

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2131 OF 2014

Laxmikant S/o. Bhagwan Rana
and others

.. **Petitioners**

Versus

Municipal Corporation, Jalgaon,
Through its Commissioner and others

.. **Respondents**

Shri Kishor C. Sant, Advocate for Petitioners.

Shri Pradip R. Patil, Senior Advocate for Respondent Nos. 1 and 2.

Shri N. B. Patil, A. G. P. for Respondent No. 3.

WITH
WRIT PETITION NO. 8772 OF 2013

Prakashchand S/o. Nayansukhdas Jain
and others

.. **Petitioners**

Versus

The Commissioner,
Municipal Corporation, Jalgaon and others.. **Respondents**

Shri Kishor C. Sant, Advocate for Petitioners.

Shri Pradip R. Patil, Senior Advocate for Respondent Nos. 1 and 3.

Shri N. B. Patil, A. G. P. for Respondent No. 2.

WITH
WRIT PETITION NO. 9457 OF 2013

Ramesh S/o. Baburao Kapure
and others

.. **Petitioners**

Versus

The Commissioner,
Municipal Corporation, Jalgaon and another.. **Respondents**

Shri Kishor C. Sant, Advocate for Petitioners.
Shri Pradip R. Patil, Senior Advocate for Respondent No. 1.
Shri N. B. Patil, A. G. P. for Respondent No. 2.

WITH
WRIT PETITION NO. 4399 OF 2015

M/s. Ashoka Constructions,
Through its Authorised Signatory,
Ashok S/o. Motilal Katariya .. **Petitioner**

Versus

The Municipal Corporation,
Jalgaon, Through its Commissioner
and others .. **Respondents**

Smt. S. D. Dhumal h/f Shri Mayur G. Deokate, Advocate for the
Petitioner.
Shri Pradip R. Patil, Senior Advocate for Respondent Nos. 1 and 2.
Shri N. B. Patil, A. G. P. for Respondent No. 3.

WITH
WRIT PETITION NO. 5260 OF 2015

Chandrakala Gaurishankar Mundhe .. **Petitioner**

Versus

The Commissioner,
Municipal Corporation, City of Jalgaon
and another .. **Respondents**

Shri Kishor C. Sant, Advocate for Petitioners.
Shri Pradip R. Patil, Senior Advocate for Respondent No. 1.
Shri N. B. Patil, A. G. P. for Respondent No. 2.

WITH
WRIT PETITION NO. 5261 OF 2015

Pushpkumar S/o. Gaurishankar Mundhra .. **Petitioner**

Versus

The Municipal Corporation of City of Jalgaon,
Through its Commissioner and another .. **Respondents**

Shri Kishor C. Sant, Advocate for Petitioners.
Shri Pradip R. Patil, Senior Advocate for Respondent No. 1.
Shri N. B. Patil, A. G. P. for Respondent No. 2.

WITH
WRIT PETITION NO. 5037 OF 2015

Ramanlal S/o. Bansilal Parakh .. **Petitioner**

Versus

The Municipal Corporation,
Jalgaon,
Through its Commissioner and others .. **Respondents**

Smt. S. D. Dhumal h/f Shri Mayur G. Deokate, Advocate for the
Petitioner.
Shri Pradip R. Patil, Senior Advocate for Respondent Nos. 1 and 2.
Shri S. B. Pulkundwar, A. G. P. for Respondent No. 3.

CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.
DATE : 4TH AUGUST, 2016.

PER COURT :-

1. Mr. Sant, Mrs. Dhumal h/f Mr. Deokate the learned counsel for the Petitioners submit that, the Petitioners are the lessees of the Respondent – Municipal Corporation of the respective shops. The Respondents have passed Resolutions. Initially Resolution No. 1231 is passed whereby the corporation decided to extend the period of lease. Some persons who felt aggrieved had approached the government and the government has granted stay to the implementation of the said Resolution. The learned counsel submits that, even, a subsequent Resolution bearing No. 1275 is passed by the corporation on 29th March, 2012 thereby

resolving to extend the period of lease by 3 years. The Petitioners have given representation for the extension of lease, however, no decision is taken by the Respondent – Corporation in that regard. The State Government has also not taken any decision with regard to Resolution No. 1231 although the stay was granted long back. The government is required to take decision about the said Resolution. The learned counsel submits that, the Petitioners are always ready to pay the amount as per the market rate, however, the Respondent now is demanding the rent 5 times the market rate. According to the learned counsel, the corporation does not have any right to set aside their earlier Resolutions to the detriment of the Petitioners. The Resolution No. 1497 is also pending for approval which is sent by the corporation to the government. The same is for extension of lease period of the tenants like Petitioners. The said Resolution is passed in the year, 2013. Though, the Resolution is sent to the government for approval no decision has been taken by the government for approval as yet. Some of the similarly situated tenants who had received notices had approached the District Court by filing appeal U/Sec. 81 (f) of the Maharashtra Provincial Municipal Corporations Act. The Respondent – Corporation took a stand that the said notices are not notices of eviction and the corporation does not have any intention to evict them and the Resolution is passed which is pending for approval. The Petitioners as such have legitimate expectations that their lease period would be extended. The learned counsel further submits that, the Respondent – corporation is now estopped by the principle of promissory estoppel to take a different stand. The Respondent – Corporation being an instrumentality of the State has to act as a model litigant. According to the learned counsel, the government also is sitting over the Resolutions pending before it and is not

taking any decision.

2. Mr. Patil, the learned counsel submits that, it may not be necessary for government to take decision about the Resolutions pending with it as fresh Resolution has been passed by the Corporation on 19.12.2013, that only by auction the premises can be given on lease. There cannot be estoppel against the statute. The learned counsel further submits that, corporation has to function in consonance with the provisions of the Statute and the Rules and as per the Statute and the Rules the premises on lease has to be given by public auction.

3. We have also heard the learned A. G. Ps.

4. It is not disputed that, the Resolution No. 1231 is pending with the government, so also, the Resolution No. 1497 was sent for approval but no final decision has been taken by the government upon the same as per the contention of the parties.

5. If, a particular Resolution passed by the Corporation is not in public interest or is improperly passed, it is for the government to take a decision upon the same. In view of Section 451 of the Maharashtra Provincial Municipal Corporations Act, the State would be a proper forum / authority to take decision upon the various Resolutions. The corporation may pass the Resolutions and if, the party is aggrieved by the said Resolution can approach the government under Section 451 of the Corporations Act.

6. It would be appropriate for the party aggrieved including the Petitioners to approach the government with regard to any Resolution passed by the corporation if, they are so aggrieved.

7. When the Resolutions are pending with the government it is

also for the government to take a decision upon the same.

8. Considering the above, the present Writ Petitions are disposed of with liberty to the Petitioners to approach the government if, they are aggrieved by any Resolution passed by the corporation. The State Government shall also take decision upon the Resolution sent to it for approval and which are pending with it expeditiously and preferably within a period of six (6) months on its own merits.

9. It is made clear that, as we have relegated the parties before the State Government we have not considered the contentions of the parties on merits, the same are kept open. If, the corporation wants to take any action against the Petitioners, we hope and trust they would follow the procedure as laid down U/Sec. 81-b of the Maharashtra Provincial Municipal Corporations Act. In that case it would be open for the Petitioners to take all such defences available to them, so also can resort to appropriate proceedings.

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]

sam/Aug.16