PILL/62/2016

BDPPS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION (L) NO.62 OF 2016

Nilesh Ramchandra Dahanukar ….. Petitioner.

V/s

State of Maharashtra & Ors. …... Respondents.

Mr. Harish R. Pawar for the Petitioner.
Mr. Ashish Gatagat i/b Vidhi Partners for Respondent Nos. 3 and 13.
Mr. Vaibhav M. Parashurami for Respondent No.2.

CORAM: V. M. KANADE &
MRS. SWAPNA JOSHI, JJ.

DATE: 18th August, 2016

P.C.:-

1. Petitioner has filed this PIL, seeking the following reliefs:-

> "(a) This Hon'ble Court be pleased to issue Writ of Mandamus or writ in the nature of Mandamus or any other appropriate writ, order or direction and Respondent No.1 be directed to initiate enquiry in respect of the matter of execution of Lease Deed dated 31st January 1989 in respect of the said plot of land executed by Respondent No.2 in favour of Respondent No.3.
>
> (b) This Hon'ble Court be pleased to issue Writ of Mandamus or writ in the nature of Mandamus or any other appropriate writ, order or direction and Respondent No.1 be directed to initiate enquiry in respect of the matter of

execution of further lease deed / renewal of lease in respect of the said plot of land by Respondent No.2 in favour of Respondent No.3.

(c) Pending the hearing and final disposal of the present petition Respondent Nos. 1 and 2 be directed to submit the report with regards to the breaches and violations of Lease Deed dated 31st January 1989 committed by Respondent No.3 and what action initiated by Respondent No.2 against Respondent No.3 for the same.

(d) Pending the hearing and final disposal of the present petition, Respondent Nos.2 and 3 be restrained from executing further Lease Deed and / or renew the lease for further period in respect of the said plot of land in favour of Respondent No.3.

(e) Ad-interim relief in terms of prayer clauses (c) and (d) above be granted.

(f) Any other and further reliefs be granted in the favour of the Petitioner.

(g) That the cost of the petition be provided for."

2. It is submitted that the land belonging to MHADA was allotted in favour of Lilavati Hospital and a lease agreement was executed between MHADA and the Lilavati Trust. It is submitted that the Hospital has committed breach of several terms and conditions of the lease agreement. Our attention is invited to clauses 2(d), 2(m) and 2(s) of the lease agreement. It is submitted that clause 2(d) in terms states that the land has to be used for constructing a building for the

purpose of Hospital. Lilavati Trust has entered into agreement of lease with Union of Bank of India. It is submitted that there is a clear breach of clause 2(d) of the said lease deed. Secondly, it is submitted that clause 2(m) also in terms states that the Hospital shall not assign, sublet, underlet or otherwise transfer any part of the land without the permission of the authority. It is submitted that while entering into lease agreement with the Bank, permission from the concerned authority was not obtained. Thirdly, it is submitted that under clause 2(q), a Chief Officer or any Officer nominated by the Chief Officer of Bombay Housing and Area Development Board has to be taken on the Managing Committee of the Hospital. It is submitted that the Hospital has also not appointed any person nominated by the Chief Officer during all these years and, lastly, it is submitted that one of the conditions of the lease agreement was to reserve 15 (Fifteen) Cots for employees of MHADA at normal charges which also is not being complied with.

3. We are of the view that it is not possible to accept the said submissions. Firstly, period of lease is already over in December, 2015 and, as such, the grievance of the Petitioner does not survive. Secondly, show cause notices have been issued to the Lilavati Trust by the MHADA and we are informed by Mr. Parashurami, the learned Counsel appearing on behalf of MHADA that action has been taken by MHADA and he has tendered a copy of the minutes of the said meeting in which the said decision was taken and in the said meeting it was

resolved that in respect of violation of clause 2(m) of the lease agreement the Trust should pay 25% of the rent which it obtains from subletting of the premises/land and also pay the amount of interest @ 10% on the outstanding amount. Further, decision was also taken to direct the trust to pay penalty charges equivalent to 75% of the dues. So far as the violation of clause 2(q) of the lease agreement is concerned, it was resolved that the Chief Officer or any other Officer nominated by the Chief Officer shall be taken on the Advisory Board and, lastly, so far as violation of clause 2(s) is concerned, it was resolved that 25 Costs shall be reserved for employees of MHADA and 25% discount on the total medical bills shall be offered to the employees of MHADA. In view of this also, PIL does not survive.

4. We are therefore not inclined to entertain this PIL. PIL is dismissed.

(MRS SWAPNA JOSHI, J.) **(V.M. KANADE, J.)**