

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1588 OF 2015

Ramraksha Bahuuddeshiya Krida, Vyayam & Shikshan Prasarak Sanstha, Buldhana, Thr.
Its President Nilesh Dagduji Tayade

-vs-

The State of Maharashtra, Thr. its Secretary, Dept. of Urban Development, Mantralaya,
Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri P. B. Patil, counsel for the petitioner.
Shri A. S. Fulzele, Addl. Government Pleader for respondent
Nos.1 to 3.
Shri R. Khapekar, counsel for respondent Nos.6 to 10.
Shri Abhay Sambre, counsel for respondent No.4.
Shri D. P. Jaiswal, counsel for respondent Nos.6 to 10.

**CORAM : SMT. VASANTI A. NAIK &
A.S.CHANDURKAR, JJ.**

DATE : 08.02.2016

By this petition, the petitioner challenges the order of the respondent No.3 Collector, Buldhana dated 15/10/2014 under Section 308 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Certain ancillary prayers are also made in the writ petition.

The respondent Municipal Council issued an advertisement inviting applications from interested persons for lease of certain plot of land belonging to the Municipal Council for a period of three years. The petitioner applied in pursuance of the said advertisement alongwith others. The proposal of the petitioner was accepted by the Municipal

Council and the lease agreement was executed between the petitioner and the respondent Municipal Council on 23/01/2013. According to the lease agreement, the lease was to expire after a period of three years and no permanent construction could have been made by the petitioner-lessee on the land in question. Being aggrieved by the grant of the lease in favour of the petitioner, the respondent No.5 and others filed proceedings before the Collector under Section 308 of the Act of 1965 on 07/06/2013. The Collector, by an order dated 13/06/2013, restrained the petitioner from making any construction, albeit temporary on the land in question. By an order dated 15/10/2014, the proceedings under Section 308 of the Act were finally decided by the Collector and the resolution passed by the Municipal Council of 14/06/2013 was suspended. The Collector, in pursuance of the provisions of Section 308 of the Act sent a copy of the order to the Municipal Council and also submitted a report to the Director along with the copy of the order. The petitioner has challenged the order of the Collector dated 15/10/2014 in the instant petition.

According to the petitioner, the respondent No.5 and others could not have filed the proceedings, challenging the resolution of the Municipal Council under Section 308 of the Act. It is stated that though the lease was for a period of three years, the lease period is liable to be extended for a further period of three years as though the petitioner was in possession of the lease property, the petitioner was not in a position to utilize the same in view of the pendency of the proceedings before the

Collector. It is submitted that it was necessary for the Director, RDMA to take appropriate decision in respect of rescinding, revising, modifying or confirming the order of the Collector within a period of six months and since the Director has not taken any decision on the order of the Collector within a period of six months from the receipt of the report as required by sub section (4) of Section 308 of the said Act, the order impugned as also the proceedings before the Collector under Section 308 have lapsed. It is stated that in the circumstances of the case, appropriate orders may be passed in favour of the petitioner by quashing the proceedings and order of the Collector under Section 308 of the Act.

The learned Additional Government Pleader, the learned counsel for the respondent Municipal Council and the learned counsel for the respondent No.5 stated that the issue involved in this case need not be decided as the cause for filing the writ petition has been rendered infructuous due to passage of time. It is stated that as per the advertisement and as per the lease agreement, the lease was to expire after three years and the lease period has expired on 21/01/2016. It is stated that in one breath the petitioner is claiming to be in possession of the leased property and in the other it is stated that the petitioner was not in a position to utilize the same. It is submitted that before the Director, RDMA could take any decision in pursuance of Section 308(4) of the Act within a period of six months, the petitioner has filed the instant petition on 17/03/2015 seeking a stay to the proceedings before

the Director-RDMA. It is submitted that the petitioner cannot blow hot and cold by challenging the proceedings before the Director-RDMA on one hand and then claim that the order under Section 308 of the Act and the proceedings under the said provisions before the Collector have lapsed as the Director has not taken any decision under Section 308(4) of the said Act within a period of six months from the receipt of the report from the Collector. It is stated that in the circumstances of the case, the judgment reported in case of ***Beg Raj Singh vs. State of U. P. and ors. (2003) 1 SCC 726*** and relied upon by the counsel for the petitioner for canvassing that an additional period of three years should be granted to the petitioner as lease period as the petitioner is not at fault and was prosecuting the matter before the appropriate forum, does not assist the case of the petitioner. The learned Additional Government Pleader and the counsel for the other respondents sought the dismissal of the writ petition.

It appears on hearing the learned counsel for the parties and on a perusal of the documents annexed to the petition, that the lease period was to expire on completion of three years. Period of three years has expired on 23/01/2016. Admittedly the petitioner is in possession of the plot of land and had not returned the possession of the same to the Municipal Council when the petitioner participated in the proceedings filed by the respondent No.5 and others before the Collector under Section 308 of the said Act. Before the Director could take a decision on the report of the Collector under Section 308 (4) of the said Act, the

petitioner approached this Court, by filing the writ petition. The petitioner had sought a stay to the proceedings before the Director-RDMA and also to the impugned order passed by the Collector under Section 308 of the said Act. On one hand the petitioner had sought the stay to the proceedings before the Director-RDMA by filing the writ petition before completion of period of six months during which the Director could have taken a decision under Section 308(4) of the said Act and on the other, it is canvassed on behalf of the petitioner today, that the proceedings under Section 308 and the order passed by the Collector on 15/10/2014 have lapsed as the Director has not taken any decision in the matter, as required by the provisions of 308(4) of the said Act with six months. We find that the period of lease has expired and the petitioner is blowing hot and cold as canvassed on behalf of the respondents. If the petitioner was not permitted to utilize the land for the purpose for which it was leased though the petitioner was in possession thereof, the petitioner could file appropriate proceedings against the Municipal Council for the loss. However, the petitioner would not be entitled to a declaration that the petitioner would be entitled to a further period of three years as lease period as he was not able to utilize the plot of land for the purpose for which it was leased. In the circumstances of the case, it would be necessary to accept the submission made on behalf of the respondents that the cause for filing the writ petition has been rendered infructuous due to the expiry of lease period, during the pendency of the writ petition. In the

circumstances of the case, a declaration that the petitioner would be entitled to a further period of three years as lease period, cannot be granted especially when it is not prayed for. The judgment in the case of **Beg Raj Singh** (supra) cannot be made applicable to the facts of the present case.

In the circumstances of the case, the writ petition is disposed of with no order as to costs.

JUDGE

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