

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

WRIT PETITION NO.4283 OF 2021

VINOD KHEMJI LODHYA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Shri Barlota Ambar S.
AGP for Respondent 1 : Shri S.J. Salgare
Advocate for Respondents 2 and 3 : Shri S.S. Tope

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**CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.**

DATE :- 05th April, 2021

Per Court :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner has put forth prayer clauses B and C as under :-

“B) The impugned notice (Exhibit A) bearing Outward No.MC/DO/194 dated 16th February 2021, issued by the Respondent No.3 thereby directed the Petitioner to remove the so-called encroachment/ illegal construction may kindly be quashed and set aside.

C) By issuing appropriate writ, order or directions, the Respondent Nos.2 and 3 (viz. Municipal authorities) may kindly be directed not to take any coercive steps against the petitioner without following the due procedure of law.”

3. Considering the order that we are passing in view of the statement made on behalf of the respondent/ Municipal Corporation, which satisfies the petitioner, we are not required to advert to their entire submissions. Suffice it to say that, the petitioner has received the impugned notice dated 16.02.2021 and based on the said notice, the petitioner had harboured an apprehension that his land is likely to be acquired by the Municipal Corporation for concretization of the road on the Mondha Naka- Zafar Gate segment. In doing so, the petitioner was likely to lose his land without any acquisition, thereby, causing monetary loss to him.

4. The learned advocate for the respondent/ Municipal Corporation has entered an affidavit in reply dated 30.03.2021 through Shri Jayant Sarvottamrao Kharwadkar, Assistant Director of Town Planning, Municipal Corporation, Aurangabad. We find it appropriate to reproduce paragraphs 4, 5 and 6 as under :-

“4. I say and submit that the road from Jafar Gate to Mondha Naka is also one of the parts of this development project. The amount of Rs.7.72 Cr sanctioned for concretization of the road from Jafar Gate to Mondha Naka and Jafar Gate to Weekly Market. Most of the road developments is planned to carry out within the existing width of the road. There is no additional land required for the development but somewhere the width is not sufficient and for the development of that particular road, some portion of the adjacent land is required.

5. I say and submit that as per the petitioner, if the said construction over is in existence prior to declaration of

the Municipal Corporation then it was the duty of the petitioner to get this construction regularize as per the statute. At present there is no construction permission to the existing construction of the petitioner and it is not regularized thereafter.

6. *I say and submit the Municipal Corporation has issued the notice to the petitioner, thereby mentioned that the land of the petitioner affects the road development. The Municipal Corporation has issued general notices to all the road adjacent property owners, thereby informing them to remove any kind of encroachment carried out over the road width area if any.*

It is required to mention that as and when if the land of the petitioner is required for the development of the road then the Municipal Corporation can take the possession of the said land by following due procedure of law. The Municipal Corporation will take possession of the private land only after due procedure of law and it will not take illegal possession of the private property. As per the sec. 126 of the MRTP Act 1966, there is specific provision of acquisition of the land required for public purpose specified in plans. The entire procedure is described in the said provision. The Municipal Corporation can follow this procedure, if the land of the petitioner is required for the widening of the road.”

5. We, therefore, find that the Municipal Corporation has fairly made the statement to the Court that they would be laying the concrete road based on the width that is available and earmarked. It is only within the existing width of the road, laying of the concrete road would be done. In future, if the Municipal Corporation needs to widen the road and for which the acquisition of private land would be necessary, the Municipal Corporation would follow the due process of law as is applicable and there would not be a case of land being taken over without acquisition.

6. The learned advocate for the petitioner is satisfied with the above statement. His apprehension is put to rest. The purpose of the impugned notice is, therefore, achieved and the petition stands worked out.

7. In view of the above, this Writ Petition is disposed off. Rule is discharged.

kps

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)