

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 120 OF 2015

Kisan Ganpat Jadhav.	...	Petitioner.
V/s.		
Ulhasnagar Municipal Corporation and others.	...	Respondents.

Anand D. Bhatia for the petitioner.
Vijay D. Patil for respondent No.1.
Vijay Killedar with Anil D. Yadav for respondent No.2.
Anish Khandekar for respondent No.4.

CORAM : A.S. OKA AND C.V.BHADANG, JJ

DATED : 29th February 2016.

PC. :

Heard the learned counsel appearing for the parties. In this PIL, there is challenge to the contract awarded by the Ulhasnagar Municipal Corporation for the construction of tenements at Rahul Nagar, Ulhasnagar-2 and Valmiki Nagar, Ulhasnagar-5 under Dr.Babasaheb Ambedkar Shram Safalya Yojana (for short "BASS Yojana"). It is pointed out that the Municipal Corporation has undertaken the construction at the aforesaid two places under the Basic Services to the Urban Poor (for short "BSUP") and Jawaharlal Nehru National Urban Renewal Mission (for short "JNNURM") Schemes.

2. The basic grievance raised in the petition is that both the schemes are being implemented on the Government land. An affidavit-in-reply has been filed by Shri Bharat Bhatija, City Engineer on behalf of Ulhasnagar Municipal Corporation on 22nd January 2016. In the said affidavit-in-reply, it is contended that initially a contract was awarded to the contractor for a construction of housing schemes at Rahul Nagar and Walmiki Vasahat. The said project was to be implemented under the JNNURM and BSUP Schemes under which 600 tenements were to be constructed. In the said affidavit, it is stated that the scheme at Rahul Nagar could not be implemented as there were several encroachments on the Government land. It is pointed out that the funds received from the Central and the State Government for the said scheme at Rahul Nagar have been refunded to the Central and State Governments. It is further stated that after the return of funds, the Municipal Corporation took a policy decision to implement the housing scheme under the BASS Yojana only on their own land at Walmiki Vasahat. It is reported that the proposal for the construction of tenements at Rahul Nagar was dropped as the land does not belong to the Municipal Corporation. It is stated that for the construction of the housing scheme under BASS Yojana, the plans were revised and the scheme is implemented by using FSI of 1.00. It is stated that the contract of the contractor who was appointed under JNNURM Scheme was continued in BASS Yojana on the same terms and conditions. It is pointed out that what is to be implemented at the Walmiki Vasahat is the scheme for providing housing at affordable prices for the existing occupiers on the said land who are sweepers and the

municipal employees. It is stated that the revised sanctioned plan has been approved.

3. A contention was raised on the earlier date that the land on which BASS Yojana is implemented is not vesting in the Municipal Corporation and the same is vesting in the State Government.

4. Today, the learned counsel appearing for the petitioner invited our attention to the documents annexed at Exhibit- “F”, “G”, and “H” to the petition. He urged that the said documents show that the land on which the said scheme is being implemented is not vesting in the Municipal Corporation and, on the contrary, the Sub-Divisional Officer has informed the Municipal Corporation that the said land is not transferred to the Municipal Corporation. He urged that the initial construction was proposed on the land admeasuring 8,630.75 sq.meters and later on, the construction was proposed on the area of 6,060.40 sq.meters. He submitted that, however, the municipal contractor is allowed to continue the the work on the reduced area thereby causing monitory loss to the Municipal Corporation. He submitted that all this calls for an enquiry and, therefore, the public interest litigation may be entertained.

5. We have carefully considered the submissions. Initially, the commencement certificate was issued on 26th November 2008 (Exhibit-E to the petition) for constructing the buildings at Walmiki Vasahat, Ulhasnagar-5 on the land bearing CTS No.57/5 admeasuring 8,630.75 sq.meters. As stated in the affidavit-in-reply, initially, the proposal was to

have two projects at Rahul Nagar and Walmiki Vasahat under JNNURM through BSUP scheme. It is stated that the said scheme could not go through and, therefore, the amounts received from the Central and the State Governments were refunded and thereafter, the housing scheme under BASS Yojana was proposed by the Municipal Corporation on its own land (Walmiki Vasahat). It is stated that under the said scheme, the tenements are being constructed at the affordable prices for the existing occupiers on the part of the same land who are the sweepers and the municipal employees. In the revised plan, the proposed construction on a lesser area of 6,060.40 sq.meters. There is a statement on oath that the contractor who was appointed on the earlier scheme is continued for the subsequent scheme at the rate of the year 2008-09. Apart from the fact that a specific contention as to the monetary loss is not pleaded, we fail to understand as to how any loss is caused to the Municipal Corporation.

6. We have perused the property register card annexed to the affidavit of Shri Sandeep Jadhav, the Deputy Municipal Commissioner dated 12th February 2016. In all the property register cards, the name of the Ulhasnagar Municipal Corporation appears as holder. Therefore, merely because there is a reference in certain documents to the stand taken by the Sub-Divisional Officer that the land in question has not been transferred to the Ulhasnagar Municipal Corporation, interference cannot be made in the implementation of the scheme which is meant for providing affordable housing to the occupants of the plots who are sweepers and municipal employees. It is pointed out in the affidavit of Shri Bharat Bhatija filed on behalf of the Municipal Corporation that three

buildings have been already constructed by the contractor under the BASS Yojana. Even the averments made in paragraph- 10 of the petition show that the petitioner himself has admitted that a substantial progress has been made in the construction. In the affidavit of Bharat Bhatija, it is stated that 80% of work is already over. Therefore, in our view, this is not a fit case to entertain the PIL. Accordingly, the petition is rejected.

(C.V. BHADANG, J)

(A.S.OKA, J)