<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY</u>
<u>BENCH AT AURANGABAD</u>

PUBLIC INTEREST LITIGATION NO.75/2016

Sanjay S/o Ratnakar Zinje,
Age:54 Years,
Occupation: Social Work
and Business,
R/o Chitale Road,
Near Nehru Market,
Ahmednagar.
...<u>Petitioner</u>..

<u>Versus</u>

1] The State of Maharashtra
(Through it's Principal Secretary)
Urban Development Department,
Mantralaya, Mumbai-32.

2] The Ahmednagar Municipal Corporation,
(Through it's Municipal Commissioner),
Ahmednagar.

3] The City Engineer,
Ahmednagar Municipal Corporation,
Ahmednagar.

4] The Town Planner,
Ahmednagar Municipal Corporation,
Ahmednagar.

5] The Assistant Director of
Town Planning,
Ahmednagar Municipal Corporation,
Ahmednagar.

6] Shripad S/o Shankar Chhindam,
Age:33 years,
Occupation: Business and Corporator,
R/o Banesaheb Patangan,Opposite Santoshi Mata
Mandir,Satbhai Galli,Ahmednagar.
...<u>Respondents</u>...

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Ms.P.S.Talekar, Advocate for petitioner.
Smt.A.V.Gondhalekar, AGP for the State.
Shri V.S.Bedre, Advocate for Respondent No.2.

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

DATE: 15.12.2016

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

1] The petitioner assails the resolution dated 20.2.2016 passed by the standing committee of Ahmednagar Municipal Corporation so also the tender notice issued for development of Nehru Vegetable Market and Shopping Complex at Chitale Road, Ahmednagar. Further directions are sought against the Municipal Corporation, Ahmednagar to develop Nehru Vegetable Market and Shopping Complex at Chitale Road on its own rather than on FBT basis.

2] Miss.P.S. Talekar, learned counsel for the petitioner submits that the petitioner is a resident of Ahmednagar. The standing committee of Ahmednagar Municipal Corporation passed a resolution on 20.2.2016 thereby resolving to develop on FBT basis Vegetable Market and Commercial Complex wherein the premium was fixed at Rs.2,28,60,837/-. The learned counsel submits that in view of the provisions of Sections 79(C) and 79(D) of the Maharashtra Municipal Corporations Act, it is only with the sanction of the Corporation, the Commissioner may lease, sell, let out on hire or otherwise convey any property, movable or immovable belonging to the Corporation. The general body would constitute the Corporation. The standing committee does not have any authority to pass any such resolution in this regard. According to the learned counsel, the general body has not passed any such resolution. In absence of the resolution being passed by the general body, the Commissioner could not have floated the said tender.

3] According to the learned counsel, the action of the Commissioner in floating the tender on the basis of the resolution passed by the standing committee *de hors* taking general body into confidence is illegal, without authority and void *ab initio*. According to the learned counsel, the general body had earlier passed a resolution on 15.3.2013 that said Vegetable Market and Commercial Complex should be constructed by the Corporation on its own. Prior to that, on 13.12.2011 also, a resolution was passed by the standing committee. The learned counsel further submits that the general body had further passed a resolution allocating the funds on 5.7.2014. The standing committee could not have passed a contrary resolution. The learned counsel submits that even the resolution passed by the standing committee does not stand to the test of the Development Control Rules. The basement can never be used for any business purpose except parking. The said resolution of the standing committee is also not in consonance with the building bye-laws and the Development Control Rules. The learned counsel submits that this illegal resolution passed by the standing committee can very well be assailed by invoking writ jurisdiction of this Court under Article 226 of the Constitution of India. For the said purpose, the learned counsel relies on various judgments in the following cases :-

1] *Jayesh Dayaram Bhoir v. State of Maharashtra & others.*
2012 (5) Mh.L.J.733.

2] *Kiran Ramchandra Suryavanshi v. State of Maharashtra & others.*
2013(2) Mh.L.J.433.

3] *Kailas Bhagwan Hajare v. State of Maharashtra & others.*

2009 (6) Mh.L.J.490.

4] *M.S.Samiti,Akola v. Municipal Corporation & others.*
2012 (4) Mh.L.J.874.

5] *Union of India and others v. Tantia Constructions Pvt.Ltd.*
(2011) 5 SCC 697.

6] *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M.Kamalia & others.*
(2004) 2 Supreme Court Cases 65.

7] *Lokprakashan Ltd. v. Kanchanbhai Kanibhai Tadvi & others.*
With
The Sandesh Ltd. v. Rameshchandra Babulal Shah & others.
(2009) 9 Supreme Court Cases 43.

8] *Jamnagar District Development Trust v. Municipal Corpration*
2013 SCC Online Guj 1364.

9] *Kanchanbhai Kanbhai Tadvi & others v. Municipal Corporation of the City of Vadodara & others.*
2001 SCC Online Guj 84:AIR 2002 Guj 31:(2002) 1 GLH 790.

The learned counsel further submits that the writ petition could be tenable and the petitioner need not be asked to avail th remedy u/s 451 of the Maharashtra Municipal Corporations Act.

4] The learned counsel further submits that the belting method has been adopted while arriving at a premium amount. The belting method for determining valuation of the property can only be adopted if there is no road abutting to the said site. The site on which the complex is to be erected has got roads from three sides. As such, the very methodology adopted is erroneous. The learned counsel submits that the Corporation is the trustee of the property. It is expected to act fairly and reasonably. The power vested in the public authority has to be viewed as a trust coupled with a duty to be exercised in larger public and social interest. The public officers are accountable to its citizens for its action in larger public interest. To substantiate the said submission, the learned counsel relies on the judgment of the Apex Court in the following cases :-

1] *M.I.Builders Pvt.LTd. v. Radhey Shyam Sahu & others.*
(1999) 6 SCC 464.

2] *State of Assam & others v. Susrita Holdings Pvt.Ltd.*
(2014) 11 SCC 192.

3] *Lalaram & others v. Jaipur Development*
2015 SCC Online SC 1263.

4] *Eureka Forbes Ltd. v. Allahabad Bank & others*
(2010) 6 SCC 193.

5] The learned counsel further submits that by issuing such a tender, the Corporation would be a loser.

The major chunk would be given to the contractor and small portion would be left with the Corporation. The major premium amount from the shop-keepers would be taken by the contractor. In fact, the Corporation should have high share in the developed area. The learned counsel relies on the judgment of the Apex Court in the following cases :-

1] *Aloke Kumar Ghosh & others v. Calcutta Municipal Corporation & others.* **(1997)SCC online Cal 226**

2] *Ennore Port Ltd. v. M/s Chettinad Inter*national Coal Terminal Pvt.Ltd. **O.S.A.No.196 of 2011 decided by Madras High Court.**

6] Miss.Talekar, learned counsel further submits that now it is possible for the Corporation to construct the said complex on its own as large amount has been received by the Municipal Corporation on account of demonetization.

7] Miss.Talekar, learned counsel for the petitioner submits that the petitioner has got the valuation done from the Government approved valuer who has valued the writ property at Rs.9,26,00,000/-. This itself shows that valuation made by the respondents is on much lower side and would favour contractor.

8] Mr.V.S.Bedre, learned counsel for the respondent - Corporation submits that the general body had already taken a decision to get the Vegetable Market and Commercial Complex constructed. A resolution to that effect is already passed by the general body in its meeting held on 10.8.2009. The said resolution was passed pursuant to Sections 79-C and 79-D of the Maharashtra Municipal Corporations Act wherein the premium was decided to be fixed at Rs.1,50,00,000/- and it was decided to give the same on FBT basis. Another resolution of the general body was also passed on 5.7.2014 wherein it was decided to construct the Shopping Complex and Vegetable Market and to increase the premium by Rs.50,00,000/-. According to the learned counsel, it is not that the standing committee had unilaterally taken a decision. The learned counsel further submits that the Nehru Vegetable Market in CTS No.208, Chitale Road, Ahmednagar, was initially constructed in the year 1962. The said market was in a dilapidated condition. On 28.2.2000, the then Municipal Council had passed a resolution to develop the said Vegetable Market and

Shopping Complex in the said CTS number. The notice of eviction was issued to the occupants i.e. vegetable sellers and the shop-keepers. The said action of the Municipal Council was assailed by these vegetable sellers and shop-keepers. The Municipal Corporation in Writ Petition No.4611/2007 filed by shop-keepers and vegetable sellers had filed an affidavit and submitted that the Corporation will follow the Resolution No.21 dated 15.5.2001 wherein it was resolved that new stalls will be allotted on priority basis to the earlier stall holders. In view of the resolution dated 28.2.2000, the Municipal Corporation had taken a policy decision for constructions of Vegetable Market and Shopping Complex on FBT basis. The resolution of the general body dated 10.8.2009 is also self-explanatory. Initially vide resolution No.74 dated 10.12.2010, the Municipal Corporation had decided to call for the tenders on FBT basis by fixing the premium price at Rs.4,50,00,000/-. In addition, the contractor should pay Rs.50,00,000/- for beautification of Chitale road. Though the tenders were floated, no response was received by the Corporation.

9] The learned counsel submits that for three times, the tenders were floated, but no response was received. Thereafter, on 5.7.2014, the Municipal Corporation passed Resolution No.2 and again decided to develop the Vegetable Market and Shopping Complex on privatization basis, but no further action was taken. The Town Planner had calculated the valuation of the land as per ready reckoner and the value of the premises is Rs.2,28,60,837/-. The said valuation is on the basis of ready reckoner of 2015. On 1.4.2016, there was revision in the ready reckoner and, therefore, on 29.4.2016, the Town Planning Department has again valued the premises in the light of the revised ready reckoner rate and accordingly fixed the value of Rs.2,40,00,000/-. In the e-tender, it is clearly stated that the Vegetable Market shall mean part of the area on the ground floor earmarked for the shopping center to be handed over to Ahmednagar Municipal Corporation free of cost. The learned counsel submits that the plan would be sanctioned strictly in accordance with the Development Control Rules and building bye-laws. The rates are also fixed at which the same will be handed over to the vegetable sellers and shop-keepers. The persons who have been evicted from the said site would be given preference and accommodated as per the affidavit filed in the earlier petition.

10] The learned counsel submits that the interest of the public at large is involved. Stalling the construction process would result in further delay and increase in the cost of the construction *inter-alia* the cost at which the same is to be allotted to the vegetable sellers and the shop-keepers. The learned counsel submits that this Court would not entertain the present petition in its writ jurisdiction under Article 226 of the Constitution of India. The learned counsel relies on the judgment of the Apex Court in a case of *Jagdish Mandal v. State of Orissa & others* reported in **(2007) 14 SCC 517.**

11] We have considered the submissions canvassed by the learned counsel appearing for the parties.

12] The petitioner herein does not claim any personal interest in the shopping complex to be constructed nor is the beneficiary, has filed the present petition in public interest.

13] The bone of contention of the petitioner, it appears, is that the premium is fixed at a low price. As far as the aspect of fixation of premium is concerned, the valuation has been made by an expert i.e. Town Planner. The ready reckoner rate is even lower than the premium fixed by the Corporation. The Courts would not possess the expertise to dwell upon the aspect of valuation. Suffice it to note here that the valuation fixed by the Corporation while inviting the tenders is based on the certificate issued by the Town Planner who would be an expert in valuing the property. It also requires to be borne in mind that on four to five occasions earlier, the Corporation had floated the tenders inviting the offers for construction of the Vegetable Market and Commercial Complex wherein the premium was fixed at Rs.4,00,00,000/-. Unfortunately, no response was received to the said tenders floated. The methodology adopted while fixing the premium does not appear to be totally erroneous. The rates mentioned in the ready reckoner have been considered. Even the premium fixed is above the valuation of the property as per the ready reckoner. The methodology adopted in valuing the property and fixing the premium price is not alien to the established norms. As such, it would not be possible for this Court to enter into the realm of valuation.

14] Certainly, this Court would have its inherent restrictions in exercising the powers of judicial review in the policy decision taken by the Corporation. This Court while considering challenge to the decision would be required to consider adherence to the legal principles and relevant norms in decision making process. This Court would not sit over the decision taken by the Corporation as an appellate authority while exercising the powers of judicial review. The powers of judicial review will have to be exercised with circumspection, more particularly when the public interest is involved. It also requires to be considered that the persons who re already evicted from the premises where the new Vegetable Market and Commercial Complex is to be constructed, are to be provided accommodation. In the earlier writ petition, the affidavit is filed by the Corporation that these persons would be given preference. These persons are without any place of business for more than seven to eight years.

15] Certainly, as per Sections 79-C and 79-D of the

Maharashtra Municipal Corporations Act, the Commissioner may lease, sell, let out on hire or otherwise convey any property belonging to the Corporation with the sanction of the Corporation. The Corporation would mean the decision taken by the Corporation in its general body. It is not the case that the standing committee on its own for the first time has passed the impugned resolution. The general body in the past also has passed the resolution for developing the Vegetable Market and the Shopping Complex. The said resolutions are already filed on record. It is pursuant to the said resolutions, the standing committee has passed the resolution in February, 2016. It is nowhere brought on record that the general body does not agree with the said resolution or the general body has taken some different stand. The resolution of the standing committee is pursuant to the resolution passed by the general body wherein decision has been taken to construct the said Vegetable Market and Shopping Complex.

16] Earlier, for three to four times, the tenders were issued, but unfortunately no response was received pursuant to the said tenders. Further delay in the construction would be detrimental to the interest of the persons to whom the said Vegetable Market and the shops are to be allotted. We cannot be oblivious of the fact that the persons to whom the said space has to be allotted are yearning for the allotment of the said space. Since the year 2010, the steps are being taken for construction of this complex, however, no response was being received. Ultimately, the instant tender has been issued and it appears that response pursuant to the said tender is received. If the general body does not agree with the resolution passed by the standing committee, it is for the general body to take a decision. However, it does not appear that such a decision was taken by the general body and the instant resolution of the standing committee is not contrary to the decision already taken by the general body earlier of developing this Nehru Vegetable Market and Shopping Centre at Chitale road.

17] Considering the above, we are not inclined to entertain the present Public Interest Litigation. The PIL is accordingly disposed of.

18] The learned counsel for the petitioner states that the petition was *bona-fide* and the petitioner be allowed to withdraw the amount deposited pursuant to the directions of this Court. Mr.V.S. Bedre for the Corporation states that the petition was not *bona-fide* and the said amount be forfeited.

19] Though we have refrained from entertaining the present petition, we do not find that the petition was frivolous one or was filed with oblique motive, as such, we are inclined to return the amount deposited by the petitioner to the petitioner. The petitioner may withdraw the amount deposited by him in this Court.

(K.L. WADANE, J.) **(S.V. GANGAPURWALA, J.)**