

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.898 OF 2013**

Adams Wylie Memorial Hospital

...Petitioners

v/s

Municipal Corporation of Greater Mumbai  
and anr.

...Respondents

Mr E.P. Bharucha, Sr. Counsel with Mr Cyrus Bharucha, Mr M.G. Salian  
and Mr J. Khan i/b M/s Gagrats for Petitioners.  
Mr Vinod Mahadik for B.M.C.

**CORAM : DR D.Y. CHANDRACHUD AND  
A.A. SAYED JJ.**

**DATED : 10 MAY 2013.**

**P.C. :-**

1. Leave to amend to implead the State Government. In view of the constitutional challenge, notice shall issue to the Advocate General.
2. Issue notice. Counsel appearing on behalf of the Municipal Corporation waives service and seeks an adjournment to file an affidavit in reply.
3. A lease has been executed in favour of the First Petitioner on 12 June 1935 for a term of 999 years. The First Petitioner proposed to execute a sub-lease in favour of the Second Petitioner for term of 51 years subject to the approval of the Municipal Corporation. A hospital building has been constructed and the Court is informed that the Petitioner has appointed medical and para-medical staff, besides which, equipment has been procured. The grievance is that the Municipal Corporation has insisted on the Petitioner executing an undertaking in terms of a draft

annexed at Exh.G to the petition under which the Petitioner has to agree to the execution of a fresh lease bringing down the tenure from 999 years to 30 years. Whether such a condition can be lawfully imposed is a matter which will fall for determination in the writ petition. At this stage, the only relief that is sought by way of an ad-interim direction is that the Municipal Corporation be directed to process the application for the grant of an occupation certificate without insisting upon the submission of a general draft undertaking. Learned Senior Counsel states that the Petitioner shall abide by such orders as may be passed by the Court in the Petition. Since the petition is still pending, we consider it appropriate and proper to direct that the occupation certificate shall be processed in accordance with law without insisting upon the submission of a general draft undertaking. We however put the Petitioner to notice of the fact that this order is passed specifically subject to such further directions as may be issued by the Court and if the Municipal Corporation is held to be justified in insisting upon such a condition, the Petitioner shall abide by such directions as may be issued by the Court.

4. The further hearing of the petition shall stand over to 25 June 2013. The affidavit in reply, if any, shall be filed on or before 14 June 2013. The rejoinder, if any, shall be filed on or before 24 June 2013.

**( DR D.Y. CHANDRACHUD J.)**

**( A.A. SAYED J.)**