

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO.143 OF 2016

Abdul Munaf Abdul Raheman Shaikh ...PETITIONER

VERSUS

The State of Maharashtra & ors. ...RESPONDENTS

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Shri A.S. Savale, Advocate for petitioner

Shri S.B. Yawalkar, A.G.P. for State

Shri S.P. Shah, Advocate for respondent No.3

Shri V.B. Patil, Advocate for respondent No.6

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**CORAM: PRADEEP NANDRAJOG, CJ &
R.G. AVACHAT, J.**

DATE: 24.09.2019

PER COURT :

1. Heard learned counsel for the parties. Case pleaded in the Public Interest Litigation is that 1392 sq.mtrs. of land comprised in C.T.S. No.3285/B belonged to the State of Maharashtra and the Collector gave the land to the Municipal Corporation, Dhule pursuant to Government Resolution

No.1643/28 for purpose of constructing a Hindu – Muslim Dharmashala. It is pleaded that the term of the grant was that the land would be used to construct a Dharmashala. It is pleaded that thus it is clear that the land user could not be changed.

2. Grievance is to the Municipal Corporation, Dhule E-tendering for reconstructing the building after demolishing the old building and user of the reconstructed building being commercial. An issue of levy of stamp duty on the indenture of lease executed by the Dhule Municipal Corporation with respondent No.6 has also been raised in the Writ Petition.

3. The reply filed is that the land was allotted by the State Government to the Municipal Corporation for establishing a Dharmshala. It is pleaded that with the help of donation by one Jeevanram Agrawal, the Dharmashala was established and dedicated in the name of the donor : Jeevanram Agrawal. With the passage of time, the building deteriorated and became inhabitable. In the year 1986, after following the procedural law, the development plan of Dhule was modified and in the modified

plan, land user of the land in question was changed to commercial. It is pleaded that, on 9.3.2007 vide resolution No.3, Dhule Municipal Corporation decided to redevelop the land in conformity with the land user as per revised development plan which permitted commercial use. After inviting tenders, the proposal of respondent No.6 was accepted. In terms of the agreement between the parties, the developer paid ₹.1.25 Crore to the Corporation and reconstructed the commercial building. The ownership of the building vested in the Corporation. The benefit to the builder was the one time non-refundable premium received from the allottees of the shop. On the issue of stamp duty, it is pleaded that, keeping in view the letter of the indenture, the stamp duty levied is correct.

4. The reply filed has not been disputed by the petitioner and no rejoinder has been filed. Along with the reply a copy of the revised development plan has been annexed. The same shows that modification was made by the planning authority while publishing the draft development plan under Section 26 of the Maharashtra Regional and Town Planning Act, 1996. As per

Resolution No.148, dated 22.4.2010, modifications suggested by the planning authority vide Resolution No.51 dated 24.11.2011 were incorporated and the modifications sanctioned by the Government under Section 3(1) of the Act were notified on 28.12.2012.

5. Thus, we find no merit in the Public Interest Litigation. It is dismissed.

6. The amount of ₹.50,000/- deposited by the petitioner to demonstrate bonafides shall be returned to the petitioner together with such interest which has accrued thereon, if any.

(R.G. AVACHAT, J.)

CHIEF JUSTICE

fmp/-