

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

904 WRIT PETITION NO. 5750 OF 2016

VASANT BISANDAS GUGALE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioners : Ms P. S. Talekar i/by Talekar and
Associates

AGP for Respondent No.1 State: Mrs. S. S. Raut
Advocate for Respondents 2 and 3 : Mr. V. S. Bedre

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 22nd November, 2016

ORDER:

1. The petitioners assailed the Resolution dated 20th February, 2016 passed by the Standing Committee, Ahmednagar Municipal Corporation on the count that under the said Resolution, the shops and vegetable stalls are provided on lower ground floor i.e. Basement area. Consequently, the petitioners also assail the tender notice.

2. Ms. Talekar, the learned counsel for the petitioners, strenuously contends that under the order of this Court in Writ Petition bearing No.4611/2007 with connected writ petitions, decided vide order dated 10.07.2008, this Court had recorded the undertaking given by the corporation to the effect that the Corporation would provide alternate accommodation in

the shopping complex in accordance with resolution passed by the Corporation and that the petitioner would be given priority in allotment of shops and the space in the vegetable market. According to the learned counsel, the respondents have taken up construction activities for the purpose of vegetable market and commercial activities. The resolution came to be passed by the Standing Committee on or about 20.02.2016. As per the said resolution, the respondents are intending to provide space for vegetable market in the basement. The same is against the Development Control Rules. The basement can only be used for parking purposes and for no other purposes. The said resolution is against the letters and spirit of the Development Control Rules. The learned counsel further submits that even the cost which is being determined is on much higher side. The decision to allot the space for the vegetable market and shops in the basement being illegal, the said resolution deserves to be set aside.

3. Mr. Bedre, the learned counsel for the Corporation submits that the affidavit has been filed by the Corporation in connected PIL No. 75/2016, wherein it has been clarified that the construction permission would be accorded in conformity with the

Development Control Rules as applicable and the space for the vegetable market and the shops would not be allotted in the basement area. According to the learned counsel, even the cost which has been agreed to be accepted from the persons who would be allotted space for the vegetable market and the shops is on the lower side. The work of construction is allotted on FBT basis. The builder/developer would submit the plan and the same would be considered for approval in accordance with the provisions of Development Control Rules.

4. We have considered the submissions canvassed by the learned counsel for the respective parties.

5. The grievance of the petitioners appears to be that the space for the vegetable market and the shops would be allotted in the basement. It has been clarified by the Corporation in the affidavit that no space for vegetable market or shop shall be provided in the basement. The said affidavit is also filed on record. It is needless to state that the plan for permission can only be sanctioned in accordance with the provisions of the Maharashtra Regional Town Planning Act and Development Control Rules as applicable on the given date. Even the Corporation

would not be entitled to deviate from the applicability of the provisions of the Development Control Rules. No activity is permissible in the basement area except the one detailed in the Development Control Rules, as applicable.

6. Considering the above, the grievance of the petitioner that they would be accommodated in the basement would not survive, more particularly in view of the affidavit filed on record so also the aforesaid observations that the Corporation would be bound by the provisions of the Development Control Rules and also the provisions of the Maharashtra Regional and Town Planning Act, the Provincial Municipal Corporation Act so also the regulation under notification dated 20th September, 2016, while sanctioning the plan for construction. As far as the cost of construction is concerned, the experts body would determine the same. It would not be possible for the Court to dwell into the said aspect. With these observations, the writ petition is disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC