

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13817 OF 2023

SHAILESH AJITKUMAR KASLIWAL AND OTHERS
VERSUS
STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS

...
Advocate for Petitioner : Mr. P.G. Godhamgaonkar
AGP for Respondents/State : Mr. A.V. Deshmukh
...

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.
DATE : 1st November, 2023

ORDER (Per: Y.G. Khobragade, J.) :-

1. Heard Shri Godhangaonkar, the learned Adcocate for the Petitioners and Shri A. V. Deshmukh, the learned Assistant Government Pleader for Respondent No.1-State at length.

2. By the present Petition under Article 226 of the Constitution of India, the Petitioners have put-forth prayer clause B-1 and/or B-2 as under:

“B-1. By issue of writ of certiorari or any other writ, order or direction, the construction permission at EXHIBIT-F dated 17.08.2022 and subsequent occupancy and use of premises of the respondent no. 3 & 4 on the plot no. 13 & 14-A in Shrinath Nagar by name Dr. Santapure Orthopedic Hospital be quashed and set aside.

And / Or

*B-2. By issue of Writ of Mandamus or any other appropriate writ, order or direction the respondent no. 1 & 2 be directed to act on the representation at **EXHIBIT-F** of the petitioners in relation to the seizure of construction and operation of the premises Dr. Santapure Orthopedic Hospital of the respondent no. 3 & 4.”*

3. The Petitioners are the residents of Shrinath Nagar, Behind Petrol Pump, Jalna Road, Aurangabad. The said layout was duly sanctioned by Respondent No.2-Municipal Corporation. The residents of the locality have 25 feet width road to approach Jalna Road with 2 curves. Respondent Nos. 3 and 4, who are Medical Practitioners, owned Plot Nos. 13 and 14 in the said locality. Respondent No.2-Corporation sanctioned the construction plan for commercial activity i.e. for running Orthopedic & Maternity Hospital in favour of Respondent Nos. 3 and 4. The grievance of the Petitioners is that Respondent Nos. 3 and 4 have carried out the construction in violation and contrary to the sanctioned plan. Further, on 6th August, 2023, Respondent No.2 revised the construction plan in violation of the Development Rules & Regulations on which basis, Respondent Nos. 3 and 4 constructed 30 bedded Hospital with Operation Theater, Medical Store and other ancillary requirements of the Hospital including Ambulance, which are not feasible in a residential locality. The Petitioners further contended that due to frequent use of number of Ambulances carrying patients and their relatives, peace in their locality has been lost. Not only this, but the visitors are also parking their vehicles in front of the residential houses. Therefore, all the residents in the locality are facing day to day hardship and nuisance. Hence, the Petitioners

prayed for revocation of permission of construction and in the alternative, for removal of encroachment.

4. It is needless to say that Respondent Nos. 3 and 4, who are Medical Practitioners by profession, constructed the Hospital after the Respondent No.2 - Sanctioning Authority sanctioned the construction plan. Under these circumstances, if Respondent Nos. 3 & 4 carries the construction in violation of sanctioned plan, in that event Respondent No.2 is the Competent Authority to initiate appropriate action in that regard. Indeed the Petitioners have produced copy of the notice dated 4th June, 2013 served upon the Respondent Nos.3 for carrying illegal construction by the Competent Authority, which Respondent No.3 replied on 6th August, 2013.

5. On perusal of representation of the Petitioners dated 24th March, 2023, it appears that due to insufficient space, the visitors to the Hospital are parking their vehicles at road side in front of residential houses of local residents. So also, there were several instances of untoward incidents of assault upon the owner of houses on account of parking of vehicles in front of their houses. Therefore, it appears that there is personal vendetta between the Petitioners and the Respondent Nos.3 & 4. Further, this court can not ascertain legality or illegality of construction of the Hospital and there are many disputed question

of facts, which cannot be considered by this Court by invoking the writ jurisdiction. However, the Petitioners are having alternate remedy to approach the Civil Court for seeking appropriate relief, which may be considered after a full fledged trial.

5. In view of the above discussion, we are not inclined to entertain the present Petition. Accordingly, **the Petition is dismissed**. No order as to costs.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]