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

WRIT PETITION NO.15557 OF 2019

Javed Khan Shabbir Khan Patel & ors. ... **PETITIONERS**

VERSUS

The State of Maharashtra & ors. ... **RESPONDENTS**

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Mr. V.D. Sapkal, Senior Advocate with Mr. Rohit N. Jadhav, i/b
Mr. S.R. Sapkal, Y.A. Jadhav & A.S. Gadekar, Advocates for
petitioners

Mr. P.K. Lakhotiya, A.G.P. for Respondents No.1, 2 & 5

Mr. A.P. Bhandari, Advocate for Respondents No.3 & 4

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WITH

WRIT PETITION NO.10863 OF 2019

Pyari Begum Nabi Patel ... **PETITIONER**

VERSUS

The State of Maharashtra & ors. ... **RESPONDENTS**

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Mr. Swapnil Joshi, Advocate for petitioner

Mr. P.K. Lakhotiya, A.G.P. for Respondents No.1, 2 & 5

Mr. A.P. Bhandari, Advocate for Respondent No.3

Mr. D.S. Manorkar, Advocate for Respondent No.6

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WITH

WRIT PETITION NO.9541 OF 2019

Sajeda Naeem Shaikh ... **PETITIONER**

VERSUS

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The State of Maharashtra & ors. ... **RESPONDENTS**

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Mr. Swapnil Joshi, Advocate for petitioner

Mr. P.K. Lakhotiya, A.G.P. for Respondent No.1

Mr. A.P. Bhandari, Advocate for Respondents No.2 & 3

.....

WITH

WRIT PETITION NO.9166 OF 2019

Xavier Devidas Aanthony ... **PETITIONER**

VERSUS

The State of Maharashtra & ors. ... **RESPONDENTS**

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Mr. V.D. Sapkal, Senior Advocate with Mr. Rohit N. Jadhav, i/b
Mr. S.R. Sapkal, Y.A. Jadhav & A.S. Gadekar, Advocates for
petitioners

Mr. P.K. Lakhotiya, A.G.P. for Respondents No.1, 2 & 5

Mr. A.P. Bhandari, Advocate for Respondents No.3 & 4

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**CORAM : R.G. AVACHAT AND
ABASAHEB D. SHINDE, JJ.**

DATE : 7th NOVEMBER, 2025

ORAL ORDER :

Heard. This group of Writ Petitions is taken up together for hearing and decision since they are interconnected. For the sake of convenience, the pleadings in Writ Petition No. 15557/2019 are referred to. The main prayer in the Writ Petition read thus :

- “(B) To hold and declare that the construction of the petitioners is with permission of the Gram Panchayat, Satara, District Aurangabad, therefore, it is legal by issuing appropriate writ, order or direction in the nature of writ or as the case may be.
- (C) To direct the respondents No.1 to 4 to initiate proceedings for acquiring land of the petitioners for the purpose of construction of road as per DP Plan by following due process of law, by issuing appropriate writ, order or direction in the nature of writ or as the case may be.
- (D) To quash and set aside the order dated 16/3/2019 passed by the Commissioner, Municipal Corporation, Aurangabad (Designated Officer) by issuing appropriate writ, order or direction in the nature of writ or as the case may be.”

2. We have heard the learned Senior Advocate and the learned Advocate appearing for the petitioners in other Writ Petitions. We have also heard the learned Advocate for the respondent Municipal Corporation and learned A.G.P. for the State as well.

3. Land bearing Gut No.36 admeasuring 86 R belonged to the petitioners. It was situated within the limits of Village Panchayat, Satara, District Aurangabad. Way back on 12/3/1986, some portion of the said land was acquired for construction of Beed Bypass. Admittedly, the width of the said

road was 30 mtrs. (100 ft.). Due to the said acquisition, the land belonging to the petitioners came to be divided into two parts. Meaning thereby, the remaining lands abut the Beed Bypass on either side.

4. The petitioners claim to have made construction after obtaining due permission from the local authority i.e. Satara Grampanchayat. The construction permissions accorded by the Grampanchayat during the period from 2001 to 2008 have all been placed on record along with approved plans. According to learned Senior Counsel, before going for construction on the said lands, necessary permission for converting the user from agriculture to Non-agriculture was obtained from the Collector, in view of Section 44 of the Maharashtra Land Revenue Code, 1966 (for short the MLRC). According to learned Senior Counsel, the three villages came to be merged with the respondent Municipal Corporation on 14/5/2015. Before that, the respondent Corporation did not have any authority to take any action against the owners of the land situated within the limits of the erstwhile Grampanchayat. According to him, in the meanwhile, Satara-Deolai Nagar

Parishad was there and thereafter the Corporation limits came to be extended. According to him, the respondent Corporation time and again issued notices under Sections 260 and 478(2) of the Maharashtra Municipal Corporations Act (for short the Corporations Act). The petitioners therein had responded to said notices and even approached this Court. In one of those Writ Petitions, a statement was made on behalf of the respondent Corporation that due process of law would be followed. Accepting the said statement, the Writ Petition was disposed of.

5. It was further submitted by the learned Senior Counsel that, since the Municipal Corporation came on the scene post May 2015 and the constructions standing on the petitioners' land have been made therebefore, after obtaining due permission from the then local authority, the respondent Corporation did not have any authority to issue any notice for demolition. According to him, right to property is a constitutional right in view of Article 300-A of the Constitution of India. He would further submit that, the said right is now being read into Article 21 of the Constitution of India. He placed

on record certain authorities to submit that, no owner of a property could be dispossessed or denuded of his right of enjoyment unless he is paid adequate compensation for acquisition of the said land. He relied on certain documents such as N.A. permission accorded by the then Collector. Some photographs have also been placed on record to indicate the respondent Corporation in high-handed manner entered the land for erecting public lampposts and even for laying of water pipeline. Those actions are illegal since the owners of the lands have been deprived of their right to property. According to him, the petitioners have in fact been dispossessed. He, therefore, referred to the main prayer clause in the petition that Corporation be directed to acquire the land and the petitioners be paid adequate compensation therefor. According to him, whatever submissions have been made by the learned counsel for the Municipal Corporation have no foundation in pleadings. According to him, the case of the Corporation that development plan was published and approved way back in 1991 and the Grampanchayat did not have authority to accord construction permission in view of

Schedule II and III to the Maharashtra Land Revenue (Conversion of Use of Land and Non-Agricultural Assessment) Rules, 1969 (hereinafter referred to as the 'Rules of 1969'), ought to have been disclosed in the show-cause-notice first issued under Section 260 and then under Section 478(2) of the Act. According to him, the petitioners thereby have been prejudiced. Had the impugned notices contained the grounds on which the Corporation proposed to initiate action, the petitioners could very well have responded thereto. He would further submit that, since the Municipal Corporation stood in the shoes of the erstwhile Village Panchayat, which accorded construction permission, the Corporation authorities will have first to take review of the permissions granted by its so called erstwhile authorities (Grampanchayat). Such an action could have been taken after giving a notice and opportunity of hearing to a person likely to be affected thereby. The learned Senior Counsel has relied on two judgments of this Court, wherein it has been observed that, there could be no two local authorities for one and the same area. Learned Senior Counsel then adverted our attention to Section 52 of the

Maharashtra Village Panchayats Act, whereunder a Village Panchayat was authorized to grant permission for construction on the lands within its limits. It was also brought to our notice that the Section suffered amendment in 2014, whereby the authority to grant permission was restricted to Gaothan area only. According to him, since the construction permission dates back to 2014, the amended provision would have no application.

6. The learned Counsel for the petitioners in rest of the petitions would submit that, some of them have purchased the plots for making their homes. The Corporation, in high-handed action, razed the entire habitat of these petitioners. They have in fact been now roofless. The land in their possession, of which they are the owners, is the sole source of their livelihood. Those petitioners had allowed the said land to be used on licence. A tea stall was erected. The Corporation removed the same. To earn their living, they have now given the said plot for storing sand thereon. According to him, for such activity, no permission of the Corporation is required. He meant to say that, the Corporation is neither acquiring the land

nor allowing it to be used for legitimate purposes. It was also submitted that, even his tenant who had kept a generator on the open land, was made to remove the same and even a penalty of Rs.5000/- was saddled on him. According to him, in such a manner, the owners of the land are not permitted to exercise proprietary rights. He too urged for a mandamus in the nature of direction for acquisition of their land with payment of adequate compensation. According to him, in the earlier round of litigation, a statement was made on behalf of the Corporation that the due process of law would be followed. The Corporation authorities reneged on their statement and demolished one of the petitioner's homes 2-3 months thereafter.

7. The learned counsel for the respondent corporation would, on the other hand, submit that, only in Writ Petition No.15557/2019 the scope of hearing on the issue involved has been kept open in view of the order passed by the Apex Court in the Special Leave Petition. In case of other three Writ Petitions, the petitioner in two of them did not approach the Apex Court. One of the petitioner namely Pyari Begum had

approached in Special Leave Petition, but the statement was made on her behalf that, the construction has now been razed. No liberty was sought for reagitating the said issue in a Writ Petition before this Court. According to the learned counsel for the respondent Corporation, again and again same issue cannot be agitated for soliciting a decision thereon. According to him, in the petition itself the petitioners admitted that, the development plan was approved way back in 1991.

According to him, the erstwhile Grampanchayat did not have an authority to grant construction permission. He adverted our attention to the order granting N.A. permission. He also adverted our attention to the conditions namely, 8, 10 and 11, whereunder it was observed that the petitioners had submitted a lay-out duly approved by the Town Planning authority. According to him, the said plan/ lay-out has not been placed on record of this Court. According to him, it is nothing but suppression of material fact. He adverted our attention to Schedule II and III to the Rules of 1969, whereunder if the development is to be made on a land which abuts either a National, State, District or Village way/ road, the conditions

therein have to be complied with. The authority to grant construction permission is the Collector and not the local authority i.e. the Satara Grampanchayat herein. According to him, thus these provisions override the provisions of Section 52 of the Maharashtra Village Panchayats Act. According to him, since the construction made by the petitioners was with the permission of the Grampanchayat, which did not have authority to grant such permission, the same is non est. He adverted our attention to the notice, wherein it has been specifically averred that, no construction permission has been accorded by a competent authority. He meant to say that, since the petitioners have come to the Court for protecting their construction, it is for them to make out a case that the construction has been made after obtaining valid permission accorded by a competent authority. Since the same has not been done in the present case, the petitions are liable to be dismissed.

8. Learned A.G.P. adopted the aforesaid submissions made by learned Advocate for the respondent Municipal Corporation.

9. We have considered the submissions advanced. Perused the documents relied on. In response to the show-cause-notice issued under Section 260 of the Act, the petitioners had made a detailed representation to the Corporation authorities. The same suggests the petitioners were given due hearing. The Corporation authority made its decision on 16/3/2019, holding the construction made by the petitioners to be illegal and unauthorized. On the same day, the Corporation issued the petitioners notice, calling upon them to demolish the illegal construction within a period of 24 hours. A day before the Corporation issued notice, Writ Petition filed by the petitioners was disposed of by this Court. The petitioners approached the Apex Court in Special Leave Petition. The orders passed by the Apex Court in the said SLP is reproduced below :

“This appeal arises out of the aforementioned writ petition filed by the petitioner praying inter alia for following reliefs:

“B) To direct the respondent that they shall not dispossess the petitioners from their own land without taking recourse to the due process of law as indicated in the judgment in Writ Petition No.2840 of 2012 by

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issuing appropriate writ, order or direction in the nature of writ or as the case may be.

C) To grant injunction against the respondent from removing the structure which is beyond 100 ft. road which is in the possession of petitioner by issuing appropriate writ, order or direction in the nature of writ or as the case may be.”

In response, the Aurangabad Municipal Corporation submitted inter alia as under:

“9. I say that, order passed by this Hon’ble clearly holds that, construction which is without there being a construction is not protected. Furthermore, it must be stated here that, construction which Petitioners have carried out is within an area earmarked for 60 meters road. There cannot be regularization which is inconsistent with the development plan. Therefore, there is absolutely no question of satisfaction to be arrived at by the authority regarding the permissibility of construction and regularization of the same. As a consequence of it, the only course available with the answering respondent was to take appropriate steps for demolition of illegal construction.

11. I say that, Beed i.e. road in question is a bypass and therefore as per the Government Resolution dated 07.01.2002 the building line is required to be considered at a distance of 40 meters from the center of road. Furthermore, as per Government Resolution dated 02.12.1996 all the town planning authorities and revenue authorities in the state are specifically directed that, in case of a by-pass all lay-outs adjacent thereto must contain provision for service roads. In the facts of the present case, the Petitioner has not produced on record copy of sanctioned lay-out of the property which is occupied by the Petitioner. Copies of Government Resolution dated 07.01.2002 and Government

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Resolution dated 02.12.1996 are annexed herewith and marked as Exhibit R-1.

12. I say that, firstly there is no valid permission issued by the competent authority which has been produced on record by the petitioners. Secondly, the permission could not have been granted for the area in question and for the constructions in question in view of the fact that, all the constructions are situated within 40 meters from the center of the Highway. Furthermore, the area in question is affected by the development plan road.”

It is also a matter of record that a communication was addressed on 16.03.2019 by the Aurangabad Municipal Corporation after considering written explanation offered by the petitioners. It was stated:

“2. Thereafter, in the said matter your written explanation was called. Your written explanation was considered. In the said explanation, you have mentioned various decisions of the Hon’ble High Court. However, you have not submitted any construction permission given by competent authority alongwith your explanation. Therefore, you have not submitted construction permission along with your explanation. Therefore, construction done by you as mentioned in notice reference no.1 is without permission/unauthorised and there is no doubt about it.”

The writ petition was finally disposed of by the High Court by its order dated 18.03.2019 with following observations:

“10. Though the learned counsel for the petitioners have stated that they have carried out the construction in accordance with the permission granted by the Gram Panchayat, the perusal of such permission reflects that

the same was conditional. A specific condition is incorporated therein that if the land is required for extension of road, the same will be used by the authorities.

11. Apart from above, the fact remains that, on instructions, the learned counsel for the Respondent Corporation has made a specific submission that the Respondent-Corporation will demolish only such structures which are found to be illegal. Mr. Bhandari, learned Counsel for Respondent-Corporation, has submitted that appropriate compensation will be paid to the petitioners in case, if their lands are acquired for expansion of Development Plan road. Since the statement about dispossession is made on instructions, same is accepted as an undertaking from the Corporation that in case, lands of the petitioners are acquired, same will be done in accordance with law."

It is thus clear that only illegal structures were allowed to be demolished by the Municipal Corporation and in case the lands were required for expansion for development plan road, the appropriate compensation would be paid to the concerned persons after acquisition.

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It has been accepted by Mr. Sudhanshu S. Choudhari, learned counsel that the construction was not authorised. However, he claims that the lands in question are of the ownership of the petitioners and in case the lands are required for road widening, the Corporation may follow the mandate issued by the High Court.

Though the constructions are admittedly unauthorised,

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since there are families who are residing in the constructed area(s), we grant to the petitioners in SLP (C) Nos.8306 and 8307 of 2019 time up to 31st July 2019 to remove themselves. An undertaking to that effect shall be submitted by said petitioners to the High Court within two weeks from today. The undertaking shall state that the petitioners shall remove themselves voluntarily and shall not induct any third parties or create any third party rights with respect to the constructed portions.

Subject to the aforesaid observations, we see no reason to interfere in the matters and dismiss the special leave petitions.”

10. The reading of the aforesaid order would indicate that, in one of the cases only, a window was kept open for decision by this Court as to whether the construction sought to be demolished/ already demolished was legal one.

11. It is true that, before Satara-Deolai Nagar Parishad was there, the Satara Village Panchayat accorded construction permission to the petitioners. Those construction permissions have been placed on record. The learned counsel for the Corporation tried to pick up holes therein, pointing out none of the construction permissions bears Outward Number. He would further submit that, all those permissions are cyclostyled

one. The fact, however, remains that, there is nothing for us to doubt those submissions. These petitioners have relied thereon time and again on the strength of his affidavit in support thereof. The question is whether, the Satara Grampanchayat did have authority to grant construction permission. In the first blush, it did have, since Section 52 of the Maharashtra Village Panchayats Act empowers it to grant permission for construction. It is also true that, the construction made by the petitioners were assessed for Grampanchayat tax. In the petition itself, it has been admitted that the development plan was approved way back in 1991. It is true that, the Municipal Corporation was not on the scene until 2015. A development plan has, however, been approved by the State Government. It would have, therefore, application for the land falling within the limits of Village Panchayat as well. Admittedly, in the year 1986, some of the land of the petitioners was acquired for construction of Beed Bypass, the width whereof was 100 ft. In the approved development plan, the width of the Bypass is shown as 200 ft. As such, the land abutting the existing Bypass has been covered and finds place

as land reserved for extension of Beed Bypass/ Service Road in the Development Plan. Even if we peruse the construction permission accorded by the Grampanchayat, it has been specifically conditioned therein that if the land is required for widening of the road, the owners thereof will have to lose the land along with construction as well. The same suggest that, although the land owners are entitled for compensation of the land, they may not be entitled for compensation for the constructed buildings. Be that as it may. The question is, whether the Grampanchayat in fact did have an authority to grant construction permission. It has been told/ informed across the bar that, few months before the Village was merged within the Corporation limits, the Grampanchayat accorded hundreds of construction permission without adhering to the development rules.

12. In view of there being a development plan in existence since 1991 and admittedly the lands in question to have been shown as reserved for service road and extension of bypass, any construction to be made thereon post 1991 should have been in complete adherence to development rules

and with the necessary permission from the competent authority. In terms of Schedule II and III to the Rules of 1969, it is the Collector who is competent to accord permission for development of the land which abuts National/ State Highway, District or Village road. Although Beed Bypass is not in so many words stated to be either a National or State Highway, the Court can take judicial notice of the fact that it joins or negotiate between two districts in the State. The said road cannot be termed to be a village road. It is no less a State Highway although has not been described so in so many words. The said road was laid under World Bank Project.

13. Since we find/ hold the said road is no less than a State Highway and the lands in question abut the said road, the authority to grant permission for its development since 1991 or onwards is the Collector in view of Schedule II or III of the Rules of 1969. The same suggests the Grampanchayat, Satara did not have authority to accord construction permission. In terms of the Schedule, building-line has length of 40 mtrs. from the centre of the road on either side. Admittedly, the plots in question get covered by the said

building-line. Meaning thereby, any development which is to be made thereon has to be in accordance with the development rules contained in the Schedule itself. It was brought to our notice that, no open spaces, side margins were kept. The construction permission has been accorded by the Grampanchayat, turning blind eye to those aspects. The lay-out approved by the Village Panchayat is placed on record instead of a lay-out that was said to have been approved by the Town Planning authority. It could not lie in the mouth of the petitioners that no lay-out was sanctioned by the planning authority. When the petitioners rely on the N.A. permission, the conditions attached thereto need to be read as it is, which suggest the petitioners although placed before the Collector a lay-out sanctioned by the town Planning authorities, the same is not forthcoming in this Writ Petition.

14. At the cost of repetition, it is observed that, in view of the development plan and the provisions of Schedule II and III of the Rules of 1969, the competent authority to grant construction permission is the Collector. The construction permission accorded by the Grampanchayat was without any

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authority. For better appreciation, the relevant rules are reproduced hereinbelow :-

SCHEDULE II
[See Rule 4(1)(e)]

[Provision for construction of buildings between boundary of a road and building line and between building line and control line in areas on which Chapter III of the Bombay Highway Act, 1955 is not in force]

1. Subject to the provisions of this schedule, no person shall without the previous permission in writing of the Collector-

(a) upon any land lying between boundary of a road and building line, specified under clause 2 erect any structure or materially alter any existing structure or change user of land;

(b) upon any land lying between building line, and the control line specified under clause 2 erect any structure for any industrial or commercial purpose including cinema houses which attract large number of vehicles.

2. As respects the class of roads specified in column 2 of the table hereto, the building line and control line measured from the centre of any such road shall in any urban or industrial area be as specified in columns 3, 4, 5 and 6 and in any non-urban excluding industrial area as specified in columns 7 and 8 of the table against each such class of road:

Provided that, at curves on each such road, the building line shall be set at an increased distance

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equal to 20 per cent, of building line specified as aforesaid.

		Urban or industrial areas				Non-urban excluding industrial	
Sr. No.	Class of road	Within actual Limits		On approaches to urban or industrial areas			
		Building line	Control line	Building line	Control line	Building line	Control line
1	2	3	4	5	6	7	8
1.	National Highways and State Highways	24.38	36.58	30.48	45.72	30.48	67.06
2.	Major District Roads	24.38	36.58	24.38	36.58	30.48	54.86
3.	Other District Roads	12.19	18.29	15.24	22.86	15.24	30.48
4.	Village Roads	9.14	13.72	12.19	18.29	12.19	24.38

SCHEDULE III
[See Rule 4(1)(e)]
[(Building Regulations)]
Part I
General

1.

2.

3. Access to road- Buildings shall be allowed to be erected on the condition that the applicant provides for suitable access by an existing road or by a projected road.

4.

5. Distance from boundary of the plot- No building shall be erected within 3.05 metres of the perimeter or a plot; and 6.10 metres from the rear boundary of the plot.”

14. It is true that, the Corporation do not propose for

now to go for acquisition of the land affected by the development plan. This Court, however, cannot direct it to acquire the land for the purpose for which it has been reserved. It was submitted on behalf of the Corporation that, the petitioners have a remedy under Sections 49 and/ or 127 of the Maharashtra Regional and Town Planning Act to give the Corporation purchase notice or ask for permission for development. If the Corporation did not positively respond to such action, the petitioners may have their remedy to have the lands declared to have been dereserved. We are in agreement with the submissions. We are conscious of the plight of the petitioners that in spite of the owners of a valuable land, the Corporation is neither acquiring the same nor is permitting them to make use thereof. We are, however, helpless. The petitioners can use their land for the legitimate purpose for which no permission of the Corporation is required or they may use the same for any other purpose after obtaining necessary permission from the Corporation.

15. So far as regards the action of the Corporation of erecting public lamppost and laying of water pipeline is

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concerned, though the said acts have been done without the owners affected thereby to have been paid any compensation or damages for the loss or inconvenience they have suffered, the petitioners have a remedy elsewhere. If they resort to those remedies, we hope and trust that the Corporation would remedy the situation.

16. With the aforesaid observations, we find the petitions sans merit. The petitions, therefore, stand dismissed.

(ABASAHEB D. SHINDE, J.)

(R.G. AVACHAT, J.)

fmp/-