

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

WRIT PETITION NO.3672 OF 1999

Raver Municipal Council,
Raver, District Jalgaon,
through its Chief Officer,
Raver Municipal Council,
Raver, District Jalgaon.

... PETITIONER

VERSUS

1. The State of Maharashtra
(Copy to be served on Govt.
Pleader, High Court of Bombay,
Bench at Aurangabad)
2. The Deputy Secretary,
Govt. of Maharashtra,
Urban Development Division,
Mantralaya, Mumbai.
3. The Collector, Jalgaon,
District Jalgaon.
4. D.S. Mujumdar & K.M. Jain,
Govt. registered Contractor,
160, Navi Peth,
Jalgaon – 425 001
5. Baban Bhikulal Agrawal,
Age 54 years, Occ. Business,
6. Sow. Shakuntalabai Ramesh Mahajan,
Age 34 years, Occ. Household,
7. Sow. Ushabai Vishnu Mahajan
Age 31 years, Occ. Household

R.Nos.5 to 7 Councilors,
Raver Municipal Council, Raver,
District Jalgaon.

... RESPONDENTS

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Shri S.P. Shah Advocate for petitioner
Mrs. M.S. Patni, A.G.P. for State
Shri Girish Rane, Advocate for respondent No.4
Shri A.N. Kakade, Advocate for respondent No.5
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W I T H

WRIT PETITION NO.3373 OF 2000

Shri Balaji Shopping Samiti,
(unregistered) having its office at :
Raver, Taluka Bhusawal,
District Jalgaon, through its Members:-

1. Gopaldas Dallumal Nagwani,
Age 54 years, Occ. Businessman,
President.
2. Madhavdas Dhamandas Bhojwani,
Age 49 years, Occ. Business,
3. Jiwan Namdev Mahajan,
Age 40 years, Occ. Business &
Agriculture
4. Santosh Madanlal Agrawal,
Age 31 years, Occ. Business &
Agriculture
5. Goverdhandas Arjundas Nagdev,
Age 56 years, Occ. Business,
6. Atul Babanlal Agarwal,
Age 29 years, Occ. Business.
7. Vijay Narayanlal Agarwal,
Aged 46 years, Occ. Business,

8. Suresh Narayanlal Agarwal,
Age 55 years, Occ. Business,
9. Champalal Ganpat Raut,
Age 44 years, Occ. Agriculture
10. Ravindra Vishwanath Nemade,
Aged 41 years, Occ. Business,
11. Jagannath Sadashiv Chaudhary,
Aged 51 years, Occ. Business &
Agriculture

All R/o Raver Town, Taluka Bhusawal,
District Jalgaon.

... PETITIONERS

VERSUS

1. Municipal Council, Raver,
through its Chief Officer,
Raver, Taluka Bhusawal,
District Jalgaon.
2. The State of Maharashtra
Urban Development Department,
Mantralaya, Mumbai.
3. D.S. Majumdar & K.M. Jain,
Government Registered Contractor,
160, Navi Peth, Jalgaon,
Taluka and District Jalgaon
4. Babanlal Bhiculal Agarwal,
Age 56 years, Occ. Business &
Agriculture, R/o Raver, Tal. Raver,
District Jalgaon.

... RESPONDENTS

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Shri D.K. Kulkarni, Advocate for petitioner
Shri S.P. Shah, Advocate for respondent No.1.
Mrs. M.S. Patni, A.G.P. for State
Shri M.M. Patil (Beedkar), Advocate for respondent No.3
Shri A.N. Kakade, Advocate for respondent No.4

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CORAM: S.V. GANGAPURWALA AND
 A.I.S. CHEEMA, JJ.

DATED: 23rd March, 2015.

ORAL JUDGMENT (Per S.V. Gangapurwala, J.):

1. We have heard the learned counsel for respective parties. Writ Petition No.3672/1999 is filed by the Municipal Council, challenging the order passed by the Government, whereby Resolution no.2, dated 26.2.1999, passed in the special meeting of the general body of the Municipal Council came to be cancelled. Vide the said resolution No.2, the Municipal Council had resolved to accept the tender of respondent No.4 of Writ Petition No.3672/1999 and to give the same to him for development as per the terms and conditions stipulated in the said resolution. The said resolution was subject matter of challenge before the Government. The State cancelled the said resolution on the ground that the same is not in consonance with Section 92 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. According to the petitioner, it is within the jurisdiction of the Municipal Council to

enter into an agreement with the developer for construction of the commercial complex. Agreement with the developer for the project is not illegal. The petitioner relies on the judgment of the Apex in the case of "G.B. Mahajan and others Vs. Jalgaon Municipal Council and others" [AIR 1991 SC 1153].

2. Writ Petition No.3373/2000 is filed by the unregistered Samiti through its members. It is their contention that the land Survey No.2258 of Raver is originally earmarked for dispensary and the Municipal Council wanted to convert the user of northern portion of Survey No.2258 to the extent of 2810 sq. mtrs. for shopping complex. The change of user was permitted pursuant to the minor modification on 5.8.1996.

3. The public notice was given in the newspaper which does not have vast circulation and the contract was given to the respondent No.4 of the said writ petition. The Municipal Council has not resorted to Section 272 of the said Act. According to the learned counsel for the petitioner, the tender notice of the agreement are void as tender notice does not mention any condition as contemplated. So also the said terms and conditions are contrary to the interest of the Municipal Council and citizens of Raver. The same is to favour the contractor i.e. respondent

No.3 of the said writ petition. The petitioner Samiti has also made an offer of Rs.25,00,000/- in cash in advance so also the monthly rent.

4. Mr. Rane, the learned counsel appears for the contractor who has been given the contract and submits that that this Court, vide order dated 29.7.1999, has stayed the impugned order of the Government. After the order was stayed, the Contractor carried out the work as per the agreement and has performed his part of the agreement. The part to be allotted to the Municipal Council as per the agreement, has been allotted to the Municipal Council and the remaining part has been given on stallage basis to the third parties as per the agreement.

5. We have considered the submissions of the learned counsel for respective parties. Aforesaid factual matrix of the Municipal Council passing the resolution and entering into agreement with a contractor is not disputed. The said resolution was also subject matter of challenge before the Government. The Government has cancelled the said resolution. Against the said order, the Municipal Council has filed Writ Petition No.3672/1999. It would be seen that, this Court, while admitting the Writ Petition, considered the merits of the matter and passed

an interim order on 20th April 2000 and has observed thus :

"6. So far as the prayer for interim relief is concerned, we have, with the help of Shri Shah, gone through the judgment of the Supreme Court in the case of "G.B. Mahajan and others Vs. Jalgaon Municipal Council and others" [AIR 1991 SC 1153] wherein the Apex Court has held that the provisions of Section 272 are independent of the provisions of Section 92 of the Municipalities Act and the Municipality has the power to lease out its property after development for a period of more than 30 years as well and the provisions of Section 92 do not apply in such cases. In view of the law laid down by the Supreme Court, we hereby stay the impugned order.

6. Pursuant thereto, it has been submitted that the agreement has been performed by the contractor. The construction is complete and even the part of the property has been given on stallage to the third parties and it is also submitted that the part which was required to be handed over to the Municipal Council is handed over.

7. In light of all the aforesaid facts and the fact that it was within the province of the Municipal Council to enter into an agreement with the developer for financing, execution of the project and further the agreement has been implemented and

attained finality, wherein even the third parties' rights have been created, the case of the petitioner in Writ Petition No.3373/2000 cannot be considered at this stage. The said Writ Petition stands disposed of.

8. So also, considering the powers of the Municipal Council and the same has been executed, Writ Petition No.3672/1999 is allowed. The impugned order passed by the Government is quashed and set aside. Rule is made absolute in terms of the interim order. Writ Petitions are accordingly disposed of. Rule disposed of.

(A.I.S. CHEEMA, J.)

(S.V. GANGAPURWALA, J.)