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Petitioners. Public Interest Litigation No. 137 of 2013 was filed by the Members of the Bar inviting attention of the Court to the fact that the premises at present available for Nashik District Court are wholly inadequate and on account of lack of the adequate space, the entire administration of justice has been adversely affected and the litigants as well as the members of the bar have to face several inconveniences. In terms of the interim orders passed in the said Public Interest Litigation, the State Government has allotted adjacent land having area of 2.5 Acres which was in possession of the Police Department for expansion of the District Court and now the area of 2.5 Acres has been placed in possession of the District Court. In fact, the orders passed in the Public Interest Litigation No. 137 of 2013 would reveal that even the structures on the area of 2.5 Acres have been vacated and the same are placed in possession of the District Court.

2. As Public Interest Litigation No. 137 of 2013 is placed along with this Public Interest Litigation, we are referring

to the orders passed in the said Public Interest Litigation. In fact, the Petitioners have annexed some of the orders passed in the said Public Interest Litigation. Paragraph 2 of the order dated 14th February 2018 refers to the submission made by the learned Counsel appearing for the 6th Respondent that there was an access road available to the additional area of 2.5 Acres handed over to the District Court which has been closed. In fact, this Court directed the 6th Respondent to file an Affidavit to that effect so that the State Government can deal with the said contention. In paragraph 3 of the immediate next order dated 8th March 2018, a direction was issued to the learned Government Pleader (GP) to make a statement on the next date. Thereafter, the order dated 26th April 2018 was passed in the said Public Interest Litigation which considers the issue of road. In paragraph 4 of the said order, it is observed thus:-

*“In the earlier order it is noted that there is some dispute raised regarding closure of a road abutting the plot allotted to the District Court. As far as this*

*aspect is concerned, the Principal District Judge along with the Officers of the Public Works Department will have to take a call after making a site visit. If they are of the view that considering the extent of the proposed construction, if the use of the said road is necessary, the learned Principal District Judge will submit a proposal to the appropriate Authority for granting permission to use the said road. This exercise shall be completed within a period of six weeks from today. If the proposal is submitted by the learned Principal District Judge, the concerned Authority will take appropriate decision thereon as expeditiously as possible.”*

3. Accordingly, a site inspection report dated 5th June 2018 signed by the learned Principal District Judge and the Superintending Engineer of the Public Works Department of Nashik was produced on record to which a Plan was appended. Paragraph 2 of the order dated 22nd June 2018 records that both the learned Principal District Judges and the Superintending Engineer have come to a conclusion that the road shown by the blue colour on the map attached to the

Report is more suitable for approaching the site of the proposed new Court building and the road shown by green colour was not suitable for various reasons. Paragraph 3 of the said order records that if the road shown by blue colour is suitable, the learned Principal District Judge will have to make an Application to the concerned authority/State or the Municipal Corporation to allow the use of the said road.

4. The order dated 10th July 2018 records that the Principal District Judge has moved the Municipal Corporation for permitting use of the said road shown in blue colour. Today in Public Interest Litigation No. 137 of 2013, a copy of the proposal dated 6/7th July 2018 addressed by the Principal District Judge to the Nashik Municipal Corporation regarding the said road is placed on record.

5. This Public Interest Litigation proceeds on the footing that if the road marked by blue colour is allowed to be used by the Court administration, it will affect the security of

families of the Police Personnel who are residing within the boundaries of the head quarters and it will affect members of the public at large.

6. Most unfortunate part of this Public Interest Litigation is that in paragraphs 5.7 onwards and in various other paragraphs, the Petitioners have assailed the opinion of the learned Principal District Judge in the Report dated 5th June 2018 submitted by him pursuant to the directions of this Court. Most importantly, the Report of the learned Principal District Judge and the opinion expressed by him has been severally criticised, without even impleading him as a party Respondent. The 1st and 2nd Petitioners are retired senior officers of the Police Department who are claiming to act *pro bono*. We fail to understand as to how the report of the learned Principal District Judge could have been challenged and that also without impleading him as a party. The annexures to the Petition show that the Petitioners were aware of the various orders passed in Public Interest Litigation No. 137 of 2013. As stated earlier, it

was the 6th Respondent in the said Public Interest Litigation who made submission before a Division Bench of this Court which is recorded in the order dated 14th February 2018 that there was an access road available to the area of 2.5 Acres which was handed over to the District Court and the said access road is being blocked. The said contention was not accepted by the Court, but the 6th Respondent was directed to file an Affidavit. The said order further records that the photographs of the road and plan were handed over to the learned GP. Paragraph 4 of the order dated 26th April 2018 makes it very clear that there was no direction issued by this Court as regards allowing the use of the said road and this Court merely directed the learned Principal District Judge along with the officers of the Public Works Department to take a call after making a site visit. The only aspect to be considered by the said officers was whether the use of the said road will be necessary for the proposed new Court Building. It is in the light of this order that there is a report submitted by the said officers in which they have made recommendations. This Public Interest Litigation

proceeds on erroneous footing that the learned Principal District Judge is an authority who can pass an order directing that the road shown in blue colour shall be made available for approaching the additional plot allotted to the District Court. The learned Principal District Judge has expressed his opinion about the convenience of the road in the light of the order of this Court. However, the Petitioners in this Public Interest Litigation have chosen to assail the report of the learned Principal District Judge on various grounds without making him as a party. At least the first two Petitioners should have been aware that the learned Principal District Judge has no authority to take over the road and ultimately, it was only for the State Government to take a decision whether the said road can be allotted for the use of the Court complex. The orders passed in the said Public Interest Litigation to which the Petitioners admittedly have access will show that there is no such decision taken by the State Government. A direction is sought in the Public Interest Litigation not to provide the road in terms of the report dated 5th June 2018. We fail to understand as to how such a direction

can be issued at this stage. Ultimately the authorities who are empowered to take a decision will have to take a decision in accordance with law. Faced with this difficulty, the learned Counsel appearing for the Petitioners states that the Petitioners do not want to press the Public Interest Litigation. Even otherwise, the Public Interest Litigation cannot be entertained for the reasons set out above. Accordingly, we decline to entertain the Public Interest Litigation and the same is disposed of.

7. We make it very clear that the authorities which are empowered to take a decision on the allotment of the said road will not be influenced by observations made in this order, as the reasons recorded are only for the purposes of deciding the issue of entertaining the Public Interest Litigation.

**[RIYAZ I. CHAGLA J.]**

**[ABHAY S. OKA, J.]**