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

901 WRIT PETITION NO.3763 OF 2019
WITH CA/4665/2019 IN WP/3763/2019

GRAM AUDYOGIK SHIKSHAN MANDAL AURANGABAD
THROUGH GENERAL SECRETARY
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Mr D. P. Palodkar, Advocate for petitioner;
Mr S. K. Tambe, A.G.P. for respondent No.1;
Mr A. P. Bhandari, Advocate for respondent Nos.2 to 5

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 15th July, 2021

PER COURT:

1. This matter was heard at length on 8th July, 2021 and there was a further marathon hearing today.
2. Considering the order that we intend to pass in view of the statements made on instructions by the learned Advocates for the petitioner and for respondent Nos.2 to 5 – Municipal Corporation, Aurangabad, we would be justified in not adverting to their entire contentions since we do not desire to make any observation or draw

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conclusion on such contentions, lest it would affect the further hearing in the matter under Section 478 of the Maharashtra Municipal Corporation Act, 1949 (In short 'the said Act').

3. Suffice it to say that the Corporation desires to recall its order dated 16th March, 2019, which was passed after the petitioner tendered a detailed reply dated 26th July, 2017, pursuant to the notice under Section 260 of the said Act, dated 15th May, 2017.

4. In view of the above, the learned Advocate for the petitioner submits on instructions, that the Corporation may pass a fresh order under Section 478 of the said Act, taking into account the reply dated 26th July, 2017 submitted in response to the notice dated 15th May, 2017 (wrongly mentioned by the petitioner as 15th July, 2017 in its reply dated 26th July, 2017). Before passing the said order, in the event the Corporation desires to hear the representative of the petitioner, it may accordingly inform the petitioner, either through a notice to be served on the petitioner or to be emailed to the petitioner on its E-mail address, viz. munish.sharma@mit.asis or munishsharma@gmail.com, within ten days from today. Though the law does not contemplate a

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personal hearing to be given by the Corporation to the petitioner, if the Corporation so desires to grant a personal hearing, it would intimate the petitioner of the schedule of such hearing. It is further prayed that the Corporation may pass a reasoned order after taking into account all the contentions put forth by the petitioner.

5. The learned Advocate for the petitioner further submits that in the event of an adverse order, if passed by the Corporation, under Section 478 of the said Act, the petitioner would resort to a civil suit before the Court of civil jurisdiction as it would be raising contentious issues like, the title to the property, the compound wall having been legally and authorizedly constructed, the compound wall having been demolished by way of a highhanded act in violation of the tenets of law and the petitioner would then claim quantification of compensation for such demolition.

6. The learned Advocate for the Corporation submits on instructions from the Assistant Director, Town Planning, Municipal Corporation, Aurangabad, that if the Corporation so finds it appropriate, it may offer TDR or DRC or RCC, to the petitioner. The

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learned Advocate for the petitioner submits that, if such offer is made, the petitioner would opt for either of the three options.

7. Besides the above contentious issues, we deem it appropriate to record the statement made by Shri. Sumedh Sudhakar Kharwadkar, Assistant Director, Town Planning, Municipal Corporation, Aurangabad, in paragraph 15 of his affidavit-in-reply dated 27th March, 2019, which is now ratified by Mr Jayant Kharwadkar, Deputy Director, Town Planning, Municipal Corporation, Aurangabad. Paragraph 15 reads as under :

“15. I say that, the answering respondent has demolished illegal construction. At present possession of land is not taken. In case, the possession of land is to be taken, appropriate course of law regarding the same will be followed in accordance with provisions of Maharashtra Regional and Town Planning Act, 1966, Maharashtra Municipal Corporation Act, 1949 and Development Control and Promotion Regulations as applicable to D-Class Municipal Corporation.”

8. In view of the above, this petition is disposed off. Needless to state, the order dated 16th March, 2019 would not survive in view of the statements recorded as above.

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9. We find it appropriate to note that the statements made on behalf of the petitioner and the respondent – Corporation, recorded as above, are made considering the situation during the course of the hearing before us and the statement of the Corporation agreeing to reconsider the petitioner's reply before passing a fresh order under Section 478 of the said Act, shall not tantamount to or shall not amount to an admission that the Corporation had committed a mistake in demolishing the compound wall of the petitioner.

10. All pending civil applications, in view of the above, would not survive and stand disposed off.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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