

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2384 OF 2021

Viveka Super Specialty Hospital &
Research Centre Private Limited,
through one of its Directors,
Dr. Prashant Jagtap, Aged : 56 years
Occupation : Cardiologist, having
Office at Plot No.1A, Naik Layout,
Subhash Nagar, Nagpur – 440 022.

.... **PETITIONER.**

// VERSUS //

1. The State of Maharashtra,
Urban Development Department,
through its Secretary Mantralaya
Annex, Mumbai.
2. The Nagpur Municipal Corporation,
Through its Commissioner,
Civil Lines, Nagpur- 440 001.
3. The Nagpur Improvement Trust,
Station Road, Sadar, Nagpur
through its Chairman.

.... **RESPONDENTS.**

Shri S.P. Dharmadhikari, Sr.Adv. a/b. Shri Kartik.N.Shukul, Adv. for Petitioner.
Smt.K.S.Joshi, G.P. for Respondent No.1.
Shri J.B.Kasat, Advocate for Respondent No.2.
Shri C.S.Kaptan, Sr.Adv. a/b. Shri Girish Kunte, Adv. for Resp. No.3.

**CORAM : SUNIL B. SHUKRE AND
ANIL L. PANSARE, JJ.**

DATE OF RESERVING THE JUDGMENT : 03/02/2022
DATE OF PRONOUNCING THE JUDGMENT: 21/02/2022

JUDGMENT : (Per Court)

1. Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.
2. Heard.
3. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.
4. The traces of petition find place in order dated 19th April 2021 passed by this Court in *Suo Motu* PIL No. 4 of 2020. The *suo motu* cognizance of the Covid Pandemic was taken. Various orders were passed from time to time. We all are conscious of the fact that during second wave of the Pandemic the entire country suffered a setback because of lack of health care infrastructure in the hospitals. Nagpur city was no exception. Many casualties occurred for want of oxygen. Various High Courts in their respective jurisdictions had taken cognizance of the then prevailing situation and had passed various orders. One of such orders was passed by this Court. The relevant portion of the said order dated 19th April 2021 in *Suo Motu* PIL No. 4 of 2020, that led to filing the present petition is as under:

“9. There is another issue of major concern which relates to shortage of oxygen supply. Presently, it appears that the production capacity itself is falling short to meet the demand and, therefore, the long term solution would only lie in increasing the production capacity. That can be done through various ways. For the time being, we direct the State as well as Collector, Nagpur and Commissioner, Municipal Corporation, Nagpur and also Central Government, if required, to grant all necessary permissions to all the private covid Hospitals which are interested in setting up their own oxygen generation plants/units. Some of these Hospitals may also require additional space for setting up these units and, therefore, if these Hospitals apply for allocation of any adjoining land which belongs to the state government or the corporation, same shall be made available by completing all formalities including grant of exemptions or de-reservations, if necessary, by State/Collector, Nagpur / Commissioner, NMC and on payment of the appropriate market value of the land or premium determined as per market value of the land without any delay. If these Hospitals are interested in setting up smaller plants utilizing air separation technology and any special permissions are required for that purpose, same shall be given by these authorities without any delay. If any of the Hospitals are interested in procurement of smaller oxygen generation units which are called concentrators based upon air separation technology, necessary permissions shall be granted by the state and all the concerned authorities for their import / delivery to these Hospitals, without any delay.”

5. Thus, the Court has taken the cognizance of shortage of oxygen supply and to meet the demand the Court thought it proper to have a long term solution by increasing the production capacity of

oxygen. Accordingly, directions have been issued to the State as well as Collector, Nagpur, Municipal Commissioner, Nagpur and also Central Government to grant all necessary permissions to all the private Covid Hospitals which are interested in setting up their Oxygen Generation Plants/ Units. The Court has then observed that some of these Hospitals may also require additional space for setting up these units and therefore, directions have been given that if these hospitals apply for allocation of any adjoining land which belongs to the State Government or the Corporation, the same shall be made available by completing all the formalities including grant of exemptions or de-reservations if necessary by State/Collector, Nagpur, Commissioner, Nagpur Municipal Corporation on payment of appropriate market value of the land or premium determined as per the market value of the land without any delay.

6. If one reads this order in its proper perspective, which requires plain reading, it would immediately come in the mind that a long term solution is to be found out to enhance the production capacity of oxygen by setting up Oxygen Generation Plants/Units. The long term solution is required because requirement of oxygen plant was not only the need as on 19th April 2021, when the order was

passed, but would be the need of the future as well. It was not known at that time nor is it known now, how long will this Covid Pandemic continue. At that time, the country was facing second wave, now, it is facing third wave. The future is not known. Thus, the problem solving approach is expected from all concerned, but what is before us is a very painful scenario.

7. There is a battle going on between one private hospital viz. Viveka Super Specialty Hospital and Research Centre Pvt. Ltd. (petitioner herein) on one hand and the Nagpur Improvement Trust (respondent No.3) and the Nagpur Municipal Corporation (respondent No.2) on the other. It appears that the petitioner hospital was nominated as a Dedicated Covid Hospital on or about 20th August 2020 by the respondent No.2-Corporation. According to the petitioner, the Hospital had dedicated 39 out of its 100 beds for Covid patients in the first wave and thereafter had dedicated 60 out of its 100 beds in the second wave. It claimed to have treated almost 1400 Covid patients since onset of the pandemic. The petitioner appears to have made a representation dated 28/04/2021 in furtherance to the order dated 19th April 2021 passed by this Court.

8. In response, the respondent No.1/ State of Maharashtra, Urban Development Department, upon recommendation of respondent No.3-Nagpur Improvement Trust, granted permission for temporary use of the land for a period of two years, on the condition that the petitioner would pay premium of Rs.54,00,000/-.

9. The petitioner claims to have erected a temporary structure on the said land. The respondent No.3 issued a notice dated 7th July 2021 mentioning therein that the land in question was reserved for Primary School and out of the said land 10000 Sq.Ft. was proposed to be allotted to the petitioner upon the terms and conditions mentioned in the letter dated 17th May 2021, and that the petitioner failed to comply with the said terms and conditions and erected a room admeasuring 4.15 x 5 Meters with tin roof. Such construction, it was stated, amounted to encroachment and therefore, the respondent No.3 directed the petitioner to remove the encroachment.

10. The petitioner, therefore, approached this Court by way of present petition seeking multiple reliefs, the prime relief being allocation of land admeasuring 10000 Sq.Ft. out of 87833.509 Sq.Ft. in terms of the order dated 19th April 2021 passed by this Court in *Suo Motu* PIL No. 4 of 2020.

11. On 17th September 2021 this Court while taking cognizance of the above petition, passed following order:

“1. Heard.

2. It has emerged during the course of hearing that a detailed proposal regarding allotment of the subject land on the certain terms and conditions is yet to be received by the Nagpur Improvement Trust(NIT) from the petitioner.

3. Shri S.PDharmadhikari, learned Senior Advocate submits that a suitable proposal in detail would be submitted by the petitioner to the NIT.

4. In view of the above, we grant liberty to the petitioner to submit its detailed proposal to the NIT, within a period of one week from the date of the order and if such proposal is moved by the petitioner, the same shall be dealt with and forwarded, in accordance with law by the NIT within a period of three weeks from the date of receipt of the proposal, and on its receipt by the State Government, an appropriate decision thereupon shall be taken by the State Government, within a reasonable period of time.

*5. List the petition for further consideration/hearing after **six weeks**.”*

12. The aforesaid order would clearly indicate that the petitioner was given liberty to submit its detailed proposal to the respondent No.3-Nagpur Improvement Trust within a period of one week from the date of the order. Upon receipt of such proposal, the respondent No.3-Nagpur Improvement Trust was directed to deal with it and forward the same, in accordance with law, to the State Government, within

three weeks. Thereafter the State Government was directed to take appropriate decision within a reasonable period.

13. It appears from record that the petitioner did not submit proposal within one week, has submitted it after some time. The respondent No.3 has, instead of forwarding the proposal, rejected the same vide its communication dated 26th December 2021 issued in favour of the petitioner.

14. The learned Senior Advocate Shri C.S.Kaptan for the respondent No.3 submits that the proposal that has been rejected by the Nagpur Improvement Trust has been forwarded to the respondent No.1 and can very well be treated as proposal with negative recommendation of the Nagpur Improvement Trust. These submissions were made against the contentions advanced by the learned Senior Advocate Shri S.P.Dharmadhikari for the petitioners that the respondent No.3 could not have rejected the proposal but should have forwarded the same to the respondent No.1, at most, with negative recommendations.

15. We have not heard of forwarding a proposal to the State Government which is addressed to the sender of the proposal

mentioning therein that his proposal is rejected, copy of which is only forwarded to the State Government. It cannot even be treated as proposal with negative recommendations as argued by Shri C.S. Kaptan, learned Senior Advocate.

16. The land under question is reserved for Primary School. The land is admeasuring 0.816 Hectares (87833.509 sq.ft). Out of the said land, the petitioner intends to set up a medical oxygen gas plant on the land admeasuring 0.9929 Hectare (10000 (sq ft). The land is reserved for primary school since 1968. If this land is to be allotted to the petitioner-hospital, it will have to be released from reservation and for that, the process under relevant Act has to be followed. Shri Kaptan, learned senior Advocate for respondent no.3- NIT contends that the respondent no.2- Nagpur Municipal Corporation is the Planning Authority and, therefore, the Corporation should move the proposal for de-reservation. As against, Shri J.B.Kasat, learned counsel for respondent no.2 submits that the land is fully under the control of the respondent no.3-NIT and, therefore, proposal should be forwarded by the NIT.

17. Thus, the authorities are trying to shift their burden upon

each other instead of finding out a solution in terms of the order of the Court. It is also pleaded by Respondent no.3-NIT that if the land is so allotted to the petitioner by exercising extraordinary jurisdiction of the Hon'ble Court, it would amount to opening floodgates for such type of litigations before this Court and the very purpose, scope and object of the NIT Land Disposal Rules would stand frustrated. It is then submitted that the Scheme under the Rules for allotment of lands by public auction, tender etc. is required to be taken into consideration, while allocating land to the petitioner. These submissions would indicate that Respondent no.3-NIT has some limitations.

18. Shri Kaptan, learned senior counsel has relied upon the judgment, in the case of Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh and others:(AIR 2011 SC 1834) wherein in paragraph nos. 31 to 34, it has been held as under :-

“31. What needs to be emphasized is that the State and or its agencies /instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/ or officers of the State. Every action/decision of the State and/ or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made

known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented /executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefitted by the policy. The distribution of largesse like allotment of land, grant of quota, permit license etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

32. *We may add that there cannot be any policy, must less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions de hors an invitation or advertisement by the State or its agency/ institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/ instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/ or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.*

33. *This, however, does not mean that the State*

can never allot land to the institutions/ organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the Society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions / organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similar situated eligible persons, institutions/ organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution.

34. *The allotment of land by the State or its agencies instrumentalities to a body organisation/ institution which carry the tag of caste, community or religion is not only contrary to the idea of Secular Democratic Republic but is also fraught with grave danger of dividing the society on caste or communal lines. The allotment of land to such bodies organisations/institutions on political consideration or by way of favouritism and/ or nepotism or with a view to nurture the vote bank for future is constitutionally*

impermissible.”

19. The above finding is rendered in the context of the issue of allotment of land to the bodies/organisations/institutions upon political consideration or by way of favouritism or nepotism or with a view to stop opening of floodgates for such allotments in future. The Hon’ble Supreme Court held that such allotment of land is Constitutionally impermissible.

20. In our considered opinion, the aforesaid findings must not be read in isolation and that they need to be understood by reading together with them observations in other paragraphs. Then, by order dated 19th April 2021 in Suo Moto IL No.4/2020, this Court has neither directed nor even indicated to consider allotment of land in breach of any provisions of any law. In fact, the answer to the submissions made by Shri Kaptan, senior counsel, can be found by also considering observations in paragraph 18 of the same judgment which read as under :-

“18. For achieving the goals of Justice and Equality set out in the Preamble, the State and its agencies/instrumentalities have to function through political entities and officers/officials at different levels. The laws enacted by Parliament and State Legislatures bestow upon them

powers for effective implementation of the laws enacted for creation of an egalitarian society. The exercise of power by political entities and officers / officials for providing different kinds of services and benefits to the people always has an element of discretion, which is required to be used in larger public interest and for public good. In principle, no exception can be taken to the use of discretion by the political functionaries and officers of the State and/ or its agencies / instrumentalities provided that this is done in a rational and judicious manner without any discrimination against anyone. In our constitutional structure, no functionary of the State of public authority has an absolute or unfettered discretion. The very idea of unfettered discretion is totally incompatible with the doctrine of equality enshrined in the Constitution and is an antithesis to the concept of rule of law.”

(emphasis supplied)

21. Thus, it is clearly found by the Hon’ble Supreme Court that in the larger public interest and for public good, the State Government can use its discretion to achieve such public interest. In fact, there are provisions to that effect in the Maharashtra Regional and Town Planning Act, 1966, so also the Nagpur Improvement Trust Act, 1936 which will come to a little later.

22. Shri Dharmadhikari, learned senior counsel for the petitioner, in response to the submissions made by Shri Kaptan, learned

senior counsel for respondent no.3 contends that directions in paragraph 9 of the judgment dated 19th April,2021 were issued in public interest. Efficient and effective health structure was need of the hour and will be helpful for all times to come. The order is applicable to all private hospitals which together constitute a class in itself in the sense that if any private hospital intends to set up oxygen plant and other amenities, it was given liberty to apply for allocation of any adjoining land, if any, which belonged to State Government or the Corporation and the same was directed to be made available by completing all formalities by the authorities like the respondents, that too on payment of appropriate market value of the land or premium determined as per the market value of the land. Thus, it is argued that any private hospital could have applied for allotment of land and the petitioner-hospital is one of such hospitals. According to petitioner, the contentions of respondent no.3 that there will be a flood of such requests is without any substance.

23. We do find force in the aforesaid submissions. The order dated 19th April 2021 passed in *Suo Moto* PIL No.4/2020 was already in public domain. It allowed all private hospitals to apply for allotment of adjoining land. It was equitable in nature and public oriented in its

impact. Its purpose was to save precious human lives, then and future, by increasing medical oxygen production capacity by putting together public and private resources. It was issued with a view to encourage private hospitals to contribute their bit in strengthening the infrastructure relating to production of medical oxygen. The reason was that Government alone could not have expanded the existing infrastructure for various reasons. There was lock-down in force, number of patients were increasing on every passing day, there was shortage of medicines, medical oxygen and even Doctors and trained staff, there were no beds available in Covid hospitals, the Government was running short of money on account of closing down of various businesses with resultant decline in accumulation of revenue, there was paucity of time and there was inadequacy of manpower as well. In other words, task was Herculean and time was slippery. This required the State and Corporation or the local authorities like the NIT, which was in the same position as the Corporation, to come forward with a helping hand and complete all formalities like granting exemptions, notifying de-reservations etc. and allot the land by exercising the discretion for serving a public cause, for achieving greater good of greater people, whenever it received applications from private hospitals for allotment of adjoining land. If any of such

applications lacked in some details or was addressed to just one authority though it ought to have been addressed to more than one authorities, given the jurisdictional issues, it was the duty of the State to co-ordinate between the hospital and multiple authorities involved in the whole process and see that all necessary permissions etc. were issued and land was allotted, lest healthcare of the patients in the State suffered. The State was thus expected to play a *pro* active role, all for improving the health care system of the State.

24. The proposal of the petitioner, however, has not found favour with the NIT rather, we find that there is resistance to it on the part of the NIT. Surprisingly, the NIT also does not come out with a case that it would utilise this piece of land by setting up an oxygen plant on its own or in collaboration with some others. On the contrary, we can notice that NIT sees a difficulty when a private hospital like the petitioner shows its willingness to contribute towards a public cause at its own expenses. The Division Bench of this Court had, through its order dated 19th April 2021, triggered a process of amalgamation of Government effort with private enterprise with a view to build up a robust health infrastructure within four corners of the law but it appears now that the alloy of sound health infrastructure is far

from being created and health management of the patients has taken a back seat.

25. Man is considered to be intelligent because he is gifted with the ability to learn from the mistakes. During first and second wave of Covid-19 pandemic, we suffered a lot; we also learnt something. We learnt that our suffering became worse due to paucity of medical oxygen on several occasions, but what have we not learnt is how to alleviate our sufferings. We feel that any civil society is intelligent and we wish it to remain so, if we allow it to be so. It means, let us not repeat our mistakes and do whatever we can in whatever way it is possible and as permissible in law, to build up a strong health infrastructure.

26. Coming back to this case, we find that it is not even the case of respondents that many such applications have been received by them. It is so because there may not be many hospitals where adjoining land is belonging to the State Government or Corporation or NIT. The order dated 19th April 2021 does not say any hospital may apply for allotment of Government land situated in any place in city. The argument of respondent No.3 for such allotment will open floodgate of

similar requests is uncalled for. Rather, the proper spirit would be to entertain as many applications of similar nature as will be received in this regard to build medical infrastructure to handle a situation like present Covid-19 pandemic.

27. Shri Dharmadhikari, learned senior counsel, in this regard, has rightly placed reliance upon the judgment in the case of Prem Chand Shah and another vs. Union of India and another: (1991) (2) SCC 48 wherein, the Hon'ble Supreme Court while dealing with the argument by the petitioners therein of treating unequals as equals under the import and export policy held in paragraph 8, as under :

“8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to be protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia

which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question.”

(emphasis supplied)

28. What we find in the underlined portion in paragraph 8 of above judgment, so also in paragraph 18 of the Akhil Bhartiya Upbhokta Congress’s judgment cited by respondent no.3 is the answer to the difficulties put forth by the respondents in processing the proposal of the petitioner in terms of the order passed by this Court. The Respondents ought to have processed the proposal in terms of order passed by this Court which if intended to be executed would find support in the judgments cited by both the parties.

29. Apart from the above, the answer also lies in Rule 26 of the NIT Land Disposal Rules, 1983 which provides as under :-

“26. The Government may, for the reasons to be recorded in writing, relax any of these rules in respect of a case which, in its opinion, is of a special nature.”

30. The above rule takes care of the apprehension of the

respondent no.3-NIT that the land under question cannot be allotted in terms of NIT Land Disposal Rules, 1983. This provision enables the Government to relax any of these rules in respect of a case, which is considered by it to be of special nature. In our view, any application based on the order dated 19th April 2021 passed in Suo Moto PIL No.4 of 2020 would be the one which by itself would be in a class of special nature. We are, therefore, of the opinion that the apprehension of the NIT that any positive consideration of the case of the Petitioner would lead to a train of more requests for allotment of land is without any reasonable foundation.

31. Another such provision finds place in Section 37 of Maharashtra Regional and Town Planning Act, 1966, more particularly Section 37(1)(1AA)(a), which reads thus,

“37. (Modification) of final Development Plan

(1) Where a modification of any part of or any proposal made in, a final Development plan, the Planning Authority may, or when so directed by the State Government shall, within ninety days from the date of such direction, publish a notice in the Official Gazette [and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and

after giving a hearing to any such persons, submit the proposed modification (with amendments, if any,) to the State Government for sanction within one year from the date of publication of notice in the Official Gazette. If such modification proposal is not submitted within the period stipulated above, the proposal of modification shall be deemed to have lapsed:

Provided that, such lapsing shall not bar the Planning Authority from making a fresh proposal.

(1A) If the Planning Authority fails to issue the notice as directed by the State Government, the State Government shall issue the notice, and thereupon the provisions of sub-section (1) shall apply as they apply in relation to a notice to be published by a Planning Authority.

(1AA)(a) Notwithstanding anything contained in sub-sections (1), (1A) and (2), where the State Government is satisfied that in the public interest it is necessary to carry out urgently a modification of any part of, or any proposal made in, a final Development plan of such a nature that it will not change the character of such Development plan, the State Government may, on its own, publish a notice in the Official Gazette, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice and shall also serve notice on all persons affected by the proposed modification and the Planning Authority.

(b) The State Government shall, after the specified period, forward a copy of all such objections and suggestions to the Planning Authority for its say to the Government within a period of one month from the receipt of the copies of such objections and suggestions from the Government.

(c) The State Government shall, after giving hearing to

the affected persons and the Planning Authority and after making such inquiry as it may consider necessary and consulting the Director of Town Planning, by notification in the Official Gazette, publish the approved modifications with or without changes, and subject to such conditions as it may deem fit, or may decide not to carry out such modification. On the publication of the modification in the Official Gazette, the final Development plan shall be deemed to have been modified accordingly.

(1-B) Notwithstanding anything contained in sub-section (1), if the Slum Rehabilitation Authority appointed under section 3A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 is satisfied that a modification of any part of, or any proposal made in, a final Development plan is required to be made for implementation of the Slum Rehabilitation Scheme declared under the said Act, then, it may publish a notice in the Official Gazette, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification, and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any) to the State Government for sanction.

(2) The State Government may, make such inquiry as it may consider necessary and after consulting the Director of Town Planning by notification in the Official Gazette, sanction the modification with or without such changes, and subject to such conditions as it may deem fit or refuse to accord sanction. If a modification is sanctioned, the final Development plans shall be deemed to have been modified accordingly.”

(Emphasis supplied)

empowers the State Government to urgently modify Development Plan, in public interest but without changing the character of such Development Plan. The petitioner is seeking 10000 Sq.Ft. land out of 87833.509 Sq.Ft. which is reserved for Primary School since the year 1968. We feel that the reservation of the land that appears in Development Plan would not change the character of the plan if a small piece of 10000 Sq.Ft. out of 87833.509 Sq.Ft. is allotted to be used for the cause which is in the interest of public at large, particularly when the purpose for which the land is reserved is waiting its implementation for last more than fifty years.

33. The aforesaid provisions have been quoted just to indicate the recourse that was available to the parties before us had there been intention to comply our order dated 19th April 2021 in its proper spirit. In addition, the respondents are at liberty to invoke such other provisions as could help the cause of strengthening the medical infrastructure in Nagpur city. The respondents are at liberty to have additional measures apart from one that we are dealing with to empower the medical / health infrastructure in Nagpur city.

34. In the light of the above and since we have found that

the Respondents have failed to process the proposals dated 28.04.2021 and 02.06.2021 forwarded by the petitioner in the manner as expected in terms of the order dated 19th April 2021, they are directed to process these proposals afresh in the light of the observations made in the body of this order. In particular, we direct respondent Nos. 2 and 3 to do so while ignoring decision of respondent no.3 rejecting these proposals and communicated vide respondent no.3's letter dated 26.12.2021 to the petitioner and forward these proposals for necessary permission/approval afresh in coordination with each other to the respondent No.1 at the earliest and preferably within four months from the date of the judgment. We further direct respondent No.1 to take appropriate decision on the proposals as per law, keeping in view the observations made hereinabove and by taking necessary steps, if required, in accordance with law, within three months from the receipt of the proposals.

35. So far as the disputed construction is concerned which is the subject-matter of demolition notice dated 7th July 2021, the same shall not be demolished until final decision of the respondent no.1, upon forwarding the proposals to it by respondent nos.2 and 3 is rendered subject to the condition that the petitioner shall furnish an

undertaking to this Court that within two weeks from the date of the order that if the proposals forwarded by respondent nos.2 and 3 are found to be not acceptable by respondent no.1, the petitioner shall demolish the disputed structure within fifteen days from the date of receipt of the communication to the petitioner indicating rejection of proposal by the respondent no.1. The Writ Petition is accordingly partly allowed. Rule accordingly. No order as to costs.

36. At this stage Shri Kaptan, the learned Senior Advocate makes a request to issue direction to the petitioner to deposit with respondent No.3 an amount of Rs.56,48,440/-. Such a request, however, cannot be considered at this stage for the reason that we have directed the respondents to consider the proposals of the petitioner. Therefore, decision in this regard is left to be taken by respondent No.1 at the time when it finally decides the proposals received by it in terms of this order.

(ANIL L.PANSARE, J)

(SUNIL B. SHUKRE, J)

sahare.