

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO. 25313 OF 2019

Indian Law Society	}	Petitioner
versus		
The State of Maharashtra	}	
and Anr.	}	Respondents

Mr.Y.S.Jahagirdar-Senior Advocate with
Mr.S.S.Kanetkar for the petitioner.

Mr.B.V.Samant-AGP for respondent no.1.

Mr.S.B.Talekar with Mr.Madhavi Ayyappan i/b.
M/s.Talekar and Associates for respondent nos. 2 to 5.

**CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.**

DATED :- OCTOBER 16, 2019

P.C. :-

1. The prayer in this writ petition is to issue an Occupation Certificate in respect of two buildings, namely, Building 'A' being New Girls Hostel and Building 'B' being Arbitration Centre. Both these are set up by the petitioner on their own Final Plot Nos. 97 and 98 and the grievance is that in view of the communication, copy of which is at Exhibit 'D' to the petition, the Occupation Certificate is withheld. Exhibit 'D' says that as on 27th June, 2019, the petitioner would be entitled to issuance of an Occupation Certificate provided the petitioner complies with the terms and conditions of this communication.

2. The argument of Mr.Jahagirdar learned senior counsel appearing for the petitioner is that there is no question of linking the condition imposed on the petitioner while issuing a Commencement Certificate with that of the grant of the Occupation Certificate. That condition, if is required to be enforced, can still be enforced irrespective of the grant of Occupation Certificate. However, there is no obligation to handover any portion of the land or property of the petitioner free of cost for laying of a Development Plan Road (DP Road). If that obligation has to be fulfilled by the Pune Municipal Corporation, it must take recourse to law.

3. It is true that there is an affidavit filed and in that affidavit, the Pune Municipal Corporation is expressly establishing a link between the condition imposed while developing the property or granting development permission and after that construction is complete, for grant or issuance of Occupation Certificate. It is claimed that the Pune Municipal Corporation has started construction of a 30 meters DP Road at Survey No.44, but has completed the stretch of 30 meters and for that purpose, Bhandarkar Institute has already given the possession of its land admeasuring 4784 square meters. At other place in this affidavit, it is stated that the land in question is a Government land and

granted under a Sanad dated 4th June, 1949. The petitioner society is liable to handover possession of the land required for construction of 30 meter link road to the Pune Municipal Corporation, for which the Government would pay such compensation as provided under the Sanad dated 4th June, 1949 to the petitioner society.

4. We do not think that this question needs to be gone into for there appears to be a dispute between the parties. Whether the road has already been laid and up to a point or otherwise is another question which need not detain us. If there is any condition imposed on the petitioner while allowing the development or granting development permission, but that condition has still not been complied with, none prevented the Pune Municipal Corporation from taking recourse to law, including the law enabling forcible acquisition of land. In other words, the applicable land acquisition law. However, the Completion Certificate and the Occupation Certificate cannot be withheld in the facts and circumstances of the case on this ground.

5. The Pune Municipal Corporation shall issue the Occupation Certificate if all other conditions and stipulations are complied with and without prejudice to its right to acquire the portion of the land, which is reserved for laying a DP Road. Merely because the

Pune Municipal Corporation issues this Occupation Certificate does not mean that no proceedings can be initiated for acquisition of the land.

6. The petitioner has disputed that there was any such condition as is referred in the foregoing paragraphs, either in the Sanad or in the Commencement Certificate. If at all there is a reservation or proposal in the development plan for a DP Road of 30 meters' width, then, if that road cuts through the petitioner's property or is affected by the petitioner's property, the Pune Municipal Corporation can acquire that portion or that piece or parcel of land from the petitioner's property by taking recourse to the acquisition law. The Land Acquisition Act can be invoked in the absence of any reservation or designation if there is a public purpose. The grant of Occupation Certificate will not preclude or prohibit the Pune Municipal Corporation from taking recourse to such law.

7. The Occupation Certificate shall be granted to the petitioner within a period of two weeks from the date of the communication of this order.

8. With the aforesaid directions, the writ petition is disposed of.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)