

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 8700 OF 2015

SAU. VIMAL SURESHKUMAR JETHLIYA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. S. S. Thombre.
AGP for Respondent / State : Mr. S. K. Tambe.
Advocate for Respondent No.5 : Mr. P. K. Lakhotya.
Respondent No.5 (Dr. Ramprasad Madhavlal Porwal) : Present in-person.

...

CORAM : **T. V. NALAWADE, J.**
DATE : 25th October, 2016.

ORDER:

. The petition is filed to challenge the order made by the learned District Collector, Jalna in Disqualification Application No.3 of 2012 and also the Honourable Minister of Urban Development, Maharashtra State in appeal filed against the decision given by the Collector. The Collector has disqualified the present Petitioner for making illegal and unauthorized construction as described in Section 44(1)(e) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. The decision is confirmed by the Honourable Minister. Heard both the sides.

2 Disqualification proceeding was started on the basis of application given by Respondent No.5 of the present proceeding. He

is a resident of Partur, Tahsil Partur. The Petitioner Smt. Vimal has been Councilor of Partur Municipal Council since the year 1996. For some time, she was also the President of this Municipal Council. She and her husband own many landed properties within the local limits of Partur Municipal Council. In the application, Respondent No.5 had made allegations that on almost all plots, which were more than three in number, illegal and unauthorized construction was made by the present Petitioner and her husband. He had made allegation that the lands were not converted to Non Agricultural purpose use, proper development plan was not prepared and the construction of more area than permissible was made on these plots. Allegations were made that due to the post which the present Petitioner was holding in the local body, she saw to it that all necessary permissions are granted by the local body and the amount, which she and her husband were required to pay as a charges of development is also reduced. Thus, allegations were made that not only the constructions are illegal and unauthorized, pecuniary loss was also caused to the local body by the Petitioner.

3 There were specific allegations in respect of one acre land situated at Paradgaon Road of Partur where there was a construction

of one school by name Bright Star English School. Allegations were made that the property was standing in the name of Sureshkumar, husband of the present Petitioner and without converting the land to NA purpose, the construction was made and the payment of charges for NA conversion and development charges not made.

4 There were allegations in respect of other property situated at Pawar Mala, which also admeasures one acre and it was alleged that on this land also construction was made illegally without converting the land to NA purpose and without making payment of development charges.

5 Allegations were made in respect of property being House No.576, which is a part of Survey No.243 and similar allegations were made in respect of construction made on this property. Allegations were made that construction was made of one building, which was given on lease to State Bank of India and similar irregularities were there in respect of this construction also.

6 Show cause notice was issued to the present Petitioner. In response to the show cause notice, she made following contentions:

“The construction on the property situated at Paradgaon

Road was made only after obtaining the permission of the local body and the permission was given on 31st May, 20015. It was contended that it was not necessary to convert this property to NA purpose and so there was no illegality in granting the permission of construction. Allegations made in respect of the property situated at Pawar Mala were also denied in the say by contending that the husband of Petitioner had paid the necessary charges to the local body and necessary permission was obtained for making construction. It was denied that there were similar irregularities done in respect of the building, which was given on lease to the State Bank of India. It was contended that there were no specific allegations against the Petitioner and there was nothing to show that there was illegality in the construction and the proceeding ought not to have been entertained.”

7 It appears that the learned Collector made order and directed the office of Town Planning to take measurement and find out as to whether there were any illegality in the aforesaid constructions made by the Petitioner and her husband. The report is as under:

- i) In respect of construction made of the building, which was given on lease to Bright Star English School, Partur, there was excess construction of 467.09 sq.mtrs. There was a permission of making construction of 264 sq.mtrs, but the construction of 731.46 sq.mtrs was found to be made.
- ii) In City Survey No.243, which was given House No.573, 252.78 sq.mtrs construction was found to be excess. When permission was to make construction of 247.4 sq.mtrs, on the cite, there was construction of 500.18 sq.mtrs.

8 The learned counsel for the Petitioner submitted that the property on which the school was constructed, was owned by the Petitioner's family and also one more person and so it cannot be said that excess construction was made on the property of Petitioner. This submission is not acceptable as admittedly, the building was given on lease basis by the family of present Petitioner. Submission was made in respect of construction of the building, which is given on lease to N-Mart, a mall that application for approval of excess construction was made by the husband of the Petitioner on 10th October, 2011, but

nothing was informed within the period of 60 days to the husband of the Petitioner by the local body whether the permission was granted or refused and so it needs to be presumed that permission was granted and so no action can be taken in respect of excess construction.

9 Admittedly, the election for the present post took place in the year 2011. Even if one legal point raised that other constructions were not made during the present tenure is accepted as it is, the fact remains that one construction was made admittedly during the present tenure. She admits that she was Councilor of local body atleast from the end of the year 2011 and at that time, the application of her husband was pending for approval, for permission of excess construction mentioned above in respect of N-Mart building. This circumstance is sufficient to infer that the aforesaid excess construction was made during the tenure of present Petitioner. The submission that permission was not granted by local body and nothing was informed within 60 days and so it needs to be presumed that there was a permission, cannot be accepted.

10 From the record, it can be said that the Petitioner and her husband acted highhandedly as since 1996 the Petitioner was Councilor. Many constructions were made by the Petitioner and her

husband on the property owned by them. Even if other constructions are ignored for the present proceeding, it can be said that during the present tenure, as a Councilor, her husband had made excess construction over the aforesaid property, the building given on lease to N-Mart. It was excess construction and it was not as per the permission granted in past. No record in respect of excess construction was produced before the Collector to show that such construction could have been made as per the Rules and By-laws of the local body and also the Rules prepared under the Town Planning Act.

11 The learned counsel for the Petitioner submitted that before the Collector, application was moved for permission to cross-examine the officer of the Town Planning office who had given aforesaid report, but such permission was not given and so the order of the learned Collector needs to be set aside. The provisions of Section 44(1)(e) of the Act show that the Collector is expected to give reasonable opportunity to the person like Petitioner. She admits that there was an excess construction, but the application was moved for seeking permission in respect of excess construction. In view of the nature of defence taken by the Petitioner, it was necessary for her to

produce necessary record and to satisfy the Collector that it was not illegal or unauthorized construction. The burden was on her. Thus, nothing can be made out due to the circumstance that the Officer who did the measurement was not examined and cross-examined before the Collector. It can be said that inquiry could have been done in other allegations also and something more could have been revealed as per the allegations made by present Respondent No.5. When a citizen is coming against such a political person, he is not able to get particulars and the copies of record, which can be used before the Authority created under such Act. The persons like Petitioner are misusing the position and they see to it that persons like Respondent No.5 do not get any record. Even after making such attempt, it can be said that Petitioner failed to give explanation in respect of excess construction noted above.

12 The learned counsel for the Petitioner placed reliance on some cases as follows:

- i) **2010(3) ALL MR 768** (Arun s/o. Laxmanrao Alne Vs. Returning Officer / Sub-Divisional Officer, Kinwat and others) Aurangabad Bench of this Court.
- ii) The decision given by the Division Bench of this Court in Letters Patent Appeal No.148 of 2009 (in Writ Petition

No.5121 of 2009) at the Principal Seat and the decision given in Writ Petition No.5121 of 2009 at the Principal Seat and against this decision this Letters Patent Appeal No.148 of 2009 was filed.

13 In Writ Petition No.5121 of 2009, the learned Single Judge of this Court had held that it was necessary to give opportunity to cross-examine the witness and on that ground the decision given by the Collector was set aside. This decision was confirmed by the Division Bench in Letters Patent Appeal. The facts of present case are altogether different and they are quoted above. In other reported case of *Arun* (supra), it is observed by this Court that the provisions of Section 44 can be used only if disqualification was incurred during the period of holding the office. There is no dispute over this proposition and for limited purpose this provision can be accepted in respect of other construction. One construction, which was made illegally was during the present term and there is no escape to the present Petitioner from the order of disqualification. When there are already other illegal constructions, which were also made during the previous term, those constructions also can be considered if subsequent to that term, the Councilor gets elected again. In such case, it can be said

that only due to the post the Councilor was holding, the Authority was not taking action against his illegal constructions. There is no need to discuss this legal point in relation to Section 44(1)(e) of the Act as there is more than sufficient material in respect of other construction for proving the ground under this provision. Thus, it is not possible to interfere in the decision given by the Collector, which is confirmed in appeal by the Honourable Minister. In the result, the writ petition stands dismissed.

14 The learned counsel for the Petitioner requested for continuation of interim relief. It is refused.

[T. V. NALAWADE, J.]

ndm