IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7227 OF 2015

Sunil Supdu Mahajan .. Petitioner

Versus

The State of Maharashtra and another .. Respondents

Shri V. D. Sapkal, Advocate h/f Shri S. P. Katneshwarkar, Advocate for the Petitioner.
Shri Y. G. Gujrathi, A.G.P. for the Respondent No. 1.
Shri P. R. Patil, Advocate h/f Shri S. S. Patil, Advocate for the Respondent No. 2.

CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.
DATE : 19TH JANUARY, 2017.

PER COURT :

. The petitioner claims to be the Deputy Mayor of the Jalgaon Municipal Corporation. The present petition is filed on the count that, the resolutions passed by the General Body are not being implemented by the Commissioner.

2. Mr. Sapkal, the learned counsel for the petitioner strenuously contends that the respondent No. 2/Commissioner is required to implement the resolutions passed by the general body of the Municipal Corporation. When the municipal corporation has passed resolutions, the Commissioner is duty bound to

implement the same in its true letter and spirit. The welfare measures are taken pursuant to the resolutions passed. However, the Commissioner of Municipal Corporation is showing total apathy in implementing the said resolutions. The Municipal Commissioner is the Chief Executive Officer and the executive arm of the municipal corporation. The Municipal Commissioner is bound by the resolutions passed and he has no authority to intermeddle with the said resolutions. The Commissioner has no power to sit over and defy the resolutions passed by the Corporation. The authority to assail the resolution only vest with the State Government U/Sec. 448 of the Maharashtra Provincial Municipal Corporation Act (for short "said Act")

3. The learned counsel for the petitioner to substantiate his submissions refers to some of the resolutions and states that the resolutions though passed are never implemented. The learned counsel submits that, on 29.04.2015 the general body passed resolution bearing No. 214 thereby has taken a decision to suspend/terminate Mr. Chandrakant Nikam, the Assistant Director of Town Planning for the second time, but the said proposal is never acted upon by the Commissioner. The said Chandrakant Nikam continues to function as Assistant Director of Town Planning. The said resolution was unanimously passed.

4. The learned counsel further submits that, under resolution No. 98 dated 13.05.2014 it was decided to develop Jalgaon city and to connect Jalgaon city for the purpose of tourism development and for that purpose to undertake construction of roads, railways, bridges, etc. The proposal for financial assistance from the State Government was directed to be prepared by the municipal authorities, however, the Commissioner or the authorities have not taken any steps in that regard. The learned counsel further submits that, there is total inaction on the part of the Commissioner, which has resulted in various problems in the Jalgaon. The learned counsel submits that, even resolution No. 1408 dated 20th September, 2012 is not implemented. According to the learned counsel the resolution No. 1463 is dated 24.12.2012 with regard to the construction of the houses of those who were occupying slum. However, the respondent No. 2 has not given any clarification in respect of the same. But produced running bills in respect of resolution No. 1018 dated 13.05.2011, which is passed prior to the resolution No. 1463. Nowhere it is stated that, resolution No. 1463 dated 24.12.2012 is in continuation of resolution No. 1018 dated 13.05.2011. The learned counsel further submits that, the resolution No. 1420 was passed, wherein the valuation of land was communicated to the District Court and the amount was required to be deposited by the District Court. However, no steps are taken in that regard also. According to the learned counsel

the resolution No. 1408 dated 20th September, 2012 is not at all taken care of, which was with regard to solving water problem. According to the learned counsel, the municipal Commissioner is required to be directed to implement the said resolutions. The resolutions are in public interest and for welfare of the residents of Jalgaon city. The Commissioner cannot be at loggerhead with the Corporation, which is a local self Government. The learned counsel relies on the judgment of the Division Bench of the Gujrat High Court in a case of **Karsanbhai R. Patel Vs. Ahmadabad Municipal Corporation** reported in ***1989(2) GLR 782***.

5. Mr. P. R. Patil, the learned counsel for the respondent No. 2/Municipal Corporation submits that, the Commissioner against whom the petitioner has made allegations is already transferred. The Commissioner is implementing the resolutions passed by the corporation from time to time. The Commissioner is not at loggerhead with the general body. The petitioner is Deputy Mayor and is not supposed to litigate against the Commissioner. The same would be against the propriety. If, there is any dispute between such intra department, it is to be resolved without resorting to judicial proceedings. The learned counsel relies on the judgment of the Apex Court in a case of **Oil and Natural Gas Corporation Vs. City and Industrial Development Corporation** reported in ***(2007) 7 SCC 39***.

6. The learned counsel submits that, the resolutions which are referred to in the petition are implemented in its true letter and spirit by the Commissioner. Affidavit in reply is filed on record showing the manner in which the resolutions are implemented. The documents to that effect are also filed on record. Mr. Chandrakant Nikam who was working as Assistant Director of Town Planning and against whom allegations are made and resolution was passed is already transferred on 30th November, 2016. The learned counsel submits that, resolution No. 1463 was with regard to construction of houses for those persons who were residing in slum. In fact, running account bills are placed on record to show that 50% work is complete. The said resolution is in fact in furtherance of resolution No. 1018 dated 13.05.2011. The contents of resolutions are required to be seen. The learned counsel further submits that, it is inappropriate on the part of the petitioner to approach this Court. If, the petitioner had any grievance with the non implementation of the resolutions or work not being carried out as contemplated, then the petitioner can very well approach the Government U/Sec. 448 of the said Act and the State Government is empowered to pass orders thereon.

7. We have considered the submissions canvassed by the learned counsel for respective parties. Present litigation cannot

be an adversarial litigation. The Commissioner, no doubt, is an executive arm of the Municipal Corporation and has to execute resolutions which are passed from time to time. He cannot rescind or suspend the resolution. That power vest with the Government. In writ jurisdiction under Article 226 of the Constitution of India, this Court certainly would not probe into the extent of the work that has been done. The petitioner has alleged about non implementation of some of the resolutions. Reply has been filed by the Commissioner stating that, said resolutions are implemented. The documents are filed on record to substantiate the contentions made in the affidavit in reply filed by the Commissioner. Said documents are with regard to running bills. To show quantum of the work done, the documents are filed with regard to the work undertaken for construction of 472 housing units. The resolution No. 1463 and the resolution No. 1018 deal with the construction of house under IHSDP scheme. The grievance for non implementation of resolution No. 214 with regard to suspending and terminating the services of Mr. Nikam, Assistant Director of Town Planning would not survive as said person is no longer in service with the municipal corporation and is transferred on 30.11.2016 as submitted by the respondent No. 2.

8. Considering affidavit in reply filed about resolutions being implemented, it would not be possible for us to probe further in

the matter. However, the petitioner, if has got any grievance with regard to implementation of resolutions in its entirety or the pace with which the same is being implemented, then the petitioner may approach the State Government under Sec. 448 of the said Act. The writ petition accordingly is disposed of. No costs.

[K. L. WADANE, J.] **[S. V. GANGAPURWALA, J.]**

bsb/Jan. 17