

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

WRIT PETITION NO. 1066 of 2019

USHA GOVIND TARMODE
VERSUS
THE STATE OF MAHARASHTRA AND OTEHRS

Mr. S. C. Swami, Advocate for the petitioner.
Mr. S. B. Yawalkar, AGP for respondents.

**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ**

DATED : 19th JUNE, 2019.

PER COURT:-

1. The learned Counsel for the petitioner submits that the petitioner had undergone family planning operation on 07.06.2017. The learned Counsel submits that the petitioner was discharged from hospital on 12.06.2017 and on 15.06.2017 the petitioner started vomiting. She had gone to the hospital and it was diagnosed that the petitioner was pregnant. The petitioner already had three female children. She could not afford the fourth child and for that purpose the petitioner had undergone family planning operation. The husband and other relatives are harassing mentally and physically to the petitioner on the said count.

2. The learned Counsel for the petitioner relies on the judgment of the Andhra Pradesh High Court in the case of *Punnam Somalakshmi and Others Vs. Government of Andhra Pradesh and Others reported in 2007*

(3) ALD 159.

3. The learned AGP accepts notice for all respondents and submits that it is not a case of negligence. The petitioner is already pregnant. It is not the case that the petitioner had undergone family planning operation and thereafter had become pregnant. The petitioner was already pregnant at the time when family planning operation had conducted upon the petitioner. According to the petitioner, the petitioner was not made known about her pregnancy. The same would be disputed question of fact. In such case, the petitioner has to prove all disputed facts.

4. Considering the above, we are not inclined to invoke our jurisdiction to grant compensation claimed by the petitioner for maintenance of fourth child. It is clear that petitioner was already pregnant at the time of family planning operation and it is not case that upon failure of the operation the petitioner become pregnant.

5. As such, Writ Petition is disposed of. In case, if any alternate remedy is available to the petitioner, the petitioner may avail the same. No costs.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

P.S.B.