

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

**WRIT PETITION NO. 5830 OF 2014
WITH
CA/10989/2015 IN WP/5830/2014
WITH
WP/5857/2014
WITH
CA/10990/2015 IN WP/5857/2014**

SUDHAKAR SHANTARAM LAKARE. ..PETITIONER.

VERSUS

**THE STATE OF MAHARASHTRA
AND OTHERS. ..RESPONDENTS.**

...
**Advocate for Petitioner : Mr.Chapalgaonkar Shailesh S.
AGP for Respondents/State: Mr.S.B. Pulkundwar.
Advocate for Respondent 3 : Mr.Patil Milind M.**

...

CORAM : S.S. SHINDE & A.M. BADAR,, JJ.

Dated: 07th September, 2015.

PER COURT :-

1. These writ petitions have been filed with the following
prayer:

“B) Issue writ of mandamus or any other writ,
order, or direction in the nature of writ of mandamus

and direct the respondent No.3 to consider and decide the claim of the petitioner for allotment of shops in fruit market and allot the shops to the petitioner in view of the resolution dated 20.09.2011 at Sr.No.21 within stipulated period as this Hon'ble Court deem fit and proper and for that purpose issue necessary order.”

2. The learned Counsel for the petitioners invited our attention to the resolutions passed by the respondent No.3 - Municipal Council and submits that the resolution was passed to the effect that, after removal of the petitioners and reconstruction of the premises, they would be rehabilitated. He further invited our attention to the provisions of sub-section (3) of Section 92 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and submitted that, by ignoring the directions of the State Government, the Municipal Council is empowered to take decision under the provisions of sub-section (3) of Section 92 of the said Act and in the facts of the present case, the respondent Municipal Council should take a decision and protect interests of the petitioners since they are encroachers since 1997 till 2011. The learned Counsel for the petitioners invited our attention to the reported

judgment of this Court in case of ***Mohansing Uttamsing Tanwani vs State of Maharashtra & ors.***¹ and in particular, paragraphs 33 and 34 thereof and submitted that the benefit of doctrine of legitimate expectation for considering claim of the petitioners for allotment ought to have been kept in view by the respondents.

3. On the other hand, learned Counsel for the respondent No.3 – Municipal Council invited our attention to the affidavit-in-reply and also the directions issued by the State Government to put the shops for public auction and allot the same to higher bidders. The learned Counsel for the respondent No.3 Municipal Council submits that the resolutions passed by the respondent / municipal council was subject to directions, if any, to be issued by the State Government.

4. Learned AGP appearing for the respondents / State adopted the arguments advanced by the learned Counsel for the respondent No.3.

1 2010(5) Bom.C.R.837;

5. We have heard learned Counsel for the petitioners, learned Counsel for respondent No.3 Municipal Council and learned AGP for the State. It is true that, sub-section (3) of Section 92 of the said Act empowers the Municipal Council to take a decision even though there are directions from the State. However, in the facts of the present case, respondent No.3 Municipal Council has decided to abide by the directions given by the State Government. Reliance placed by the learned Counsel for the petitioner on the decision in the case of **Mohansing** (supra) is misplaced in the facts of the present case inasmuch as, the petitioner in the case of **Mohansing** (supra) was carrying on business on the premises which were allotted to him by the municipal Council for a period of 60 years. Therefore, keeping in view the facts of the present case wherein according to the petitioners, they were carrying on their business on the premises from the year, 1997 till 2011, we are not inclined to accept the contention of the petitioners that the petitioners should be given benefit of the doctrine of legitimate expectation.

6. For the aforesaid reasons, we are of the opinion that

the decision taken by the respondent No.3 - Municipal Council needs no interference.

Both the Petitions sans merits and the same stand rejected. Consequently, civil applications also stand rejected.

(A.M. BADAR, J.)

(S.S. SHINDE, J.)

Kadam/*