

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

924 WRIT PETITION NO.4847 OF 2021
SAYYED SUJADDIN NIZAMODDIN KHATEEB AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners:

Mr. M. S. Deshmukh h/f. Mr. Syed G R
AGP for Respondents/State: Mr. A. R. Kale

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**CORAM: S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATE: 18th MARCH, 2021

PER COURT:

1. We have heard Mr. Deshmukh, learned Counsel for the petitioners.

2. The learned Counsel submits that in the development plan, annexed at Page No. 63 of this petition, Plot No. 54 have been acquired by the Municipal Council for the purpose of development road. Now construction is said to be made on the same for shopping complex by the Municipal Council. The same is not permissible.

3. Mr. Deshmukh, learned Counsel fairly concedes that subsequently the development plan was revised and the property is now reserved for commercial purpose. The learned Counsel submits that writ site is used by the petitioners and

other persons as road since many years. The petitioners would not have any access.

4. This Court would only interfere, if, the construction is made on a development plan road or a layout road or a service road. In the present case, it is submitted that, in the revised development plan the same is not shown as road but as per the petitioners the writ site is used as a road by them since many years and that they will not have access to the main road. In that case, the petitioners are claiming either easement of necessity or easement of prescription. The petitioners will have to seek declaration to that effect and that can only be before the Civil Court.

5. In view of that, we are not inclined to entertain the writ petition. The writ petition is disposed of. The petitioners may avail the remedy as is permissible under law. In that event, all contentions are kept open. No costs.

[SHRIKANT D. KULKARNI, J.]

[S. V. GANGAPURWALA, J.]

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