

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No. 4407/2012.

Gopal Brijmohan Zunzulwala

VERSUS

The State of Maharashtra and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

CORAM : B.P. DHARMADHIKARI
AND A.P. BHANGALE, JJ.

DATE : FEBRUARY 27, 2015.

Heard Shri S.C. Mehadia, learned Counsel
for the petitioner, Ms. T. Khan, learned A.G.P. for
respondent nos. 1 and 2 and Shri A.B. Mirza, learned
Counsel for respondent no.3.

Question is – Whether auction of its land
by respondent no.3 – Municipal Council confers any
right upon the present petitioner ?

Petitioner has on 02.03.2012 been called

upon to take back 25% of the amount deposited by him, and treating this as a cause of action, present petition has been filed. There is also a prayer to direct respondent no.3 Municipal Council to seek necessary permission from respondent no.1 State Government for sale of auction land.

Facts are not in dispute. On 16.04.1992, Municipal Council passed a resolution to obtain permission from the State Government to sell its field survey no.60/1, area 2 Acres 7 Gunthas, and to purchase a field with lesser area, and for that purpose to obtain permission from the Collector, Akola. Resolution therefore, only authorizes steps to obtain permission from State Government to sell agricultural field.

However, Municipal Council on 11.05.1992, published an advertisement for auctioning that field. Petitioner is the highest bidder, who after participation deposited necessary amount as per the terms and conditions. After this auction, on 26.05.1992, the Municipal Council passed further resolution and confirmed the auction.

However, thereafter no steps have been taken by the Municipal Council to obtain permission of the State Government in terms of Section 92 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (herein after referred to as “**the 1965 Act**” for short). Petitioner claims that he has made several representation right from the year 1997 onwards, but, no cognizance thereof was taken. In this situation, after Municipal Council resolved to return back his security deposit and other amounts, and sent a communication accordingly on 02.03.2012, present petition came to be filed.

Shri A.M.Mirza, learned counsel for respondent no.3 and Ms. T. Khan, learned A.G.P. for respondent nos. 1 and 2 submits that Municipal Council has never decided to put field property to auction. They are relying upon Section 92 of the 1965 Act to urge that without previous permission, the property could not have been transferred and as such auction by itself does not confer any right upon the petitioner. It is further submitted that when the petitioner approached the State Government, and State

Government called upon the Municipal Council to take necessary steps, Municipal Council resolved on 21.04.2011 to return back the amount paid by the petitioner. They therefore pray for dismissal of the Writ Petition.

Shri Mehadia, learned counsel submits that sanction of government is necessary only when property is to be transferred and hence, after the highest bidder was ascertained, necessary sanction for that purpose ought to have been sought. The Municipal Council was therefore, under obligation to seek that sanction and as that sanction is not sought or denied, right of petitioner cannot be said to be extinguished. He therefore, seeks appropriate direction to the Municipal Council as also the State Government.

The language of Section 92 (1) of the 1965 Act is very clear. The Municipal Council cannot transfer its immovable property without sanction of the State Government. As per 92[2] - a proposal of such transfer shall be accompanied by resolution of the Council passed at a meeting by a majority of not less

than two-thirds of the total number of Councillors and it shall in no way be inconsistent with the rules made in this behalf by the State Government. Our attention has not been invited to any Rules made by State Government in this respect. However, on record there is also no resolution by which the Municipal Council had decided to auction the said property. Resolution dated 16.04.1992, only seeks to obtain permission of State Government for such transfer. Municipal Council had never resolved to put the field property to auction.

It is obvious that the property vests in Municipal Council and can be dealt with by it strictly in accordance with the provisions of 1965 Act, and not otherwise. Auction therefore, ought to have been conducted only after permission of State Government is sought, and after State Government allowed its transfer. The situation which has crept in today would not have been then arisen. Here the public property auctioned in the year 1992 can not still be effectively claimed by the petitioner. After said participation in auction, and deposit of 1/4th amount, petitioner remained satisfied only by making representation. As

cost of property was increasing, it was not necessary for him to bother more. If such grievance is allowed, he gets public property now after 23 years at old rate.

Municipal Council could not have auctioned the property itself as there was no such resolution by its General Body. The very auction therefore, is contrary to law and contrary to above mentioned provisions of 1965 Act.

No right therefore, accrued to petitioner by participation in such auction. We therefore, find no case made out warranting interference. Writ Petition is, therefore, rejected. No costs.

JUDGE

JUDGE

Rgd