

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

WRIT PETITION NO. 1461 OF 2018

Sulochanabai w/o. Laxman Kolhe ... PETITIONERS

VERSUS

The State of Maharashtra and ors. ... RESPONDENTS

...
Mr. Milind Patil, advocate for petitioner
Mr. S. S. Dande. AGP for respondents No. 1 to 5.
...

**CORAM : R. M. BORDE and
K.K. SONAWANE, JJ.**

DATED : 21st FEBRUARY, 2018.

Order :-

1. The petitioner is objecting to the order passed by the District Collector, Ahmednagar, in exercise of powers under section 44 of the Maharashtra Land Revenue Code, 1966 (for short "MLR Code") permitting conversion of user of plot No. 22 of Kopargaon, District Ahmednagar belonging to respondent No. 7 for commercial purpose. The petitioner has also prayed for quashment of revised construction permission dated 18th September, 2015 granted by the Municipal Council, Kopargaon for the hospital on plot No. 22 of Kopargaon. The petitioner is immediate neighbour of respondent No. 7 and is objecting to the construction of hospital by respondent No. 7. Regular Civil Suit No. 80 of 2014 has been presented by petitioner in the year 2014 praying for issuance of mandatory injunction directing Municipal Council, Kopargaon to grant stay to construction of the hospital raised by respondent No. 7. It is also requested in the suit to issue directions to the planning authority to revoke the construction permission granted in favour of defendant in the suit i.e. respondent No. 7 -herein.

2. It is informed that during pendency of suit, the Collector has passed order directing conversion of user of the property i.e. plot in question for commercial purpose in exercise of powers under Section 44 of MLR Code. The petitioner contends that he came to know about the conversion after amendment was permitted in the written statement in the proceedings of suit. There was an attempt to seek amendment in the suit and to challenge the order, however, request in that regard has not been considered by the Court. It is informed that the proceedings of suit is at the concluding stage. The recording of evidence is over. It also deserves to be noted that order passed by the Collector in exercise of powers under the MLR Code is appealable to the higher revenue authority. The petitioner has asked for substantive relief of demolition of constructions raised by respondent No. 7 in the suit presented by her. This petition need not be considered for two reasons that - *Firstly*, the petitioner has already availed of remedy and subject matter of challenge i.e. construction raised by respondent No. 7 herein for hospital purpose is matter in issue in the suit. *Secondly*, the order passed by the Collector is appealable to the revenue authority and said order which was issued prior to presentation of suit in the year 2014 has not been challenged by the petitioner.

3. Considering this aspect, we are of the considered opinion that the instant petition is gross abuse of process of law. Therefore, while disposing of this petition, we are imposing costs of Rs. 10,000/- (Rs. Ten Thousand Only) to be paid to the respondents.

4. Hence, the writ petition stands dismissed with costs of Rs.10,000/- (Rs. Ten Thousand Only).

Sd/-
[K. K. SONAWANE]
JUDGE

Sd/-
[R. M. BORDE]
JUDGE