

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO.12853 OF 2022

KHAJA BANDE NAWAZ EDUCATIONAL AND SOCIAL WELFARE
SOCIETY THROUGH ITS CHAIRMAN
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE PRINCIPAL
SECRETARY AND OTHERS

...
Advocate for Petitioners : Mr. Shikrashna B. Solanke
AGP for Respondents: Mr. P.S. Patil
.....

**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 21st APRIL, 2023.**

PER COURT :-

1. On 19.12.2022, we had passed the following order:-

"1. The Petitioner has put forth prayer clause B and C as under :-

"B. By issuing Writ of Certiorari or any other, Writ, order or directions in the like nature, this Hon'ble Court may be pleased to quash and set aside the impugned order dated 29.09.2022 issued by the Respondent no.2 and for that purpose issue necessary orders;

C. By issuing Writ of Mandamus or any other Writ, order or directions in the like nature, this Hon'ble Court may be pleased to direct the Respondent no.2 to forward the proposal of Petitioner to the Respondent no.1 and the Respondent no.1 may further be directed to take decision on the proposal of Petitioner for shifting of Indira Gandhi Girls Secondary and Higher Secondary School from Silleshkhana Paithan Gate to CTS No.9233, Girni Maidan, Near

Bashir Lawns, Jinsi, Aurangabad, within stipulated period and for that purpose issue necessary orders;"

2. *Issue notice to the Respondents, returnable on 23.01.2023. The learned AGP waives service of notice on behalf of all the Respondents.*

3. *The Petitioner would place on record a typed copy of page No.23. Leave to correct prayer clause 'C'. Correction be carried out forthwith."*

2. After considering the submissions of the litigating parties, we had issued certain directions in our order dated 11.4.2023, as under:-

"1. The newly constructed School building by the Petitioner is ready to be occupied. Photographs placed on record indicate that, it is a newly constructed building (G+3). Per contra, the old building, which is in Paithan Gate area in Aurangabad (Old City), is said to be in a dilapidated condition. The photographs placed on record would sink anybody's heart. The Education Officer (Secondary) expects a certification by the Public Works Department (PWD), that the said building is in a dilapidated condition and it would not be safe for being used as a School.

2. In view of the above, we direct the PWD Aurangabad, through it's Executive Engineer, to cause an inspection of the said old School building, on or before 20/04/2023 and place a report as regards the said building, on 21/04/2023. We request the learned A.G.P. to convey this order to the Executive Engineer of the PWD

Aurangabad for being implemented.

3. At the request of the learned A.G.P., with the assurance that the report would be tendered on 21/04/2023, list this Petition on 21/04/2023 in the 'passing orders' category."

3. The Office of the Executive Engineer, Public Works Division, Aurangabad, has tendered a report dated 21.4.2023, signed by the Executive Engineer, Public Works Division and Deputy Engineer, Public Works (South) Sub-Division, Aurangabad. The same is marked as "X" for identification. The relevant portion of the report, reads thus:-

"The building inspected by Sub-Divisional Engineer, P.W. Sub Dn. (South) Aurangabad on date 21.4.2023. Following are the brief specification of the building:-

- 1. Structure type - Rcc Frame structure*
 - 2. Roof- Rcc slab on First floor and GI sheet on second Floor.*
 - 3. Plinth-Height - 45 Cm*
 - 4. Wall Thickness – External as well as Internal- 0.23 cm*
 - 5. Doors-steel Doors but it appears to be not painted since long time.*
 - 6. Windows- Windows panels are not provided. Only steel grills are provided which is also not painted.*
 - 7. Flooring – concrete coba on first floor on all classroom and Shahabad kota on second floor in all classroom.*
 - 8. Electrification – Concealed pipe fitting.*
- There is total two floors under school First floor has total 3 classroom. 1 storage room and 1 principal room and second*

floor has total 4 classroom. Visually overall building seems to be in good conditions. But the building maintenance seems to be not done since many years. There are some leakages. On some places slab plaster falled. Building is required maintenance.

The building is not constructed under the supervisions of this office and design (R.C.C.) is not approved by this office and quality control tests are not carried by this office. So this office cannot certify the life of building. As well as structural stability of building. As per visual inspection, the building seems to be in Good Condition and good for use as a school building."

4. The Government Resolution dated 28.07.2021, placed on record, suggests that the issue as to whether the school should be transferred to it's new premises, is to be considered by Respondent No.1.

5. We find from the said Government Resolution, that though Respondent No.1 has to ultimately take a final decision, Respondent No.3 Education Officer has to forward a report to Respondent No.2, Deputy Director of Education. After perusing the record and the file, Respondent No.2 is to mention his opinion/impression and then forward it to Respondent No.1. Respondent No.3 had desired that the inspection of the building be carried out and a report be submitted by the Deputy Engineer, Zone-II. Latter part has been complied with as the Deputy Engineer, Zone-II, has tendered his opinion dated 24.06.2022, clearly noting that the

building has become old and is in dilapidated condition.

6. The report of the Executive Engineer "X", going by the reproduced portion herein-above, indicates an opinion that the building is in a good condition and good for use as a school building. We would not question the view of the P.W.D. set out in its report "X", since we do not have the expertise to question the report. However, we certainly agree with the learned advocate for the Petitioner that the building does appear to be in dilapidated condition, which is situated in a highly congested area and surrounded by a slaughter house. Per contra, a new building, that is constructed within a distance of 02 (two) kilometers, appears to be a modern (G+3) structure. The rooms are spacious. There are several facilities in the said building and ex-facie, we are of the view that, it would be an appropriate place for the girls' Urdu Medium School. Nevertheless, this decision is to be left to Respondent No.1.

7. In view of the above, this Petition is disposed off, with the following directions:-

- a) The learned A.G.P. would supply a copy of report "X" to Respondent No.3, so as to enable the said authority to forward its proposal to Respondent No.2, along with the said report, within 15 days.

- b) Respondent No.2 would consider the proposal and after recording it's impression/opinion, within 15 days from the date of the receipt of the file, forward it to Respondent No.1.
- c) Respondent No.1 would decide the said issue, within 30 days and convey the said decision to Respondent No.3 as well as the Petitioner.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

rlj/