

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

901 WRIT PETITION NO.3637 OF 2019
WITH CA/4021/2019 IN WP/3637/2019

MARATHWADA MEDICAL AND RESEARCH INSTITUTE
AURANGABAD KAMALNAYAN BAJAJ HOSPITAL THR
AUTHORIZED PERSON
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Palodkar Devdatt P.
AGP for Respondent No.1-State : Mr. S. K. Tambe.
Advocate for Respondent Nos.2 to 5 : Mr. Bhandari Anand P.

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

DATE : 07.07.2021

PER COURT :-

1. On 6th July, 2021, the learned advocates representing the petitioner and the respondents made a statement that they have no objection, if this Bench considers this petition.

2. The petitioner has put forth prayer clauses 'B' and 'C' as under :

“(B) The Hon'ble High Court may be pleased be issue writ of mandamus or any other appropriate writ, order or direction in the nature of writ and thereby restrain the respondents from taking any coercive action in respect of the property of the petitioner situated in Gut Nos.43, 44, 59 and 60 of Satara,

District Aurangabad more particularly the area admeasuring 2460 Sq.Mtrs. affected in road widening which is described in detail in paragraph Nos.2 and 4 of the petition, without acquiring the same as per section 126 of the MRTP Act."

"(C) Pending hearing and till final disposal of the present writ petition, the Hon'ble High Court may be pleased to restrain the respondents from taking any coercive action in respect of the property of the petitioner situated in Gut Nos.43, 44, 59 and 60 of Satara, District Aurangabad totally admeasuring 28,000 Sq.Mtrs. and more particularly 2460 Sq.Mtrs. affected in widening of road which is described in detail in paragraph Nos.2 and 4 of the petition."

3. It is undisputed that during the pendency of this petition, since 14.03.2019 till today, there has been no order of protection or interim relief in favour of the petitioner. It is equally undisputed that a notice under Section 260 of the Maharashtra Municipal Corporations Act has been served upon the petitioner. However, an order under Section 478 of the said Act by way of a decision of the Corporation, is yet to be passed.

4. During the course of the hearing today, the petitioner has placed a map before us, which is marked as "X" for identification and will, therefore, be a part of the proceedings before us.

5. The learned advocate Mr. Bhandari, on instructions from

the Assistant Director Town Planning, Aurangabad submits that the green double lining portion on the south side is the existing compound wall of the hospital. Ownership of the hospital over the said portion is undisputed. The Corporation is willing to extend Transferable Development Rights (TDR) / Development Rights Certificate (DRC) in lieu of the portion which would be a part of the proposed development plan for widening of the Beed By-Pass High Way.

6. The learned advocate for the petitioner and the learned advocate for the Corporation agree that a hearing could be given in this matter vide which the petitioner's representatives would present their case before the competent authority representing the corporation, in pursuance to the notice under Section 260. Both agree that a personal hearing is not contemplated in law. However, without laying down a precedent and by way of an exception, such a personal hearing could be arranged. Mr. Bhandari submits on instructions that after such personal hearing and taking into account the possibility of the petitioner accepting TDR / DRC, the entire issue could be resolved.

7. In view of the above and considering the date and time agreed upon by the parties, for a personal hearing, this petition is disposed off with the following directions :

- a) The authorized representatives of the petitioner, who would be competent to take a decision in the meeting itself, would appear before the Assistant Director of Town Planning and a nominated Officer of the Corporation, on 14.07.2021 at 2.00 p.m. in the office of the Assistant Director of Town Planning, Aurangabad.
- b) The petitioner is permitted to be represented through a legal counsel, if so advised.
- c) The petitioner is at liberty to tender written submissions.
- d) After the hearing is concluded within a span of three (3) hours, the respondent-corporation shall pass a reasoned order on or before 23.07.2021 and convey the same to the petitioner, expeditiously.
- e) This order and the personal hearing permitted is purely by way of a consenting arrangement and without laying down any precedent and this order shall not be cited in any other matter by any of the parties.

- f) In the event, any of the litigating parties before us seek a certified copy of this order, the Registry shall ensure that a copy of the map 'X' shall be a part of such certified copy.

8. Pending Civil Application, in the above circumstances, does not survive and stands disposed off.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-