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**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5580 OF 2018

Tapi Vally Agro Food Products Company PETITIONER
Dondaicha, Through Manager
Shaikh Mohasin Sirajeddin,
Age – 31 years, Occ – Business,
R/o Dondaicha, Taluka – Shindkheda,
District - Dhule

VERSUS

1. Dondaicha Warwade Nagar Parishad RESPONDENTS
Dondaicha, Taluka – Shindkheda
District – Dhule

2. The Chief Officer,
Dondaicha Warwade Nagar Parishad
Dondaicha, Taluka – Shindkheda
District – Dhule

3. The President,
Dondaicha Warwade Nagar Parishad
Dondaicha, Taluka – Shindkheda
District - Dhule

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Mr. Niteen Pradhan, Senior Advocate with Ms. Subhada Khote and Mr. H. F. Pawar, Advocates for the petitioner

Mr. Shailesh P. Brahme, Advocate for respondent No.1

Mr. R. K. Ingole, Advocate for respondent No. 2

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[CORAM : SUNIL P. DESHMUKH, J.]

RESERVED ON : 14th AUGUST, 2018

PRONOUNCED ON : 12th SEPTEMBER, 2018

JUDGMENT:

1. Rule. Rule made returnable forthwith and heard finally with

consent of learned advocates for the appearing parties.

2. The petition takes exception to orders dated 13th November, 2017 and 11th April, 2018 on Exhibit-5 in Regular Civil Suit No. 3 of 2017 and in Miscellaneous Civil Appeal No. 67 of 2017, respectively passed by Civil Judge, Junior Division, Dondaicha and Ad Hoc District Judge -1, Dhule.

3. The petitioner has instituted Regular Civil Suit No. 3 of 2017 against present respondents contending that the petitioner is a registered partnership firm engaged in business of slaughtering of approved animals and packaging meat in air tight containers and to sell the same. Pursuant to notice published by respondents in newspaper inviting tenders for running and managing slaughter house business it had submitted its bid and the same has been accepted. Pursuant to the same the parties have entered into agreement dated 17th January, 2011, effective from 3rd January, 2011. Subsequently, term of agreement had been extended to thirty years and accordingly, an agreement had been executed in April, 2011.

Thereafter, in July, 2011, closure of slaughter house had been attempted, however, a resolution subsequently had been passed on 27th April, 2012 and the respondents had allowed the petitioner to run business of slaughter house according to the agreements entered into. Resolution dated 27th April, 2012, had been challenged before collector, Dhule, who under order dated 16th May, 2013 had purportedly stayed the same permanently. Against said decision of the collector, present respondents had been before divisional commissioner, Nashik in appeal bearing No. 3 of 2013 and the divisional commissioner Nashik under order dated 30th July, 2013 had set aside decision of the collector.

It has been referred to that Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter would be referred to as "MC Act") provides for creation of slaughter house and the same has also been referred to in provisions for municipal councils in the Constitution of India. Accordingly, construction and running of slaughter house is duty of the municipal council. Pursuant to the same, abiding by the rules and regulations of the State as well as Central Governments, slaughter house is being run and managed by the petitioner.

However, some years down, political equations underwent change and action against the petitioner was being campaigned and had been taken on agenda and a resolution purportedly had been passed in the general body meeting of the municipal council held on 14th February, 2017 to take appropriate decision in respect of complaints of citizens against petitioner about running of slaughter house.

4. Petitioner upon seeing some action is being undertaken to disrupt activities of slaughter house run by the petitioner under the agreements, the suit has been filed along with application for temporary injunction.

Show cause notice was issued to the defendants - respondents by the court on 16th February, 2017 seeking explanation as to why injunction, as prayed for, be not granted in favour of plaintiff - petitioner.

5. Thereafter, the respondents accordingly appeared in the suit on 2nd March, 2017 and had sought time to submit their '*say*'. Accordingly, time was granted.

On the very day, the petitioner had to lodge an application in trial court with an affidavit, since notice had been issued by the respondents informing the petitioner that all the resolutions, agreements, no objection certificates issued by the municipal council to the petitioner to run the slaughter house had been cancelled on 1st March, 2017 under resolution No. 61 passed in general body of the municipal council and, as such, sanction had been granted to close down the slaughter house. In pursuance of the same, slaughter house had been sealed on 2nd March, 2017.

6. It had been submitted by the petitioners that purported action of sealing of slaughter house had been taken after receipt of suit summons and show cause notice by the respondents. While putting seal, officers of the municipal council and councillors had been abusing the petitioner and were threatening since the petitioner dared initiating of litigation against them. They had also disconnected electricity supply to the slaughter house and had driven the petitioner out. Lot of material was lying in slaughter house, including 20 ton meat, which was perishable.

7. The trial court, in the circumstances, had gathered that there were no *bona fides* in the action of the defendants and they had been acting arbitrarily and did not follow due procedure of law. The defendants - respondents could not give any justifiable reason to support their said action. It had been considered that the defendants - respondents deserved to be restrained. Accordingly, trial court had passed an order to maintain *status quo,* according to the position as subsisting on the date of presentation of temporary injunction application.

8. Subsequent to aforesaid, the respondents had filed their say / written statement contending that the suit is untenable for want of issuance of notice pursuant to section 304 of MC Act and

against the resolution, remedy had been available under section 308 of MC Act and having regard to provisions of Specific Relief Act, 1953 while alternate remedy is available, resort to suit would not be proper and would be untenable. The advertisement for tender, thirty years agreement of lease, other agreements and the rights accrued under the same being illegal, are not accepted and approved by the defendants - respondents. It is contended contents of the plaint are fallacious. It had been denied that farcical inquiries were started against the petitioner and the petitioner was being threatened.

In additional reply, it has been referred to by the defendants – respondents that original land gut No. 123 admeasuring two *Hectare*, eighty four *Are* had been owned by Baburao Veduji Bangre. He had gifted said land in 2008 for housing scheme to municipal council. Housing scheme has come up on the land and in the balance land, the municipal council had decided to have slaughter house under a resolution. Around same time, decision had been taken to allot slaughter house on five to thirty years lease. However, citizens from all religions, social organizations, service institutions had opposed the same.

An agreement had been entered into to grant out the slaughter house for a period of five years from 4th January, 2011

@ Rs.5000/- per month. Thereafter, since the petitioner had requested for a long term lease, resolution No. 7 dated 15th April, 2011 had been passed, purportedly pursuant to section 272 of MC Act and lease period had been extended to thirty years. Accordingly, agreement had been entered into.

The agreement has caused enormous financial loss to the municipal council, and being illegal, was liable to be cancelled. Pursuant to section 92 of MC Act, immovable property of the municipal council, without approval of the government cannot be granted or transferred and proposal of transfer shall be passed by two third majority of the members / councillors. Under no circumstance, immovable property of municipal council can be leased out beyond a period of three years and total period of lease can be maximum nine years. Despite this, the earlier municipal body, misusing its powers had entered into a transaction with the petitioner. The transaction being illegal, no rights flow to the petitioner from the same.

In case, slaughter house is outside municipal limits, it is necessary to have permission of collector, however, permission required pursuant to section 268 of MC Act had not been obtained and under the illegal resolution and agreement, illegally slaughter is being run.

Since the municipal body had passed illegal resolution against the interest of the council, the same has been cancelled in meeting dated 1st March, 2017 under resolution bearing No. 61. The municipal council has powers to stop slaughter house at any time, under provisions of section 266 (2) of MC Act. Property worth lacs of rupees had been illegally leased out on nominal rent to the petitioner and in order to arrest financial loss to the municipal council, the municipal council has cancelled decisions and resolutions passed by the earlier body and has implemented the same by putting seal on the slaughter house.

The municipal council does not entertain any grudge against the petitioner. It is other way round, due to illegal possession of municipal property of the contractor, the municipal council has been incurring loss of lacs of rupees. It has been denied that the petitioner has been abused and that there had been disconnection of electricity supply. It has been specifically referred to that cold storage, where the meat had been stored, had not been sealed and petitioner had agreed to take away meat accordingly. The petitioner has no *prima facie* case, any relief in favour of the petitioner would cause financial loss to the respondents and balance of convenience is in favour of the respondent – defendants.

9. Trial court had framed usual points for determination as to whether *prima facie* case and balance of convenience are in favour of plaintiff – petitioner and whether the plaintiff - petitioner will suffer irreparable loss if injunction is refused.

10. Trial court had considered that on one side the petitioner had contended that agreement had been entered into legally and term of lease is yet not determined and on the other hand, the defendants – respondents contend that lease agreement is illegal and void *ab initio* and, therefore, has been cancelled.

11. Trial court further considered that agreement has been for a period of thirty years from January, 2011 and had been subsisting and yet, the municipal council had been attempting to close down the slaughter house. Injunction is a specific right and is governed by section 38 of the Specific Relief Act. Trial court, thus, considered that the petitioner had made out *prima facie* case on record.

12. Taking into account Rule 4 of 1983 Rules, it had been considered that it is not the case wherein municipal council did not require slaughter house or was not likely to require by it in foreseen future. Trial court then had referred to section 92 of MC Act. It was considered that slaughter house is not a land, but is a

constructed building and thus, considered that section 92 of MC Act would not be applicable and thus, trial court declined to buy line of contentions of the defendants that lease being hit by section 92 of the MC Act.

Trial court has referred to judgment of Bombay High Court in the case of *"Matsya Yojana Sahakari Sanstha Ltd. Umred V/s Municipal Council, Umred"* reported in *1983 Mh. L. J. 562*. Trial court, had taken into account Rules 5 and 10 of the 1967 Rules and amended rule 4 of 1983 Rules, resolution passed by municipal council on 18th May, 2010 in its General Body Meeting, wherein it had been decided that it was beyond the capacity of the municipal council to run and manage the slaughter house and hence management of the same was decided to be granted to private contractor by inviting tenders.

13. Trial court then considered that statement in resolution shows that subject slaughter house is given to the petitioner under section 272 (1) (b) of MC Act and particularly clause 3 of agreement, by invoking powers, slaughter house had been given to the petitioner for a term of thirty years.

14. Trial court then went on to examine as to whether cancellation of earlier resolution passed by earlier body of municipal council by present body is lawful. It has been

considered by the trial court that section 272 of MC Act, enjoins Chief Officer with a duty to issue to every person authority to occupy, use any stall, shop etc. in municipal market or slaughter animals in slaughter house, a licence in accordance with the provisions of bye laws. The provision also provides for punishment for running business of slaughter house without licence and it is not the petitioner's case that petitioner had obtained licence from Chief Officer of municipal council to run business of slaughter house and the record is silent in respect of the same.

15. Resolution dated 1st March, 2017 bearing No. 61, refers to that management of slaughter house was under obligation to have licence pursuant to section 267 (1) (ii) of MC Act and running of slaughter house without licence is punishable and since the petitioner does not appear to have licence, transaction entered into with the municipal council is not lawful. It has been observed by trial court further that under section 272 (4) (i) of MC Act it is lawful for Chief Officer or any officer in charge of the municipal market or slaughter house to expel from market or slaughter house any person occupying the same, without licence from municipal council. It had been considered that since the petitioner appears to be using or occupying municipal slaughter house without licence from Chief Officer, action taken by the

defendants – respondents would be justifiable. Therefore, resolutions passed by earlier body were cancelled. Hence, resolution No. 61 appear to be lawful to that extent.

16. Taking into account provisions of sections 266, 268, 272 (1) (b) of MC Act, it has been considered that section 266 of MC Act provides for making provision and maintenance of municipal market and slaughter house and empowers municipal council to close temporarily or permanently any municipal market or slaughter house or portion thereof.

17. Section 268 of MC Act provides for establishment of municipal slaughter house by the municipal council, beyond municipal area with sanction of collector. Present slaughter house is situated within the limits of Vikhurle village, which is beyond area of municipal council and without sanction of collector, before establishing the slaughter house. Hence, resolutions passed by earlier body of municipal council to that effect were liable to be cancelled. The words used have been "*shall*" and "*mandatory*". A body corporate is supposed to act in a prescribed manner and no other. Instant case does not appear to be the one where proper manner had been followed. Trial court had referred to the case of *"M. I. Builders Pvt. Ltd., V/s Radhesham Sahu and Others"* reported in *(1996) 6 SCC 464*. Thus, cancellation had been

considered to be lawful.

18. Since occupation of petitioner and running the slaughter house is without licence, there is no obligation existing in its favour and, therefore, there is no question of breach of obligation. Whereas, again it has been referred to that since municipal slaughter house has been established without sanction of collector, resolution by earlier body is not lawful and resolutions were not legal and, therefore, cannot be enforced. There is no question of breach of obligation existing in favour of plaintiff, therefore, petitioner was unlikely to get any success in final adjudication, as such, balance of convenience is considered not to be in favour of the plaintiff – petitioner.

19. About irreparable loss, it was considered by the trial court that it is an obligation of the plaintiff to show that loss would be caused if injunction is refused. Plaintiff firm had come up with a case that it had invested huge amounts in installing machinery and other necessary requirements to the tune of Rs.1.5 crore. This fact had not been denied by the defendant – respondents. On the contrary, they had stated that plaintiff – petitioner firm is getting income as well as profits in lacs of rupees. There appears to be substance in the same, otherwise the plaintiff – petitioner would not have made huge investments. It was considered that

since plaintiff – petitioner had been running slaughter house since 2011, it must have earned considerable profits by this time and in the circumstances, if injunction is refused and subject slaughter house is closed, there would be loss to the plaintiff – petitioner in profits, which can be ascertained in terms of money and can be compensated.

20. It was further considered that pursuant to section 266 (1) of MC Act, municipal council is under obligation to provide and maintain machinery for maintaining municipal slaughter house, it had not been necessary for the plaintiff to install machinery to maintain municipal slaughter house, yet the plaintiff had installed machinery at its own, it has run the risk of such investment in the lust of profit. Nevertheless, since loss is ascertainable in terms of money, therefore, it would not be said that the plaintiff would suffer irreparable loss and is entitled to injunction.

21. Since two ingredients do not favour the plaintiff, though it has *prima facie* case, injunction had been refused to be granted by the trial court. As such, after hearing parties, the application for temporary injunction had been rejected on 13th November, 2017.

22. Aggrieved by aforesaid decision dated 13th November,

2017, the petitioner had preferred Miscellaneous Civil Appeal No. 67 of 2017 before District Judge, Dhule. On 16th November, 2017 appellate court has passed an order on Exhibit-5 directing the parties to maintain *status quo ante* as on 13th November, 2017 and had issued notice to the respondents, as to why the same should not be confirmed. Notices were served on the respondents on 18th November, 2017.

23. Respondents appeared through their advocate and preferred an application Exhibit-18. They purported to point out that in the interregnum after rejection of temporary injunction application, respondents had implemented resolution No. 61 dated 1st March, 2017 on 15th November, 2017. Communications had been made to concerned officials from MSEDCL, Animal Husbandry Department, Village Panchayat and others that the slaughter house had been sealed and that the petitioner had been aware of the same while present application Exhibit-5 in the appeal had been filed and he has misled the court and had obtained *ad interim* relief.

24. Petitioner had, however, refused to accept such a position and had contended that the respondents do not intend to implement and obey orders of appellate court dated 16th November, 2017.

25. The petitioner had filed application Exhibit-24 for maintenance of *status quo ante* as on 13th November, 2017, in pursuance of orders dated 16th November, 2017. It had been contended by the appellant – petitioner that machinery worth crores of rupees had been lying in the premises, which would damage and perish and would rust. It had been contended that 30 to 40 labourers are employed who are required to stay on open ground, outside the premises, without any shelter and are suffering starvation.

26. Respondent No. 2 purported to take objection to the same stating that application does not comply with the requirements of order XI, Rule 15 of the Civil Procedure Code, the same is not verified by person making it. Resolution had been implemented before communication on 18th November, 2017 of order dated 16th November, 2011, and this fact had been suppressed by the appellant - petitioner. Respondents purported to rely on *panchanama* dated 15th November, 2017 and communications made to police station, Deputy Commissioner, Animal Husbandry, Gram Sevak and photographs and extracts of news items published in newspapers on 16th November, 2017 and 18th November, 2017.

27. Appellate court had considered past conduct of the

respondents in paragraph No. 13 of its order dated 30th November, 2017 and had also considered that haste and alacrity shown by respondents in implementation of resolution dated 1st March, 2017 had been multiplying complications in the litigation. It had been considered that having regard to guidelines of the Supreme Court in the case of *"Laxmi Narayan Modi V/s Union of India and Others"* in Writ petition (Civil) No. 309 of 2003, respondents ought not to have acted unduly with haste and ought to have refrained from creating complications while interim relief application had been pending for temporary injunction before trial court and application had been made on the very day of decision by the trial court under section 151 to maintain *status quo*. It had emerged that the petitioner had been intending to challenge order passed by trial court and request could have been to expedite hearing the suit.

It had been thus gathered that on technical grounds, taking advantage of the situation, deeming that order passed by the trial court stood vacated and it would require reasonable time for the petitioner to appeal from and seek orders from the court, the action of sealing slaughter house had been taken in a haste. Appellate court appreciated that it had been intended to render the proceedings infructuous by sealing the slaughter house. It had been considered that while this court passed order to maintain *status quo*, as on 13th November, 2017, in the circumstances, it would not be proper to disregard the same under the garb of status having changed on 15th November, 2017. It was considered that the actions engaged in by the respondents were intended to thwart due process of law and to undermine authority of the courts.

It was considered by appellate court that, technical deficiencies about verification in the application would not prevent court from taking cognizance of the facts and circumstances and to protect subject matter in issue. Thus, with a view to protect subject matter in issue, it was just and proper to direct the respondents to maintain *status quo ante*, as directed under earlier orders and hearing of the appeal has been expedited.

The appellate court, thus, considered that, it would be incumbent to direct the respondents to effectively implement order dated 16th November, 2017 passed on Exhibit-5 in Miscellaneous Civil Appeal No. 67 of 2017 to maintain *status quo ante* as on 13th November, 2017.

As such, application Exhibit-24 had been allowed and Exhibit-18 had been disposed of and the respondents were directed to restore *status quo ante* as on 13th November, 2017 and Miscellaneous Civil Appeal No. 67 of 2017 along with application Exhibit-5 were directed to be taken up for expeditious hearing. This was order passed on 30th November, 2017.

28. Against aforesaid order on Exhibits- 18 and 24, 4espondents had been before this court in writ petition bearing No. 14172 of 2017, wherein statement had been made before this court that order dated 30th November, 2017 passed on Exhibits-18 and 24, particularly, clause 3 of the operative order would be complied with by the respondents within twenty four hours and the petition had been disposed of as withdrawn.

29. Subsequently, the miscellaneous civil appeal had been heard by appellate court and points for determination about *prima facie* case and balance of convenience in favour of the petitioner had been framed as well as about petitioner suffering irreparable loss had also been framed. The appellate court dealt with said points simultaneously.

It had been considered by the appellate court, having regard to section 92 of MC Act, that defendants were not within their authority to transfer property without sanction of the State Government. Section 92 (3) of MC Act carves out an exception and does not permit municipal body to lease immovable property for more than three years at a time and lease may be renewed up to at the most nine years by resolution and resolution should be passed by municipal council for renewal of lease. While lease executed by defendants in favour of the plaintiff is for a period of thirty years, it is in contravention of section 92 of MC Act. Appellate court with reference to section 92 (3) of MC Act considered, a renewal or grant would not be possible unless supported by resolution and thirty years extension is adverse although resolution is passed.

It has further been considered that it had been mandatory pursuant to section 272 (1) (b) of MC Act to have licence to run slaughter house and plaintiff had not obtained licence from chief officer of municipal council for running slaughter house. Section 266 (2) of MC Act vests municipal council with powers to close temporarily any municipal market or slaughter house.

Section 268 of MC Act requires sanction of the collector to establish slaughter house beyond limits of municipal area. It had been considered that the slaughter house is situated beyond the municipal limits of Dondaicha without sanction of the collector, in contravention of section 268 of MC Act, as such, is illegal.

It had been considered that trial court had misconstrued and misunderstood concept of *prima facie* case, when there was no existence of legal right in favour of the plaintiff. Appellate court, thus, discarded finding by trial court about plaintiff having *prima facie* case.

It was considered that there is no legal right in existence in favour of the petitioner to run slaughter house. Municipal council and its general body is empowered to close down slaughter house, temporarily. Therefore, action by the defendants was considered to be proper, legal and correct and it was considered that the plaintiff could not be said to have made out any *prima facie* case to claim temporary injunction.

It had further been considered that the plaintiff had installed some machinery in the slaughterhouse, however, owner of the slaughter house is defendant No. 1 and, therefore, balance of convenience tilts in favour of defendants. As such, legal right is not in existence in favour of the plaintiff and, therefore, the plaintiff will not suffer irreparable loss, which cannot be compensated in terms of money if temporary injunction is refused and accordingly set the same aside. Petitioner is, thus, before this court.

30. Learned senior advocate Mr. Niteen Pradhan appearing on behalf of the petitioner submits that Central Government had declared a scheme, “Indian Housing Slum Development Programme”. The scheme was to be funded by Central

Government and implemented through the State agency. The scheme envisages making surplus land available for public amenities. Accordingly, land had been made available to municipal council, Dondaicha. While majority of the persons from Vikhurle village were carrying on slaughtering business, it had been considered appropriate to have an abattoir. Under the scheme, an abattoir (slaughter house) has been constructed at Vikhurle Shivar with a view to generate proper facilities for said business and to augment business of the residents.

31. Mr. Pradhan, submits that running and managing the slaughter house would involve expenditure on machinery, installation and maintenance and appointment of personnel and same had been perceived to be huge responsibility being incurred outside financial capacity of municipal council. It was, thus, thought appropriate that running and managing of slaughter house be carried on through external agency like a contractor etc. granting the same on licence, by inviting tenders, by accepting deposits. Running of slaughter house shall comply with rules of Maharashtra Pollution Control Board. For the running of slaughter house the municipal council would take no objection certificate from Maharashtra Pollution Control Board. Maintenance of slaughter house and disposal and use of waste products shall be in accordance with municipal council rules. It

would be responsibility of the contractor to employ requisite personnel and to maintain them. It would be open for the contractor to install machinery, to season carcass, produce fertilizer, enter into collaboration with outside agency and for said purpose contractor would be given a long term licence to occupy slaughter house building as well as open land admeasuring about one and one half acre abutting the building and to prepare a proper agreement in respect of the same and to enter into an agreement with contractor. Contractor was to have right to charge fees from users of facility of slaughter house keeping it open for the Chief Officer and Health Inspector of the municipal council to inspect the slaughter house every six months.

Accordingly, resolution dated 18th May, 2010 came to be passed by the municipal council. In the process, it was a win win situation to all, including the municipal council, which had no means and capacity to run and manage the slaughter house. It was to aid and augment business of residents and businessmen around as also to carry forward financial activities of the contractor.

32. He submits, conjoint reading of provisions of sections 49 and 49A of the MC Act shows that petitioner had been engaged

to perform such duties and such functions and to implement scheme of the municipal council and contends that it was lawful act of the municipal council to have performed functions through external agency like contractor.

33. While it has been considered that the petitioner had not obtained licence, such a consideration, according to him, is absolutely misconceived. He submits that the municipal council, under the signature of chief officer, had entered into a solemn agreement to run and manage business of abattoir. It is nobody's case till the business was being let run from 2011 to 2017 that for want of licence, business being run under the agreement is business without licence. The chief officer pursuant to the powers vested in him under the statute had entered into agreement to run slaughter house, it was indeed *de facto* and *de jure* licence. While business is being run by the petitioner under agreements as entered into between municipal council and the petitioner, terming the same to be illegal for ostensible pedantic non compliance alleged against the petitioner is highly misleading and not proper.

34. Further, it has been submitted that while agreements to run and manage slaughter house had been entered into, under the signature of Chief Officer, backed by the resolution of

municipal council, the same are indeed licence to run and manage slaughter house. The agreements are for that purpose. As such, no further licence is required and the same being deemed to be deficient thus depicts a pedantic approach and shows absence of application of mind to the facts of the case.

35. Learned senior advocate has adverted to that the abattoir has been constructed for municipal council under central government funding, upon a land outside municipal limits under the aegis of collector. The Collector has been in charge of the implementation of the scheme. It had thus been submitted that while the abattoir has come up indeed under aegis of the collector, no further ostensible sanction is required. According to him, on that count, running and managing the abattoir, cannot be termed as illegal.

36. It has been submitted, petitioner has entered the scene only after construction has been completed and only after resolution has been passed to allot, run and manage the slaughter house to external agency, when it had been found that it is unmanageable and beyond capacity of the municipal council, looking at the financial incapability of the municipal council and to avoid responsibility to employ personnel.

37. Learned advocate for the petitioner submits that after

entering into agreement, the petitioner has invested huge amounts in development of facilities, installation of machinery, creation of amenities, employment and required clearances under different enactments.

38. He purports to point out that one of the citizens had earlier on made an attempt to have closure of slaughter house and collector accordingly on 16th May, 2013 had allowed the application, however, divisional commissioner, Nashik had set aside order of the collector and had permitted to continue operations of the slaughter house under his order dated 30th July, 2013.

39. It is being claimed by the petitioner that some period down, local political equations underwent change and there has been yet another attempt to have interruption in running of slaughter house and interference was attempted impelling submission of a report to police station. Learned advocate submits that some of the councillors saw opportunity to coerce the petitioner and had submitted an application to the Hon'ble Chief Minister of the State, who had forwarded the same for action to the collector, who in turn has remitted the same to the Chief Officer, municipal council.

40. He submits that the respondents cannot be allowed to

approbate and reprobate, while on one hand resolutions had been passed and agreements have been entered into letting running of business by the petitioner for a consideration and on the other, to term it as illegal. He submits that the whole scenario shows that there is politics in the same. While political equations have changed from 2011 to 2017, activity for stopping and stalling business with a view to take unlawful advantage and gain, politically motivated persons are after the petitioner.

41. He submits that the respondents are estopped from alleging non compliance of statutory provisions. He submits that petitioner had been invited by respondents to enter into agreement who now are turning back and saying that the agreements were illegal. So far as petitioner is concerned, he deals with a corporate body under the statute. A corporate body which has entered into a solemn agreement in 2011 is now estopped from rescinding the same in 2017 simply because constituents of the body have undergone change.

42. He submits that although it is being now alleged that there is no reference to earlier institution of suit and its withdrawal, it may have to be referred to that it is not only that present suit had to be instituted in the then cropping up of exigency but the plaint also refers to that wrong that had been committed by

municipal body earlier on had been set right and the threatened closure had been withdrawn and taken back.

43. He submits that section 92 of MC Act is not at all attracted in the present matter, because intrinsically looking at the substance of the agreements, it would transpire that it is in fact licence agreement and consideration for the same is licence fee. He submits that, in this case, trial court had found that transaction would not be hit by section 92 of the MC Act.

44. According to learned senior advocate, all the terms and conditions of the agreement would show that those are giving occupancy rights to the petitioner for running slaughter house business. Those have no attributes of a lease, although for want of proper knowledge, reference using words of common parlance have been made.

45. Learned senior advocate on behalf of the petitioner refers to and relies on a decision in the case of "*G. B. Mahajan vs Jalgaon Municipal Council*", reported in *(1991) 3 SCC 91*.

It was a case wherein municipal council had entered into a contract with a private developer for construction of commercial complex contemplating finance from the developer and handing over its portions to municipal council free of costs having right to dispose of remaining accommodations by developer and to receive premia to defray the finance. The project had been put up to tender and respondent no. 6's tender having been accepted by municipal council under unanimous resolution, an agreement was entered into between municipal council and respondent no. 6 in this behalf. It was considered that the government or its instrumentalities have policy options to adopt any method or technique for management of the project provided the same is within the constitutional and legal limits. The project was considered to be not *ultra vires* the powers of the municipal council. Allottees and occupants of shops including those who would have the benefit of the allotments at such fixed rates as well as those to be inducted by the developer and were to have occupancy right for a period of 50 years and disposal of occupancy right was held to have been covered by section 272 (1) of Maharashtra Municipalities Act, 1965 and applicability of section 92 had been considered to have not been established.

Supreme Court, on appreciation of the matter had considered that essential elements of the transaction which could not be said to establish violation of section 92 of MC Act. It had been considered that the provision should not be interpreted to unduly restrict power of local authority. The point noted had been that the developer to the extent he had been authorized to induct occupiers in respect of the area earmarked for him merely exercises with the consent of the municipal council, a power to substitute an occupier in his own place. This is not impermissible when it is with the express consent of the municipal council. It would be unduly restrictive of statutory powers of the local authority if a provision enabling the establishment of markets and disposal of occupancy rights therein are hedged in by restrictions not found in the statute.

46. Learned senior advocate referring to aforesaid decision of the Supreme Court has submitted that as a matter of fact, agreements in present matter would overwhelmingly show that those are for occupancy of the premises and do not create any interest of the petitioner in the same.

47. On the other hand, Mr. Shailesh P. Brahme, learned advocate appearing on behalf of the respondent Municipal Council, has submitted that the earlier body constituting municipal council has committed obvious illegalities. The agreements were entered into in breach of section 92 of the MC Act, where the municipal property is purportedly transferred to the petitioner for over a period of three - nine years, rather for a period of thirty years, which is in violation of section 92 of the MC Act. Business was being conducted in the premises which had

come up without sanction of the collector and also there had been no licence obtained by the petitioner to run business of slaughter house as required under the provisions of sections 267 and 272 of the MC Act. He, with reference to a decision of the Supreme Court, has also submitted that estoppel cannot be put up as a defense, since agreements are in breach of statutory provisions.

48. He submits, the courts hitherto may be conflicting on that as to whether there is breach of section 92 of the MC Act, however, were concurrent in respect of balance of convenience and loss being suffered by the petitioner, being not irreparable.

49. Learned advocate for respondents submits, section 268 of MC Act requires sanction of collector to have slaughter house beyond municipal limits and since Vikhurle village is outside municipal limits of Dondaicha Warwade Nagar Parishad and there is no sanction from the collector, as such, business run in slaughter house is illegal. Sub section (2) of section 272 of MC Act requires the contractor of slaughter house to have licence from Chief Officer of municipal council and to run slaughter house without licence incurs penalty and the petitioner does not have licence from the Chief Officer. Agreement of lease for thirty years is void and illegal under section 92 of the MC Act. Property

of the municipal council unauthorizedly and for a meagre rent has been given on long term lease to the petitioner, which is causing financial loss to the municipal council for years. Since slaughter house is being run illegally, it is a cause of huge public unrest. A resolution had been passed bearing No. 61 and, all the agreements and no objection certificates were cancelled. The resolution had been passed on 1st March, 2017.

50. Mr. Brahme submits, land survey number 123 situated at Vikhurle, District Dhule had been owned by one Mr. Baburao Veduji Bangre. He had gifted said property to municipal council under registered deed dated 8th August, 2008. Land was meant for implementation of housing scheme. Upon houses being constructed, remaining land had been allotted for slaughter house.

51. He submits that purportedly notice for auction had been published in daily newspaper ''Daily Varta'' in December, 2010 and said newspaper could seldom be said that it has State - wide circulation. He submits, although auction was scheduled on 3rd January, 2011 yet, the proceedings for the same were carried over to the next date i.e. on 4th January, 2011. There had been a single response to public auction notice and that was of petitioner. Even there had been no proper determination of

upset price. While there had been poor response to the public notice, there ought to have been further attempts soliciting proper response to the auction. No general body resolution had preceded execution of agreement with petitioner. He submits, whole procedure followed in introducing petitioner in the premises of slaughter house had been illegal and without following due procedure of law. Petitioner's entry has been bypassing standing order no. 24 and in violation of rules of 1983. Also petitioner had failed to comply with conditions in resolution dated 18th May, 2010. Agreements dated 17th January, 2011 and 15th April, 2011 extending period from five years to thirty years are illegal.

52. He submits further that petitioner having been before civil court earlier on in 2011 has been kept away from the court as there is no reference to the same in the plaint. Special civil suit bearing no. 170 of 2011 had been filed by petitioner against respondents for declaration and injunction and subsequently had filed *pursis* not pressing said suit and accordingly suit had been disposed of in November, 2011.

53. He submits that there had been large-scale resentment against slaughter house from public as well as social organizations; they had been making complaints against illegal activities at the slaughter house. Respondents, in the

circumstances, were apprehending disturbance to law and order situation. Administration had been facing difficulties and the circumstances warranted a decision to close down the slaughter house and passing of resolution bearing no. 61 dated 1st March, 2017 cancelling earlier resolutions and the agreements. Accordingly on 2nd March, 2017 a notice had been issued since there had been absence of licence by municipal council in favour of petitioner under section 272 (3) of MC Act.

54. The circumstances impelled the respondents to exercise discretionary powers under section 266(2) of MC Act. The lease agreements were not registered. While it is a transfer of immovable property for more than one year, it compulsorily requires registration under the provisions of the Transfer of property Act.

55. A notice had been issued to petitioner on 18th August, 2017 by respondents no. 1 seeking possession of land in view of decisions by the courts dismissing applications by petitioner for injunction in suit filed against respondents. Petitioner had been permitted to take away machinery to but the petitioner has refused and as such on 23rd May, 2017 slaughter house was sealed under a *panchanama*.

56. Learned counsel for respondent – municipal council has

submitted that cumulative effect of all the provisions shows that the agreement entered into between the parties is not legal and the suit itself filed in the form and for the purpose is not maintainable and is misconceived. The two courts hitherto have rightly appreciated legal position and have passed the orders refusing to grant injunction.

57. Mr Brahme refers to and relies on a decision by division bench of this court in the matter of *Anil Kokil vs. Municipal Council, Nanded and others* reported in *2002 (Supop.1) Bom.C.R. 966 : 2002 (2) All M.R. 544*. He submits in the same, it has been considered that when a statute provides that body corporate has to act in a particular manner and provisions of law being mandatory and not directory, the same have to be strictly followed. The municipal council is a trustee of its property and doctrine of public trust would be applicable when a transfer of municipal property to third party is involved and provisions of section 92 will have to be invoked. He submits that, it had been considered under aforesaid decision that handing over possession to respondent – trust without sanction from the State was not legal.

58. Mr Bhrame submits that doctrine of estoppel would not apply in present case since it would not be applicable. Enforcement of promise contrary to law is not possible and the

doctrine would not apply. For said purpose, he refers to and relies on decision of the supreme court in the case of *Ashok Kumar Maheshwari vs. State of Uttar Pradesh*, reported in *1998 DGLS (SC) 52 : 1998 AIR (SC) 966*.

59. He, therefore, submits that although purported agreement has been entered into for thirty years would not be enforceable, the same being in contravention of section 92 of MC Act prohibiting transfer of municipal property without approval of the State government.

60. He submits that learned single judge of this court in the case of "*Municipal Corporation of City of Amravati vs. Vedant Security Services*", reported in *2005 (6) Bom.C. R. 369* wherein it had considered that in view of provisions of sections 41 and 41 (e) of Specific Relief Act, 1963 an injunction would not issue when there is no provision in previous/basic contract for extension of the same and as such no enforceable contract exists, to consider that an agreement in breach of section 92 of the MC Act and damages being ascertainable, injunction would not issue. He submits that the contract is not enforceable and while compensation in terms of money is adequate relief, in the facts and circumstances in present case, such a relief of injunction would not be possible.

61. Learned counsel further refers to and relies on a decision in *Municipal Council, Pusad vs. Kundanlal Mohanlal Jaiswal,* reported in *2007 (3) Bom. C.R. 384*. It was a case dealing with occupation by respondents of some temporary structures on municipal premises which were to be removed. Respondents were occupying the premises and were paying rent to the municipal council. In that background, it has been considered that the act of members of municipal council would not be binding until and unless it is in accordance with law. In the circumstances, it had been considered that the occupiers may not have any right to get relief from the courts.

62. Trial court has considered, having regard to that the agreements have been entered into by municipal council with the petitioner which were for thirty years duration, have been sought to be truncated under resolution bearing No. 61 dated 1st March, 2017, petitioner would have *prima facie* case. Further trial court did not find any substance in that the agreements entered into would be in breach of section 92 of the MC Act having regard to the background and terms and conditions. Whereas, the appellate court, in stark contrast, readily accepted contentions on behalf of municipal council about agreements being in breach of section 92 of the MC Act, being not supported by approval of

government and further those being for a period beyond stipulation of section 92 of the MC Act. The appellate court, as such, had found it difficult to consider that even *prima facie* case is in favour of the petitioner.

63. As regards balance of convenience, both the courts considered that there has been no licence to run slaughter house, as required under section 272 (2) and 267 (1) (i) of the MC Act.

64. Both the courts considered that loss in transactions would be ascertainable in terms of money and, as such, petitioner would not be said to be suffering irreparable loss. Trial court further went on to observe that the petitioner had run the risk of installing machinery while it was the duty of the municipal council. Albeit, it appears, trial court had been in oblivion of that the agreements between the parties provide for such installation at the instance of contractor and it does not appear to have examined whether provisions bar access to such installation.

65. A dispute has been raised about nature of agreements entered into while, the defendant purports to contend that agreement is lease whereas plaintiff contends it to be license pursuant to the resolution empowering agreement. Learned senior advocate has submitted that even the terms of the

agreement if properly read would show that it can hardly be said to be a lease agreement. It being not a lease and if at all it is to be contended that it is a lease, it will have to be proved and established by the defendant. It is in fact a licence and the court will have to take into account the genesis of the agreements has been in the resolution, which has been referred to above. In such a case, neither section 92 of the MC Act would be applicable nor the contention now being sought to be raised about lease having not been registered would be of any significance. He, therefore, has submitted that political vicissitudes shall not be allowed to cause interruption and interlude in performance of commercial agreements. He has submitted that, once having solemnly entered into agreements, which are not disputed and without placing any interpretation on the same, without letting an opportunity to the parties concerned to lead evidence, straight away two courts have committed error in dubbing the agreements that those are lease or rather have readily accepted contention on behalf of the defendant that it is a lease agreement. He has also submitted, courts below have failed to appreciate that the agreements allow the contractor to invest in the machinery for development of business of slaughtering, and the courts appear to have considered that the contractor ought not to have indulged into the same, despite there being term in the agreement with regard to same, this has been completely overlooked by the courts hitherto.

66. A resolution came to be passed by Dondaicha Warwade Nagar Parishad. Accordingly, an agreement had been entered into between the petitioner and Dondaicha Warwade Nagar Parishad for contracting out the slaughter house initially for a period of five years on the conditions referred to in the agreement. Term No. 2 of the agreement stipulates that the contractor is under obligation to abide by Central and State Governments laws and rules. Under term No. 6, the contractor had been allowed installation of modern machinery and to process carcass, boars etc. For said purpose the contractor had been allowed to carry on business through medium of company, firm, co-operative society etc. Term No. 8 refers to that building of slaughter house and abutting land would be in possession of the contractor and that the municipal council would be under obligation to allow installation of machinery and alterations therein.

67. Subsequently, municipal council had passed resolution No. 7 in general body meeting held on 15th April, 2011 whereunder contract period had been extended to thirty years, taking into account economy involved, referring it to be pursuant to section

272 (b) of the MC Act. Accordingly, an agreement had been entered into referring to section 272 (b) of MC Act. Pursuant to the same, petitioner had proceeded with further and had started activities accordingly.

68. The councillors had resorted to passing resolution stating that there has been resentment against the slaughter house at all levels demanding its closure. It is alleged that agreement is illegal and looking at that the agreement has been entered into for a period of thirty years, the same would be in breach of section 92 of MC Act, considering it as a transfer without permission of the State Government and that in no such case, beyond a period of nine years broken period. As resolutions had been passed for lease of for five years and more without taking approval from the State Government, the resolutions as well as the agreements have been considered to be illegal and liable to be cancelled.

69. Situation emerges in the facts and circumstances that there had been a resolution by the municipal council dated 18th May, 2010, pursuant to which agreements have been entered into granting contract to petitioner. Petitioner had invested money in installation of machinery and business was being run since 2011, till March, 2017. There is no denial of that pursuant

to agreements entered into and proposed project by the plaintiff, period had been extended from five years to thirty years. It is stated that the slaughter house had come up under the scheme, beyond municipal limits, under a project implemented through the State agency of which the collector had been in charge / authorized officer. It has also been stated that there had been political change in constitution of municipal body. It also emerges that there has been a flurry activities at the end of the municipal council after stated change in constitution of municipal body. Lot of complaints are stated to have received about running of slaughter house and the resolution accordingly came to be passed considering that the agreements have been entered into in breach of provisions of section 92 of the MC Act. The slaughter house is being alleged to be run without licence and is alleged to have come up without sanction of collector. During all this, it may have to be noted that there is absolutely no denial of the factual position about investments having been made by the petitioner contractor to the tune as claimed by him. It is also not disputed that the agreements with the contractor have been entered into having regard to resolution dated 18th May, 2010. The contract was awarded for running and managing slaughter house in pursuance to the same. Further, question has been raised as to whether with the political vicissitudes a person who has entered into contract with a corporate body like municipal council can be destabilized. It is being contended that estoppel would not apply against statutory law, whereas petitioner contends that the very nature of agreement as a whole would depict that it would not be a lease and it would be a licence going by the circumstances and the treatment to the agreement and use of the premises. It is being submitted that ostensible reference made in common parlance would not be determinative of the nature of the transaction.

70. All such matters are to be adjudged on evidence. Parties would require adequate opportunity to deal with and adduce evidence. The activities, actions and alacrity with which respondents have proceeded as have been gauged by the courts in intermediate stages before decisions in temporary injunction applications and appeal therefrom, lend reasons to requirement that parties shall have opportunity to deal with the aspects involved.

71. It may be said that the trial court has exerted itself taking some efforts and have found that the agreements have been entered into pursuant to resolutions and found that those have been entered into as per empowerment and are lawful, however, actions as well of municipal council were considered to be lawful

by the trial court, whereas appellate court has made short work of the matter has not discussed terms of the agreement and has readily accepted the theory of the defendants of it being a lease agreement and therefore, hit by section 92 of the MC Act and further that there is no licence given and there is no sanction to the construction of slaughter house pursuant to section 268 of the MC Act. The courts appears to have gone by the statutory provisions rather cursorily without referring to the terms of agreements and have dealt with the matter and have decided the same.

72. The matter will have to be dealt with comprehensively before court of first instance. Having regard to facts and circumstances of the case and the background, parties deserve opportunity. However, it would be expedient to see that the things shall not be allowed to be deteriorated and the subject matter being dwindled by causing delay in trial. In the present case, running of business had been allowed since 2011 to 2017. So long as contentions on either side are not allowed to be established in trial, possession of the petitioner over suit premises will have to be protected and shall not be allowed to be disturbed until the suit is decided. It appears that the pleadings are on record, the trial court can go on with the matter expeditiously.

73. Thus, petition partly succeeds. *Status quo* ante as on 13th February, 2017 with regard to possession of the petitioner over suit premises be maintained. Seal, if any, or closure of suit premises by respondents be de-sealed and / or opened for occupation of the petitioner. Petitioner shall not be dispossessed until decision in the suit by the trial court.

74. The suit shall be proceeded with by trial court as expeditiously as possible and dispose the same of preferably within a period of three months from the date of receipt of writ of this order. Parties shall co-operate with trial court in expeditious prosecution of the suit. Rule is made partly absolute as aforesaid.

[SUNIL P. DESHMUKH, J.]

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