

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11914 OF 2022**

**THE CHIEF EXECUTIVE OFFICER AND OTHERS
VERSUS
SHANKARRAO MOHANRAO PAWAR AND ANOTHER**

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Mr. Sachin S. Deshmukh and Mr. Ashish P. Deshmukh, Advocate
for the Petitioners.

Mr. S. N. Morampalle, AGP for Respondents-State.

Smt. Surekha G. Chincholkar, Advocate for Respondent No.1.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 07th FEBRUARY, 2023.**

PER COURT:-

1. Heard.

2. The challenge in the petition is to the order dated 23.03.2022 passed in Miscellaneous Civil Appeal No.02/2022 upholding the order of the Trial Court dated 01.01.2022, whereby the respondents/plaintiffs' application for temporary injunction restraining the petitioners from carrying out the construction of the Primary Health Centre on the suit property came to be allowed.

3. Learned counsel for the petitioners submits that in the year 1987 the suit property was handed over by the father of the respondents to the petitioners for construction of a Primary Health Centre. Subsequently, the building became dilapidated and hence there was necessity for reconstruction and the building is being reconstructed. He would further submit that in the year 2021 RCS No.87/2021 has been instituted in respect of the suit property claiming that the petitioners have encroached over the suit property. He would further point out the alternative prayer in the suit for compensation. He would further urge that

considering the public interest, the construction of the Primary Health Centre ought not to be stopped.

4. Per contra, learned counsel for the respondent no.1 submits that the property has been taken over by the petitioner-Zilla Parishad without payment of any compensation. She would submit that it is her specific case in the plaint that the compensation was promised, but has not been given. In such fact situation, she submits that without payment of compensation the Petitioners cannot be permitted to carry on the reconstruction.

5. Considered the rival submissions of the respective parties.

6. It is the case of the respondents in the plaint that, the suit property was handed over by the father of the respondents for construction of Primary Health Centre in exchange for an assurance that the compensation would be paid. The respondents have come with the case that, as the said assurance was not met, the construction on the suit property amounts to the encroachment. In the suit an alternative prayer has also been made for the payment of compensation. Since the year 1987 the property is in the permissive possession of the petitioners and had been handed over by the father of the respondents and during his lifetime, the father of the Respondents had not raised any claim for seeking compensation or for recovery of possession. As such, it is the matter of trial as to whether the respondents are entitled for compensation. The fact remains that private property of an individual has been taken admittedly without payment of compensation and if compensation was assured and not paid, it amounts to infringement of the constitutional rights guaranteed

by Article 300-A of the Constitution of India. It is expected that the Zilla Parishad would take sympathetic view of the situation and would not raise the issue of the stale claim.

7. Be that as it may. In the present case the admitted position is that the Primary Health Centre was constructed on the suit property pursuant to the permission given by the respondents' father, which has not been withdrawn till today. The petitioner-Zilla Parishad is now re-constructing the Primary Health Centre. Considering the public interest which is involved and the admission in the plaint that the suit property was infact handed over for the construction of the Primary Health Centre *prima facie* case has been made out by the petitioners and in case of competing private interest and public interest, public interest takes precedence.

8. For the reasons above, the impugned order dated 23.03.2022 is quashed and set aside. The petitioners are permitted to carry out the construction of the Primary Health Centre. It is left to the Zilla Parishad to treat the suit as representation and consider the same sympathetically for the payment of compensation. As the proceedings pertain to the issue of compensation, which admittedly has not been given by the Zilla Parishad for the land acquired, the Trial Court is directed to decide the suit expeditiously and in any event before the expiry of period of one year from the date of the order.

9. Writ Petition stands allowed in the aforesaid terms.

(SHARMILA U. DESHMUKH)
JUDGE