

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7981 OF 2026

**The Deccan Co-operative Housing
Society Limited,**

1079 B, Union Park,

Khar (West), Mumbai – 400 052.

.... Petitioner

Vs.

1. **The State of Maharashtra,**
through its Principal Secretary,
Revenue Department, Mantralaya,
Mumbai – 400 032

2. **The Collector,**
Mumbai Suburban,
Administrative Building, 10th Floor,
Government Colony, Bandra (East),
Mumbai – 400 051

.... Respondents

**WITH
INTERIM APPLICATION NO. 4651 OF 2026
IN
WRIT PETITION NO.7981 OF 2026**

Jasani Realty Private Limited

A Company registered under the
Companies Act, 1956

Having its registered address at

23, Morvi House, 28/30, Goa Street,
Ballard Estate, Mumbai – 400 038

... Applicant

In the matter between :

**The Deccan Co-operative Housing
Society Limited,**

1079 B, Union Park,
Khar (West), Mumbai – 400 052.

.... Petitioner

Vs.

1. **The State of Maharashtra,**
through its Principal Secretary,
Revenue Department, Mantralaya,
Mumbai – 400 032

2. **The Collector,**
Mumbai Suburban,
Administrative Building, 10th Floor,
Government Colony, Bandra (East),
Mumbai – 400 051

.... Respondents

Mr. Pravin Kumar Samdani, Senior Advocate a/w Mr. Bhushan Deshmukh, Ms. Neha Mehta, Mr. Aditya Miskita, Mr. Umair Merchant, Ms. Aayushi Gohil, Ms. Rima Ajmerwalla and Daryl Alemao i/b M.T. Miskita & Co. for Petitioner in WP.

Mr. Mayur Khandeparkar a/w Mr. Amogh Singh, Mr. Devansh Shah, Mr. Santosh Pathak, Mr. Nimish Lotlikar, Ms. Archana Karmakar, Ms. Khushi Jain i/b Law Origin for Applicant in IA No. 4651 of 2026.

Mr. Yuvraj D. Patil, AGP for Respondent Nos. 1 and 2 – State.

CORAM : ARUN R. PEDNEKER, J.
RESERVED ON : 28th August 2026
PRONOUNCED ON : 10th September 2026

JUDGMENT :

1. The Interim Application is allowed. Rule. Rule is made returnable forthwith. Heard finally.
2. By the present Writ Petition, the Petitioner challenges the legality, validity and propriety of the Impugned Order dated 17th March 2026, passed by Respondent No. 2 – Resident Deputy Collector, Mumbai Suburban District (“**the Collector**”), directing removal of gates installed on the Government land, used as an access by the Petitioner.
3. The Petitioner-Society also challenges the action taken pursuant to the impugned order dated 17th March 2026 passed by Respondent No. 2 – Collector. Pursuant thereto, Respondent No. 2- Collector and its officers, on 23rd March 2026, 27th March 2026 and 1st April 2026, visited the property which is the subject matter of the present Writ Petition and attempted to demolish the existing gate, which has been in the exclusive and uninterrupted possession and use of the Petitioner-Society for over 45 years.
4. The case of the Petitioner in the Writ Petition is briefly set out hereunder:-

By Order dated 23rd September 1959, land admeasuring 17,780 per sq. mtrs. bearing Plot nos. 15 to 22 and 23.37, out of survey nos. 323 and 289/B, situated at Danda, Bombay Suburban District (“**the Larger Land**”)

was granted on permanent basis by the Collector, Mumbai in favour of Petitioner, subject to certain terms and conditions stipulated therein. Accordingly, the land vested in the Petitioner. It is further stated that the portion of land, approximately admeasuring 7,075.07 sq. mtrs., was reserved as open space under the sanctioned Development Plan for Greater Mumbai. The BMC, through its officer, i.e. the Deputy City Engineer, Development Plan, addressed a letter dated 6th March 1978 to the Petitioner's Architect with respect to the proposed temporary access road through the property reserved as open space. As per the said letter, the Petitioner was permitted to access a 30-feet-wide strip of the D.P. road through the Government property.

5. The Petitioner transferred the ownership/title of the open space/garden to BMC sometime in the year 1978. The construction of 44-feet-wide D.P. road, as contemplated in the letter dated 13th March 1978 addressed by the BMC, was also completed, and the name of the BMC was mutated in the Property Card and updated in the Land Records sometime in or about the year 1985.

6. However, from 1985 onwards, the Petitioner has remained in physical possession of the open space and garden. The Petitioner states that it is in adverse possession of the said property that they have been using it for a

period of 41 years. It is further stated that the Petitioner has been in physical control of the property since 1985 including the garden / open space. It is stated that the garden / open space alongwith the gate thereon has been exclusive and uninterrupted possession of the Petitioner from 1960 until 1985 when the same was handed over to BMC and the possession was taken over by the Petitioner in 1985 itself. The Petitioner has incurred various expenses towards the maintenance of the garden.

7. On 6th May 2025, the name of the BMC was updated in the Property Card/Land Records. Thereafter, the BMC, through its concerned officer, issued a notice to the Petitioner stating that the garden property was owned by the BMC, as reflected in the Property Card, and that the Petitioner was using the said property unauthorisedly. Accordingly, the Petitioner was called upon to hand over physical possession of the property to the BMC, remove the locked gate and the security personnel deployed by the Petitioner, and cease all exclusive activities and/or development being carried out on the said property.

8. On 6th May 2025, the Petitioner responded to the notice issued by the concerned BMC authority. Thereafter, the Petitioner was constrained to institute Suit No. 287 of 2025, inter alia, seeking a declaration in respect of its rights, title and interest in the said property, i.e. the land reserved for

garden and also the gate, as well as a decree of permanent injunction restraining the BMC from taking any precipitative or coercive action pursuant to the notices dated 6th May 2025 and 23rd May 2025, and from dispossessing the Petitioner from the said property without following due process of law.

9. In the Civil Suit, this Court granted ad-interim reliefs restraining the BMC from taking any coercive action. The order dated 11th June 2025 passed by this court (Coram : R.I. Chagla, J.) is quoted below :

“1. The Defendant – Brihanmumbai Municipal Corporaton shall file their Affidavit in Reply to the Interim Applicatoin within a period of two weeks from today i.e. on or before 25th June 2025.

2. The Plaintiff is at liberty to file Affidavit in Rejoinder thereto within a period of one week thereafter.

3. Considering that the Plaintiff has been in possession of the Suit property for several years, till the next date, the Defendants shall not act upon the impugned notices dated 6th May 2025 and 23rd May 2025.

4. Place the Interim Application for further consideration on 4th July 2025”.

10. It is stated that the interim protection granted by this Court extends to the garden area as well as the access area. It is further stated that, during the pendency of the Suit, Jasani Realty Private Limited, a Company, undertaking a Slum Rehabilitation Scheme adjacent to the Petitioner’s property, sought to intervene in the Suit by filing Interim Application (L) No. 30680 of 2025,

inter alia, seeking its impleadment in the Suit. The said Intervention Application was subsequently withdrawn.

11. It is stated that the said Interim Application was filed by Jasani Realty Pvt. Limited for two purposes: (i) Jasani sought to ensure that the suit property, i.e. the garden, was not used exclusively by the Petitioner and was, presumably, made available for use by the proposed flat purchasers in its Scheme on the adjoining land; and (ii) Jasani sought to secure better access to its Scheme on the adjoining property by opening the gate of a pathway leading to the garden.

12. The Petitioner opposed the said Interim Application, which was thereafter withdrawn by Jasani pursuant to an Order dated 18th February 2026.

13. Against this background, on 23rd March 2026, the officers/representatives of Respondent No. 2 – Collector, visited the Petitioner's property without any prior notice and proceeded to attempt the demolition of an existing gate situated in the garden area of the property, at the entrance to a small pathway leading to the garden. The said pathway and the gate have been in the Petitioner's lawful, settled and uninterrupted possession and use for over 45 years.

14. Upon being questioned, the officials present at the site stated that the aforesaid action was purportedly being undertaken pursuant to certain directions and/or an order issued by Respondent No. 2 – Collector. It was only in the course of the said attempted demolition that the Petitioner became aware of the purported directions and/or order issued by Respondent No. 2 – Collector.

15. No show-cause notice was issued to the Petitioner, nor was any opportunity afforded to the Petitioner to furnish an explanation prior to the issuance of the purported directions/order or the attempted demolition carried out on 23rd March 2026. The said action, having been undertaken without any authority of law and without reference to or compliance with any statutory provision, is ex facie arbitrary, illegal and in flagrant violation of the principles of natural justice.

16. In the aforesaid circumstances, the Petitioner has been constrained to approach this Hon'ble Court by invoking its jurisdiction under Articles 226 and 227 of the Constitution of India, challenging the illegal and arbitrary actions of Respondent No. 2 – Collector, including the attempted demolition of the gate, as well as the impugned order/directions pursuant to which such action was purportedly undertaken. The impugned action has been taken without issuance of any notice to the Petitioner, without conducting any

enquiry, and without calling for, receiving or considering any explanation from the Petitioner.

17. Learned counsel for the Petitioner submits that (i) the garden, along with the gate, is the subject matter of Civil Suit No. 287 of 2025; (ii) the injunction order passed by this Court operates against the Respondent No.2- Collector from taking any coercive steps, although the Collector is not a party to the Civil Suit, as the injunction operates against the Municipal Corporation; (iii) the subject property i.e. the installed gates, forms part of the subject matter of the civil suit; and (iv) Respondent No. 2- Collector ought not to have passed any order for removal of the gates.

18. Learned counsel for the Petitioner submits that no notice of hearing was given to the Petitioner and the Petitioner has been in exclusive occupation of the strip of land/excess strip for a long period of time, i.e., about 45 years. As such, without issuing notice to the Petitioner, no action ought to have been taken by the Collector for removal of the gates. Learned counsel for the Petitioner submits that the strip, over which access is claimed, forms part of a larger property, which is owned by the Petitioner by virtue of the original grant of the year 1953. The learned counsel for the Petitioner submits that Respondent No. 2- Collector has acted high-handedly at the instance of the Intervenor and that the Intervenor, having failed to

intervene in the civil suit, has thereafter approached the Collector, who proceeded to take action bypassing the proceedings in the said Civil Suit. The Intervenor did not proceed to contest the proceedings before the Civil Court but withdrew the application and applied to the State.

19. Learned counsel for the Petitioner has taken me through the maps to substantiate the case of the Petitioner. It is submitted that the strip of land being used as an access belongs to the Petitioner-Society and that Respondent No.2 -Collector has no right or authority over the said strip.

20. Learned counsel further submits that the portion of the land claimed by the Intervenor and State-Respondent No.2 is not a public street. Consequently, the Municipal Corporation could not have taken any action in respect of the said property. He further submits that, even assuming that the property is Government land and that the same is held against the Petitioner, it cannot be taken over by the authorities without issuance of due notice to the Petitioner. The Petitioner has been in settled possession of the property for over 45 years. Therefore, even if it is held that the street access is situated on Government land, the authorities cannot dispossess the Petitioner or take over the land without following due process of law and providing him an opportunity of being heard. In that regard, he relies upon the judgment delivered by this Court (Coram : Shailesh P. Bramhe, J),

Aurangabad Bench, in the case of **Shakuntalabai w/o Shrinivas Dhoot & Ors. V. The State of Maharashtra & Anr.**¹.

21. An Intervention Application has been filed by the Intervenor, who has submitted that the Civil Suit does not pertain to the strip of land on which the Collector has taken action. It is specifically pointed out that, having regard to the prayers in the Civil Suit, the gate, the removal of which has been directed does not form part of the subject matter of the Civil Suit.

22. Mr. Khandeparkar, learned counsel appearing for the intervenor, submitted that the Division Bench of this Court, in Writ Petition No. 2701 of 2019, had specifically appointed a Committee to inquire into the development of the slum adjoining the petitioner's plot. Various directions were issued by this Court to ensure that access to the slum area was kept open, particularly in view of the highly congested nature of the area. The said order was also challenged before the Hon'ble Supreme Court; however, the Special Leave Petition (SLP) came to be dismissed.

23. Learned counsel further submitted that the slum area is densely populated and has no alternative access. In such circumstances, the existing public access cannot be permitted to be converted into a private access, as doing so would adversely affect the residents of the slum and impede their access to the area.

¹ Second Appeal Nos. 118, 119, 120 and 127 of 1999 dt. 8th August 2025

24. The Civil Suit pertains to a garden shown in the D.P. Plan, which is earmarked for a public purpose. According to the Intervenor, the Petitioner is a land grabber attempting to take over the said garden, and the same is the subject matter of the Civil Suit.

25. As regards the strip of land on which the Petitioner has erected the gate, it is submitted that the said strip constitutes Government land being used as an access. Such access is available to all concerned, and the Petitioner cannot claim any exclusive right over the same or convert a public access into an exclusive passage by erecting a gate.

26. The Collector, by merely directing the removal of the gates, has ensured that the access remains available to all concerned, including the Petitioner. The Petitioner has no absolute right over the said access. The use of the access was only temporarily permitted to the Petitioner over Government land, particularly since the 44 D.P. Road situated on the other side of the Petitioner's plot had not yet been developed.

27. The access in question is admittedly situated on Government land and is available to the public at large. The terms of the original letter granting access itself indicate that, once the 44 D.P. Road was developed and made available, the Petitioner was expected to discontinue the use of the access

over the strip of land now claimed by the Petitioner. It is submitted that the 44 D.P. Road is admittedly now openly available, and consequently, the Petitioner has no continuing right to exclusively use the said Government land as an access.

28. The learned AGP appearing for Respondent No. 2 – Collector submits that the strip of land in question is Government land and that access over the said land was permitted to the Petitioner by the Municipal Corporation, as the Petitioner's plot was inaccessible at the relevant time and the D.P. Road connecting the said plot was then under construction.

29. Admittedly, the D.P. Road is now constructed and operational. In any event, since the strip of land is Government property, over which access is merely permitted to the Petitioner as well as to others, the Petitioner cannot erect a gate so as to convert access over Government land into an exclusive right of possession.

30. Therefore, the action of the Government in directing removal of the gates and maintaining the access open to all cannot be faulted. The Petitioner is not in possession of the said property and is merely permitted to use the strip of land as an access. By erecting up a gate, the Petitioner is, in effect, attempting to convert public access into private access and thereby encroach upon and appropriate Government property.

31. Having heard the learned Counsel for the parties, the following questions arise for my consideration :

(i) Whether the access strip forms part of the subject matter of Civil Suit No. 287 of 2025 and, consequently, whether the injunction order passed therein applies to the said access strip, which has been directed to be kept/opened as open land by removing the gates installed therein?

(ii) Whether the strip of land on which the gate is installed is allotted to the Petitioner and form the part of allotment granted in the year 1959 ? and Whether the Collector was required to issue a separate notice to the Petitioner before directing the removal of the gate erected on the access strip?

(iii) Whether the Collector had the jurisdiction and authority to direct removal of the gate, and whether such direction is beyond his statutory powers and in violation of the provisions of Section 53 of the Maharashtra Land Revenue Code?

32. In response to the application for Intervention Application filed by the Intervenor in the Suit No. 287 of 2025, the Petitioner herein specifically responded to the said application. The relevant statements from the Petitioner's Affidavit-in-Reply are set out below:

“3.7. The guarded pleadings in the captioned IA does not even allege that the Road of 9.15 meters which leads to the suit property which is a garden in possession of and maintained by the Plaintiff is the only access available to the property which the Applicant claims to be developing. This is a reason enough to conclude that Applicant has absolutely nothing to do with

the lis involved in the present Suit.

3.8. Additionally, the road described as 9.15 meter wide D.P. Road (albeit incorrectly) by the Applicant is admittedly not part of the Suit Property. This is one more reason for warranting dismissal of the captioned IA.

4. IA is nothing but an attempt to seek one more and better access through 9.15 meter wide existing road which leads to the Suit Property i.e. garden, which is in possession of and is maintained by the Plaintiff for last several years as stated in the Plaint.

5.2. Firstly, the land beneath 9.15 meter road belongs and is owned by the Plaintiff society. There is an existing road which the Plaintiff has constructed at its own cost which leads to the garden which is subject matter of the present Suit. The land beneath this 9.15 meter wide existing road which is owned and is in possession of the Plaintiff since last several years. This private road was constructed pursuant to obtaining the permissions of statutory authorities.

For the sake of clarity, the 9.15 meter wide road is an existing road and is shown as such in the sanctioned D.P. 2034 and the land beneath belongs to the Plaintiff. Two assertions in the paragraph under reference in the IA is therefore incorrect and therefore denied i.e. 9.15 meter wide road is a D.P. Road and that it belongs to the Government. I deny that the entries in the Property Card annexed by the Applicant prove or demonstrate that the

5.13. Fourthly, what the Plaintiff describes as 9.15 meter wide D.P Road is not the suit property in respect of which the declaration of ownership by adverse possession is sought.”

33. The relevant prayer in the Civil Suit No. 287 of 2025 filed before this Court are as under :

“(a) That this Hon'ble Court be pleased to declare that the Plaintiff has perfected its title and has become the owner of the Suit Property (described in Ex. D) by way of adverse possession, and any right, title or interest of Defendant No.1 in the Suit Property (described in Ex. D) has stood extinguished in view of Section 27 of the Limitation Act, 1963.”

34. Considering the prayers made in the Civil Suit and the statements of the Petitioner opposing the Intervention Application, in the Civil Suit, it is clear that the gate and the strip of land in respect of which the Government has passed the impugned order do not form part of Civil Suit No. 287 of 2025 and thus, the interim order passed in the said Civil Suit does not apply to the gates / open access land on which the gates are installed.

35. The next issue for consideration is whether the land on which the gate is installed is allotted to the Petitioner pursuant to the allotment made in the year 1959 and whether the Collector was required to issue notice to the Petitioner before directing the removal of the gate, and whether the Collector had jurisdiction to remove the gate without following the procedure prescribed under Section 53 of the Maharashtra Land Revenue Code. In this regard, it is necessary to consider the Petitioner's claim over the strip of land, which is a open plot used as an access road.

36. The earliest communication available on record in this regard is the letter dated 6th December 1976 addressed by the Municipal Corporation of Greater Mumbai to the Petitioner. From the said communication, it is apparent that the Petitioner's plot was landlocked and that the proposed 44-feet-wide D.P. road on the Eastern side connecting the Petitioners' plot, had not yet been constructed. Until the said 44-feet-wide D.P. road was completed, the Petitioner's landlocked plot required access. Accordingly, the Municipal Corporation granted temporary access, 30 feet in width, from the southern road adjoining the open space reservation, through the Government land. The said access passed through the Government land.

37. The temporary access was granted over the Government land, subject to certain specific conditions, which are relevant for the present purpose are set out hereinbelow:

“1) That the Society shall submit a registered undertaking that they will discontinue this access as soon as the Development Plan road is constructed.

2) That the temporary access will be constructed and maintained at their own cost.”

38. Similarly, on record is the communication dated 6th March 1978 issued by the Corporation to the Architect of the Petitioner, which indicates the modified conditions. However, there was no change in the condition that the

Petitioner shall discontinue the temporary access through the open space reservation as soon as the 44-feet-wide D.P. road on the eastern side of the Petitioner's property is constructed.

39. It is the contention of the Petitioner that the access road was developed by the Petitioner and is meant for the exclusive use of the Petitioner. It is not disputed before me that the 44-feet. D.P. road on the eastern side has been completed and that the Petitioner is utilising the same. The BMC had also issued a notice to the Petitioner on 6th May 2025 for removal of the gate from the open access. Thereafter, upon a complaint being made, the State took action to remove the gate from the open access.

40. From the maps produced by the Petitioner and the communications on record, it is clear that the strip of land is owned by the Government over which the temporary access was granted, and that it does not form a part of allotment made to the Petitioner in the year 1959. On perusal of the impugned order and the maps on record, it is seen that the State is the owner of the land and that the land is maintained as an open plot and the access connects to D.P. road on one side and the public road on the other side. The Petitioner had put up a gate on the access and thereby, sought to exclusively use the access to the exclusion of others. The subject land belongs to the Government and is maintained as an access road. The condition of granting

such access to the Petitioner was that, until the eastern-side access to the Petitioner's property through the D.P. road was made available, the Petitioner could use the said access.

41. This Court finds that, by the impugned order, the Collector has not taken over the access, rather, by removing the gate, the Collector has kept the access open for utilisation by all persons. The contention of the Petitioner that the strip of land over which access is provided constitutes an exclusive access to the Petitioner and that the Petitioner is entitled to put up a gate on the said access cannot be accepted. It is Government open land over which the Petitioner has been granted a right of access. It cannot be exclusive to the Petitioner merely because the Petitioner had constructed a bitumen road on the same. The Government land with open access cannot be taken in for the exclusive utilisation of the Petitioner; and by the impugned order, the Petitioner's access over the said land has not been stopped.

42. The Petitioner has no right to put up a gate on a access road. The land belongs to the Government and connects to the D.P. road. The impugned order indicates that the Petitioner had put up iron gates. The order also indicates that the said road has not been allotted to any person and that gates having been unauthorisedly erected. The Petitioner has no right to erect a gate on the access granted by the Corporation over the Government's land.

43. Considering the same, the next issue is whether the Collector could have taken action only by resorting to Section 50 of the Maharashtra Land Revenue Code. In this regard, the Petitioner has relied upon the judgment of this Court in the case of ***Shakuntalabai*** (supra), wherein this Court has taken the view that the State has to exercise its powers under Section 53 of the Maharashtra Land Revenue Code by issuing notice to evict the occupants in illegal occupation and that, without issuing such notice, the occupants cannot be held to be illegally occupying the land. An enquiry under Section 53(1)(a) is mandatory, and a reasonable opportunity has to be granted before taking over possession. Perusal of the judgment of ***Shakuntalabai*** (supra) indicates that the lands were specifically allotted to the predecessor-in-title of the applicants therein, and they were occupying the plots based on certificates of Kabala. In those facts and circumstances, the Court proceeded to observe that there can be no summary eviction of a person unauthorisedly occupying land vested in the Government without following the procedure under Section 53.

44. In the instant case, there is no grant of Government land over which access is permitted to the Petitioner. The Petitioner has merely been permitted to use the access on the Government land; however, by erecting up a gate, the Petitioner is excluding others from using the same and converting

the access into a personal space. By removing the gate, the Collector has not stopped the access of the Petitioner, and the Petitioner continues to be entitled to use the said access. If there is any interference with the access of the Petitioner over the subject land, the State shall issue appropriate notice to the Petitioner; however, the direction to remove the gate and keep the access open to all cannot be interfered with. The gate impedes access to the general public.

45. By the impugned order, the Deputy Collector has held as under :

“उपरोक्त वस्तुस्थितीअन्वये असे निदर्शनास येते की, सदर लोखंडी गेट बसविलेले क्षेत्र हे नगर भूमापन क्रमांक डी / ११०५ मधील क्षेत्र असून धारक महाराष्ट्र शासन आहे. तसेच लोखंडी गेट ९.१५ मीटरच्या रस्त्याच्या प्रवेशद्वारावर असून सदर रस्ता प्रस्तावित १२.२० मीटर डी. पी. रस्त्याला जोडतो. संस्थेने बेकायदेशीररित्या लोखंडी गेट बसविला आहे. सदर रस्ता स्थानिक लोकांच्या वापरासाठी किंवा कोणाच्याही मागणीच्या अनुषंगाने दिलेला नसल्याचे दिसून येते. तथापि सदर रस्त्याचा अनधिकृतपणे विनापरवाना वापर होत असल्याचेही दिसून येते. त्यामुळे सद्यस्थितीत अनधिकृतपणे बसविलेल्या गेटचा ताबा शासनाकडे घेऊन सदरबाबत सुविधा अधिकार हक्काने (राईट ऑफ वे) इतर कोणाची मागणी प्राप्त झाल्यास त्याअनुषंगाने रस्त्याचे क्षेत्राबाबत निर्णय घेणे शक्य होईल.

तरी तूर्तास विषयांकित मिळकतीतील अनधिकृतपणे बसविलेल्या गेटचा एकतर्फी ताबा दिनांक २३.०३.२०२६ रोजीपर्यंत शासनाकडे घ्यावा व केल्या कार्यवाहीचा सविस्तर अहवाल या कार्यालयास सादर करावा.”

English Translation of the above-said portion is as under :-

“In accordance with the above-mentioned factual position, it appears that the area of the land where the said iron gate has been installed, is the area from out of the land bearing City Survey No. D / 1105 and the holder thereof is the Government of Maharashtra. Moreover, the iron gate is installed at the entrance of a 9.15-meter road, which connects to a proposed 12.20 meter Development Plan (D.P.) road. The institution has illegally installed the said iron gate. It further appears that the said road was neither allocated for the use of local residents nor granted pursuant to any demand raised by any party. However, it is observed that the said road is being used unauthorizedly and without permission. Therefore, taking possession of the unauthorizedly installed gate presently by the Government, will facilitate to take appropriate decisions regarding the said area of the road, if any demand regarding the right of way or easementary rights (Right of Way) is received from any party in the future.

Therefore, for the time being, ex-parte possession of the illegally installed gate on the property under subject shall be taken over by the Government by the date 23.03.2026 and a detailed report of the action taken shall be submitted to this office.”

46. By merely removing the gate, access has been made open, and the Petitioner's access has neither been obstructed nor prevented in any manner contrary to the original arrangement. However, the observation of the Collector in the impugned order, to the extent that the road over Government

land is being unauthorisedly used, is incorrect. The said road has been in use with the permission of the Municipal Corporation.

47. The public spaces/access are required to be guarded, especially in densely populated areas. The access over the Government land should remain available to the Petitioner as well as to others. Undisputedly, the gates have been erected at the entrance to the access road connecting to the D.P. Road. The Petitioner was, at no point in time, granted exclusive possession of the Government land. The Petitioner was merely granted access over the said land. However, by erecting gates, the Petitioner has sought to convert such limited access into an exclusive right of use, thereby causing prejudice, obstruction and inconvenience to other persons who are equally entitled to access the said Government land. In such circumstances, the directions issued for removal of the gates cannot be faulted with and are fully justified.

48. The Petitioner cannot claim an exclusive right over the access road, nor can the Petitioner's access be stopped without issuing proper notice. The learned AGP has also submitted that the access is kept open to all. Considering the same, the action of the State, by the impugned order directing removal of the gates, is not interfered. However, the State shall not be entitled to grant exclusive use of the road/access to any other party, as the

said access connects the D.P. Road on one side with the public road on the other side. Accordingly, the said access shall remain open to the Petitioner as well as to others.

49. Rule is made absolute accordingly.

50. The Writ Petition is partly allowed in the above terms.

BHALCHANDRA
GOPAL
DUSANE

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BHALCHANDRA
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Date: 2026.09.10
19:47:30 +0530

[ARUN R. PEDNEKER, J.]