

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

WRIT PETITION NO.10618 OF 2017

WITH CA/13203/2017 IN WP/10618/2017
WITH CA/13793/2017 IN WP/10618/2017

DR. AAMIR BABANSAB SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Sachin S. Deshmukh.

AGP for Respondent No.1 / State: A. R. Kale.

Advocate for Respondent No.2 : Mr. N. P. Patil Jamalpurkar.

Advocate for Respondent No.3 : Mrs. Anjali Dube (Bajpai).

Advocate for Respondents No.4: Mr. S. V. Natu.

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CORAM : **T. V. NALAWADE &
K. K. SONAWANE, J.**

DATE : 29th August, 2019.

ORDER: (Per T. V. Nalawade, J.)

. The petition is filed for relief of quashing and setting aside the permission dated 3rd November, 2017 granted by Respondent No.2 to other Respondent for making construction and relief is also claimed in respect of commencement certificate granted by the Respondents. The permission is granted to Respondent No.4 in respect of construction of petrol pump within the area of Corporation. It is

contended that the construction, which is permitted, would be in breach of the guidelines issued by the Government of India and as per the guidelines the petrol pump cannot be run within a distance of 100 meter from any hospital. The Petitioner is having hospital and adjacent to it, Respondent No.4 is opening the petrol pump. At the time of hearing of the proceeding, petrol pump was found to be made operational.

2 Heard all the sides.

3 The Petitioner is having Test Tube Baby Hospital in Latur city and to this hospital permission was granted by the local body in the year 2010. Respondent No.4 had applied for permission to this local body to make construction for running petrol pump in the year 2017. Permission came to be granted by the Commissioner of Corporation after hearing the objections raised by the Petitioner to such permission. On the basis of that permission granted by the local body, further certificates were issued by other authorities including the district authority.

4 The order of Commissioner of the local body and

submissions show that it is the contention of Respondent No.4 that the Petitioner has made encroachment over the space of Respondent No.4 and as civil suit was filed in respect of that encroachment, to pressurize Respondent No.4, the Petitioner is playing such tactics.

5 The submissions made and the order of Commissioner of local body show that it was contended before the Commissioner by the Petitioner that as per the D.C. Rules, 2015, distance between such hospital and petrol pump should be more than 90 meter but such distance was not being kept by Respondent No.4. The Commissioner has held that as per the latest D.C. Rules dated 16th September, 2016 and as Latur Corporation was 'D' class Corporation, there was no such rule and there was no restriction of the nature contended by the present Petitioner. In reply affidavit, it is reiterated by the local body that there are no such development rules. The representative of district authority has contended that on the basis of permission granted by the local body, further no objection came to be granted.

6 The submissions made and record show that the petrol pump is situated in residential zone (R-2). It was submitted for the local body that clause 25.2(C) of the Development Rules is applicable

for such area. It was submitted that as per the Rules when there is independent premises, it can be used for running petrol pump or CNG service stations. On the other hand, it is the contention of the Petitioner that clause 25.6 (xxvi) (f) of the Rules is applicable.

7 The Development Control and Promotion Regulations for 'D' Class Municipal Corporation in Maharashtra were made available and this Court has gone through those regulations. In part (III) of the Rules, various zones and permitted uses of the area situated in those zones are given. Clause 25.2 is for residential zone (R). In this zone, there are three parts and part (C) is in respect of the use of independent premises / buildings and clause (C)(ii) shows that such premises can be used for petrol filling and CNG service stations. No restrictions as contended by the Petitioner are there for such use as per this clause. Clause 25.6 is in respect of Agriculture / Green Zone / No Development Zone and for that zone sub-clause (xxvi) (f) is there and it shows condition of keeping 90 meter distance as contended by the Petitioner.

8 The learned counsel for Petitioner showed to this Court the information collected by the Petitioner under the Right to

Information Act from various authorities. On that basis, he submitted that the provision of clause 25.6 needs to be used in the present matter. This Court has gone through that correspondence. That information is not specifically in respect of class 'D' Corporation and in respect of residential zone from which independent premises are being used for petrol pump. As there is no condition as contended by the Petitioner is in existence, this Court holds that no relief can be granted. The petition stands dismissed.

9 Pending civil applications are disposed of.

[K. K. SONAWANE, J.]

[T. V. NALAWADE, J.]

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