 2, which is a definition clause, there is a specific definition and of the term “Street”. It is clear that there is a concept of a private street to mean a street, which is not a public street but there is a distinct concept and a definition therefore, of the word “public street”. In that regard Section 2 Clause 52 defines “public street” to mean any street heretofore levelled, paved, metalled, channeled, sewerred or repaired out of municipal or other public funds or which under the provisions of Section 224, is declared public or under any other provision of this Act becomes a public street. Section 63 sets out obligatory duties and functions of the municipal corporation, which says that it shall be incumbent on the corporation to make reasonable and adequate provision, by any means or measures which lawfully competent to it to use or to take for each of the matters mentioned in this provision and clause 18 of this Section reads thus :

“[18] the construction, maintenance, alteration and improvement of public streets, bridges, sub-ways,

culverts, cause-ways and the like;”

14] Then follows Clause 19. A Combined reading of these two clauses and Section 63, would indicate that construction, maintenance, alteration and improvement of public street, removal of obstruction and projection in or open streets, bridges and other public places, is the obligation of the municipal corporation.

15] The municipal corporation is endowed with the powers and which we find are dealing with both private streets and public streets. The projections and obstructions are set out in Section 226. It is stated that except as provided in Section 227, no person shall erect, set up, add to, or place against or in front of any premises any structure or fixture, which will obstruct by the projection, the smooth flow of traffic, including vehicular movements. It is for the Commissioner to give permission in writing on such terms, as he shall think fit, to the owner or occupier of any building abutting on street to erect arcade, varandah, balcony on any street. Then, there are clear prohibitions of structure or fixture, which cause obstruction in a street.

16] There are further provisions in Sections 230, 231 and 232, which enable the Commissioner, to require removal of any structure. There are definite provisions following this Section so as to take care of smooth and efficient movement of traffic and safely. Nothing can be done on the street, neither they can be

opened or broken up and building materials cannot be deposited without permission. We have thus elaborate provisions dealing with streets. We must now refer to Chapter XIV which is titled as "Construction, Maintenance and Improvement of Streets". All streets within the City being, or which at any time become, public streets, except streets, which on the appointed day vested in the Government or which after the said day may be constructed and maintained by an authority other than corporation, and the pavements, stones and other materials thereof shall vest in the Corporation and be under the control of the Commissioner. There is a power of the Commissioner in respect of public streets outlined in Section 203. Thus that power would enable him to improve any street, lower or alter it at any place. There is a power to make new public streets. Then, this power would enable the Commissioner to provide for minimum width of new public streets, there is a power to adopt, construct or alter any sub-way, bridge etc. and that is conferred by Section 207. There is a power to prohibit use of public street for certain kinds of traffic. Section 209 reads as under :

"209. Power to acquire premises for improvement of public streets.

(1) The Commissioner may, subject to the provisions of sections 77, 78 and 79,-

(a) Acquire any land required for the purpose of opening, widening, extending, diverting or otherwise improving any public street, bridge or sub-way or of making any new public street, bridge or sub-way and the buildings, if any, standing upon such land;

(b) acquire in addition to the said land and the buildings, if any, standing thereupon, all such land with the buildings, if any, standing thereupon, as it shall seem expedient for the Corporation to acquire outside

of the regular line, or of the intended regular line, of such street;

(c) Lease, sell or otherwise dispose of any land or building purchased under clause [b].

(2) The acquisition of land for providing, extending or improving a public for the parking of vehicles shall be deemed to be acquisition of land for the purpose of providing, extending or improving a public street.

(3) Any conveyance of land or of a building under clause (c) of sub-section (1) may comprise such conditions as the Commissioner thinks fit, as to the removal of existing building, the description of new building to be erected, the period within which such new building shall be completed and other such matters.”

17] The argument throughout is that once the road width is prescribed even if it is to be widened, then as in the present case, there have to be proposals in the development plan for a D.P.road to be widened and taken to the width proposed in it. If the existing road is 9 meters wide, for it be 12 meters wide, portion beyond 9 meter width/limit would have to be acquired.

18] True it is that sub section 1 of Section 209 gives a discretion to the Commissioner and it is subject to the provisions of Sections 77, 78 and 79. What is clear from perusal of Sections 77, 78 and 79 is that there is an acquisition of immovable property by agreement, on such terms, at such rates or prices, not exceeding such maximum, as shall be approved by the Standing Committee, either generally for any class of cases or specially in any particular case. Then by sub Section 2 of Section 77, Commissioner is authorised to pay money or sum for acquiring immovable property and the Commissioner is fully empowered to acquire by agreement any easement affecting

any immovable property. When the immovable property cannot be acquired by the Commissioner, then, Section 78 sets out duty, the procedure of acquiring it and it is then the State Government has to be approached, who has a discretion. It is therefore, clear that by sub section 2 of Section 78, the application can be made but application made under sub section 1 of that Section for acquisition of land for the purpose of providing a new street or for widening or improving the existing street, it shall be lawful for the Commissioner to apply for the acquisition of such additional land immediately adjoining the land to be occupied by such new street or existing street as is required for the sites of buildings, to be erected on either side of the street, and such additional land shall be deemed to be required for the purposes of this Act. It is clear that the power has to be exercised, when any immovable property or easement affecting the same, has to be acquired and that acquisition does not come through by agreement. The acquisition of land can be for the purpose of providing a new street or for widening or improving existing street. Therefore, this power to acquire premises for improving a public street vesting in the municipal corporation, apart, there is a power to prescribe street line, the Commissioner may prescribe a line on one or both sides of any public street. There is proviso to sub section 1 of Section 210 and which enables prescribing the street lines. The Commissioner in each case subject to the previous approval of the Standing Committee, prescribe a fresh line in substitution for any line so prescribed or for any part thereof. How that approval has to be granted is then set out and the line for the time being prescribed shall be called a regular line of the street. It is

therefore, clear that the road width in this case has been prescribed. The road line has been prescribed. The line can be altered and in the manner set out in this provision. Therefore, we find that the Commissioner or the Corporation is not helpless once there is a regular line prescribed. Then, Section 211 enables setting back buildings to the regular line of the street, Section 212 confers an additional power to Commissioner to order setting back of buildings to regular line of street and by Section 213 acquiring open land or of land occupied by platforms, etc. within regular line of street. That provision reads as under :

“213. Acquisition of open land or of land occupied by platforms, etc., within regular line of street.

If any land not vesting in the Corporation, whether open or enclosed, lies within the regular line of a public street and is not occupied by a building, or if a platform, verandah, step, compound wall, hedge or fence or other structure, is within the regular line of such street, the Commissioner may, after giving to the owner of the land or building not less than seven clear days' written notice of his intention to do so, take possession on behalf of the Corporation of the said land with its enclosing wall, hedge or fence, if any, or of the said platform, verandah, steps or other such structure as aforesaid or of the portion of the said platform, verandah, step or other such structure as aforesaid which is within the regular line of the street and, if necessary, clear the same and the land so acquired shall thenceforward be deemed part of the public street:

Provided that when the land or building is vested in the [Government], possession shall not be taken as aforesaid, without the previous sanction of the Government concerned and, when the land or building is vested in any Corporation constituted by any law for the time being in force, possession, shall not be taken as aforesaid, without the previous sanction of the [State] Government.”

19] We have found that Section 214 onwards provides for acquisition of the remaining part of building and land after their portions within a regular line of the street are acquired, Section 215 enables the setting forward of buildings to the line of the street and importantly when powers under Sections 211, 212, 213 and 214 are exercised, there is a provision of payment of compensation by Section 216.

20] Thus there is a complete scheme and Code prescribed. Once there is a power to prescribe street line and which power can also be equally exercised to modify or amend the prescribed street line, then, we do not see how the Commissioner was required in this case to prescribe a fresh line and substitute or order any part thereof. Throughout, it is maintained that because there is a proposal for widening of the road in the D.P. map, acquisition was the only mode and there was a difficulty presented in this case because those in possession of these portions, which would be required for widening the road, have not cooperated. However, if any land is not vesting in the Corporation, but lies within a regular line of a public street and is not occupied by a building or any structure is within the regular line of the subject public street, the Commissioner may act as above.

21] We agree with Mr.Thombre that the applicants in the intervention application, may or may not have been declared as encroachers. They cannot be termed as encroachers but we have enough material before us, which would indicate that at some place, even 9 meter width of the public street or road has

not been maintained. Anybody coming on the portion and occupying, a road is not entitled to do so and can be removed, by resorting to the above provisions. If the road is to be widened and if it is public street, then the powers, which we have enumerated above, are conferred in the Municipal Corporation. Not very long back but in 1980's, the Hon'ble Supreme Court had an occasion to consider an identical controversy. The judgment reported in **AIR 1980 S.C. 1785 State of U.P. V/s Ata Mohd.**, very succinctly discussed as to what is the status of a public street. The Hon'ble Court held as under :

"9. The Municipalities in various States were created under the respective Municipalities Acts, in order to facilitate the efficient administration of the Municipal areas and to provide lighting, watering and maintaining of public streets and places. The duties of the Municipal Boards are specified in Section 7 of the U. P. Municipalities Act. Under Sec. 118 of the Act, the Municipal Board is empowered to manage or control any property entrusted to its management and control. The vesting of the property, in the Municipality is under Section 116 of the Act. Section 116 provides that subject to any special reservation made by the State Government, all property of the nature specified in this section and situated within the Municipality shall vest in and belong to the Board, and shall, with all property which may become vested in the Board, be under its direction, management and control. Clause (g) relates to vesting of streets and is as follows :-

"All public streets and the pavements, stones and other materials thereof, and also all trees erections, materials implements and things existing or on appertaining to such streets".

It may be noted that while under clause (f) of Section 116 all lands and other property transferred to the board by the Government by gift, purchase or otherwise for local public purposes vest in the Municipality, under clause (g), the streets vest only qua streets and not as absolute property with the Municipality. The word 'street' is defined under

Section 2 (23) as follows :-

“Street means any road, bridge, footway, lane square, court, alley or passage which the public or any portion of the public, has right to pass along, and includes, on either side, the drains or gutters and the land up to the defined boundary of any abutting property notwithstanding the projection over such land of any verandah or other superstructure”.

It has been found that the property in dispute is Patri and is a land which is within the defined boundary of the property abutting into the road. Thus the property in question falls within the definition of the word 'street'. The question as to the nature of the right that vest in the Municipality under Section 116(g) of the Uttar Pradesh Municipalities Act will have to be considered. This Court in *Municipal Board, Mangalur v. Sri Mahadeoji Maharaj*, (1965) 2 SCR 242; (AIR 1965 SC 1147) had to consider the nature of the right that vested in the Municipality over the streets, Subba Rao, J. (as he then was) after considering the decisions of the English Courts and the High Courts, summed up the law on this subject as follows :-

“The inference that the side lands are also included in the public way is drawn easily as the said lands are between the metal road and the drains admittedly maintained by the Municipal Board. Such a public pathway vests in the municipality, but the Municipality does not own the soil. It has the exclusive right to manage and control the surface of the soil and 'so much of the oil below and of the space above the surface is necessary to enable it to adequately maintain the street as a street. It has also a certain property in the soil of the street which would enable it as owner to bring a possessory action against trespassers. Subject to the rights of the Municipality and the public to pass and repass on the highway, the owner of the soil in general remains the occupier of it and, therefore, he can maintain an action for trespass against any member of the public who acts in excess of his rights.”

After referring to Section 116(g) of the Uttar Pradesh Municipalities Act, under which a public street vests in a Municipality, the learned Judge referred to a decision of a Division Bench of the Madras High Court in *S. Sundaram Ayyar v. The Municipal Council of Madura and the Secretary of State for India in Council*, (1902)ILR Mad 635 where the scope of the vesting under the Madras District Municipalities Act was dealt with. The learned Judge extracted the head note from the Madras decision observing that it brought out the gist of the decision. The head note runs as follows :-

"When a street is vested in a Municipal Council, such vesting does not transfer to the Municipal authority the rights of the owner in the site or soil over which the street exists. It does not own the soil from the centre of the earth usque ad ceelum, but it has the exclusive right to manage and control the surface of the soil and so much of the soil below and of the space above, the surface as is necessary to enable it to adequately maintain the street as a street. It has also a certain property in the soil of the street which would enable it as owner to bring a possessory action against trespassers."

The view taken by the division Bench of the Madras High Court was that though the street vested in the Municipal Council, it does not transfer to the Municipality the rights of the owner in the site or soil over which the street exists. The question has been dealt with at some detail in the Madras decision and as it has been approved by this Court, it may be usefully referred to. The High Court while observing that if the land itself had been acquired by the Municipality, either by purchase or otherwise and road and drains formed thereon, the Municipality would have been the owner of the land but if the street or highway over the land was dedicated to the public either by the State or by the owner of the land but if the street or highway over the land was dedicated to the public either by the State or by the owner of the land adjoining the highway will continue vested, subject only to the burden of the highway, in the State or the respective owners of the land on either side of the highway *ad medium filum*, or in any other person who may who may have dedicated the street to the public as the case may be. The Court after pointing out that the Madras Municipal Act was a modelled after the English Metropolis Local Management Act, 1855, referred to the English cases which dealt with the vesting of the street in the Municipality and observed :

"The conclusion to be drawn from the English case law is that what is vested in urban authorities under statutes similar to the District Municipalities Act, is not the land over which the street is formed, but the street *qua* street and that the property in the street thus vested in a Municipal Council is not general property or a species of property known to the Common Law, but a special property created by Statute and vested in a corporate body for public purposes, that such property as it has in the street continues only so long as the street is a highway by being excluded by notification of Government under Section 23 of Act IV of 1884 or by being legally stopped up or diverted, or by the operation of the law of limitation (assuming that by such operation the highway can be extinguished), the interest of the corporate body

determines."

It is, therefore, clear that when a street ceases to be a highway by its being diverted to some other use, the interest of the corporate body determines. After referring to the decisions of the High Courts in India, it expressed its concurrence with the decisions in *Chairman of the Naihati Municipality v. Kishori Lal Goswami* (1886) ILR 13 Cal 171, *Madhu Sudhun Kunda v. Pramoda Nath Roy* (1893) ILR 20 Cal 733 and *Nihal Chand v. Asmat Ali Khan*, (1885) ILR 7 All 362 and concluded that the nature or the right that vested in the Municipality as regards public streets there is no disposal by the Indian Legislature of any land or hereditament vested in the Government. What is vested in the Municipality under Section 116 (g) is the street qua street and if the Municipality put the street to any other user than that for which it was intended, the State as its owner, is entitled to intervene and maintain an action and to get any person in illegal occupation evicted. We accept the contention of Mr. Dixit, learned counsel for the State of U.P. that the State is the owner and in the circumstances of the case entitled to maintain action for eviction of the respondent. The view taken by the High Court is erroneous. The result is that the appeal by the State is allowed with costs and there will be decree in favour of the plaintiff as prayed for.

Appeal Allowed."

22] We have from perusal of this judgment, no manner of doubt, that for municipal administration to be effective, efficient, there are enough powers conferred by law in the Municipal Commissioner.

23] After this regime was pointed out to both sides, we are happy to note that Mr. Thombre, on instructions, stated that the applicants would fully cooperate and hand over the portions in their occupation voluntarily or allow the Municipal Corporation to take them over, provided a scheme is prepared and commensurate benefits are offered in lieu of such voluntary handing over. It is stated on behalf of Respondent no.4 that a

scheme or plan will be prepared, enlisting these benefits, so that even if not a compensation in monetary form in lieu thereof, the benefits in the form of an additional FSI or TDR can be made available. The Municipal Commissioner has instructed Mr. Patil to make this statement before the Court and we accept it. The statement also appears in paragraph 2 page 41 of the additional affidavit in reply of respondent no.5 and therefore, once it is made on oath, it can safely be accepted as an undertaking.

24] In the light of the above, we direct that on or before **31/12/2017**, the Municipal Corporation must take steps to widen the road to 12 meters width. For that purpose the scheme or plan, as stated above, be drawn up, the offer made and the benefits granted. Mr. Thombre, on instructions, stated that the applicants will not seek time beyond this period and within this period, fully cooperate with the authorities. They shall hand over the portions in their possession of the existing 9 mtr. road/street and also required for widening of the road, without any resistance or obstruction much less a violent protest. They would then only seek the benefits in terms of the scheme. So long as they are offered the TDR and FSI in lieu of cash compensation, these persons will not insist on payment of monetary compensation. We accept the statements made by Shri Thombre on instructions, as undertakings given to this Court.

25] We dispose of this Public Interest Litigation with the above directions and we expect even the petitioner to cooperate with the authorities, by not coming over or encroaching on these

portions.

26] Civil Application is also disposed of.

(MANGESH S. PATIL,J.)

(S.C. DHARMADHIKARI ,J.)

umg/