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

WRIT PETITION NO.11070 OF 2015
WITH CA/3055/2017 IN WP/11070/2015

GURUNATH BABUAPPA SAMASHETTE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. Kishor C. Sant.

AGP for Respondent No.1: M. M. Nerlikar.

Advocate for Respondent No.2 : Mr. Suhas P. Urgunde.

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CORAM : **T. V. NALAWADE & SUNIL K. KOTWAL, JJ.**

DATE : 17th January, 2019.

O R D E R: (Per T. V. Nalawade, J.)

. The petition is filed to challenge the demand notice of rent issued by Respondent / Municipal Corporation, which contains enhanced amount of rent.

2 Both the sides are heard.

3 It is the case of the Petitioners that a shop is allotted to each of the Petitioners on rent basis by the Corporation and those

shops are constructed on Site Nos.111 and 112 of Latur city. It is contended that the rent was fixed by the Standing Committee of the then Municipal Council first on 20th August, 2004. It is their case that even prior to the allotment of shops to them, they were doing the business at the same site, in open space and they were removed from there and only for the purpose of their rehabilitation, shopping complexes were constructed on Site Nos.111 and 112. It is contended that each of them had given Rs.1,00,000/- for making construction of the complex and so it can be said that only the land is belonging to the Corporation and the building was constructed from the amount given by the Petitioners and other shop keepers. It is contended that all of a sudden, the Corporation has demanded higher rent than what was fixed in the year 2004 and from them rent of Rs.1284 and 2094 is demanded and that too from 1st April, 2012 when the notice was issued in October 2012. It is contended that in the past, they were legally occupying the open space with permission of the then Municipal Council and it is not open to the Corporation to say that they were encroachers in the past over the open space.

4 The Respondent / Corporation has filed affidavit in reply and it has contended that the demand of rent is as per the resolutions

passed by the Standing Committee of the present Corporation dated 5th January, 2011 and 20th September, 2012 and it has also base of the previous resolution passed by the Municipality of 20th August, 2004. It is the contention of the Corporation that none of these resolutions were challenged by the Petitioners or other shop keepers and so the petition itself is not tenable. It is the case of the Corporation that it has spent huge amount for construction of shopping complex and it is the source of income to the Corporation.

5 It is the case of the Corporation that the Petitioners and many other persons had made encroachment over the open space of Site Nos.111 and 112 and that was removed by the then Municipal Council in the year 1998. It is contended that the Municipal Council had taken decision to rehabilitate the encroachers by making construction of shopping complex and so the shopping complex was constructed. It is contended that three member committee was appointed by the Municipal Council to propose the rent. It is contended that rent and deposit were initially fixed as per the proposal made by the Committee. It is contended that the rent and deposit amount were subsequently decreased. It is contended that the interest, which accrued on the deposit amount is being deducted from

the rent amount and only after that, at present, the rent is being recovered, but as per the new rates.

6 It is the case of the Corporation that the Petitioners and others were not ready to give the rent of Rs.2,000/-, which was suggested by three member committee in the past and so the then Municipal Council had considered the request of the Petitioners and others sympathetically and the rent at lower rate was fixed by resolution dated 20th August, 2004. It is contended that this concession was made available only for the period of 3 years from the date of resolution and after that no such concession was available. It is contended that though rent could have been revised, for about 10 years rent fixed in the year 2004, was collected by the Municipal Council and then by the Corporation.

7 It is the case of the Corporation that in the year 2011, the Municipal Council became Corporation and after that by way of resolution, it was decided to start recovery of rent as per the proposal made by the three member committee in the year 2002. It is contended that the rate of rent needs to be as per the provisions of the Corporation Act and further the Town Planning Department of the

Government has given directions to the local bodies in Government circular dated 25th May, 2018 that the rent fixed by the local bodies should not be less than what is shown in ready reckoner, market price. It is contended that the local body is bound to comply that direction and also the provisions of law.

8 In support of the contentions made in the petition that the Petitioners were not encroachers, one typed copy of permission given to the predecessor of Petitioner No.3 by name Sharanappa Lingayat Shete is produced and it is dated 21st May, 1976. This document shows that Sharanappa was having a shop adjacent to open space of one of the aforesaid sites and he had requested to the then Municipal Council to give open space for his use. The record shows that the space having size of 20 x 20 feet, which was adjacent to the shop of Sharanappa was given on rent for 11 months. This permission does not show that he had permission to make construction over the space and he was not to do any business on this open space. The space was not to be sublet and right was kept to the Municipal Council to take back the possession of the open space at any time even within the period fixed. The photocopy of so-called *Parvana*, licence is produced and it contains the aforesaid conditions. There is no such

record in respect of any other Petitioners from the present matter.

9 The other record of Petitioners is also in respect of Petitioner No.3 and it shows that on 5th March, 2005 his predecessor was informed that the rent in respect of shop No.47, which was allotted to him from shopping complex constructed on Site No.112 was to be Rs.850/- from 2nd October, 2003. The submissions made and record show that this rent was fixed in accordance with the resolution of the General Body of Municipal Council dated 25th January, 2005. This rate was to continue for the period of 3 years from 2nd October, 2003. The record shows that in the past, on the basis of recommendation made by three member committee, rent was fixed at Rs.2084/- per month against Sharanappa and it was based on resolution dated 20th March, 2012. There was objection to such rent fixed by the Municipal Council and then the decision was taken to charge the rent at lower rate viz. Rs.850/-.

10 There is a copy of representation shown to be given by all shop keepers and dated 8th November, 2012 in which they had contended that they had permission of local body in the past to use the space of 10 x 10 feet on rent basis, but their constructions were pulled

down illegally by the local body on 20th September, 1998. They had contended that to redress their grievance, they were given shops in the shopping complex to rehabilitate them. They had contended that they had record like bonds written on Rs.50/- denomination stamp and there was agreement to charge rent of only Rs.50/- for space. There is nothing on record to show that such representation was really given and it is only a typed copy without any record of receipt. Many things can be read between lines on the basis of such documents against the Petitioners. It is apparently false contention.

11 On the other hand, the Respondent / local body has produced the record like resolutions passed by local body on the basis of report given by three member committee for fixing rent in respect of each shop. The first resolution dated 20th August, 2004 shows that three member committee's report was considered and then there was consultation with the association of shop keepers for each shop on the basis of its location and then rent was fixed and it was Rs.850/- for few shops and Rs.600/- for other shops. This resolution was also opposed by shop keepers and then the Municipal Council had reduced that rate also to make it Rs.550 and Rs.400/- per month. Even the fees, deposit was also reduced. However, in this resolution also it was made clear

that the rate was only in respect of 3 years period from the date of possession. It appears that this resolution was not sent for approval and it was not approved and then the rent at the initial rate at Rs.850/- and Rs.600/- was fixed. Though the local body has contended that the rent is now recovered on the basis of recommendation of the committee, in view of the provisions of the Act and in view of aforesaid directions issued by the Government, it can be said that the Corporation cannot act against the provisions of the Act and policy of the Government.

12 The learned counsel for Petitioners relied also on Government permission dated 22nd February, 2000. This permission was given to the Municipal Council to give the shops on rent basis for the period of 30 years. The permission was given under Section 92 of the Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965 and as per the Rules of 1983. This permission cannot help the Petitioners in any way as it was only the permission given to the local body to give the shops on rent basis as the period involved was more than the period permissible to the local body without sanction of the Government.

13 There is a record to show that the persons, who were to get the shops were asked to deposit Rs.25,000/- and see that they become members of the scheme and take loan of Rs.75,000/- from the bank and that way amount of rupees one lakh was made available for construction. It cannot be said that it was the entire amount required for construction as there are other different kinds of agreements and the local body has described this amount as deposit and interest on this amount has been considered by the Municipal Council right from the beginning and that interest is deducted from the rent fixed.

14 The aforesaid circumstances and the record show that in the resolution dated 25th January, 2005 the Municipal Council finalized the rate of rent at Rs.850/- in respect of persons like Petitioner No.3. This rate was accepted by Petitioner No.3 and so resolution of 25th January, 2005 was accepted by the persons like Petitioners. It is already observed that this rate was to apply only for the period of 3 yeas and that period expired in the year 2007. The rent was not enhanced till the year 2012 when it could have been enhanced after the year 2007.

15 By way of example, case of Petitioner No.3 can be

considered and it shows that his rent was increased form Rs.850/- to Rs.2500/- from 1st April, 2012. The chart supplied by the Corporation shows that the rent of Rs.850/- was in respect of Shop Nos.1, 2, 14, 17, 31 to 34, 42 to 49, 116, 117, 122 and 123 situated at Site No.112. The Petitioner No.3 is in possession of Shop No.47 and the record in respect of Petitioner No.3 shows that he has already cleared the amount demanded from him, which is under challenge. The chart shows that after fixing rent of Rs.2,500/- per month, interest on the amount of Rs.1,00,000/-, which is shown as Rs.416/- per month was deducted and then the demand notice of Rs.2084/- was issued against him.

16 The circular of the Government dated 25th May, 2018 shows that the Government has informed to all the local bodies to see that the rent of premises is not less than the market value. In the present matter, the local body is now saying that the rent, which can be fixed as per the ready reckoner can be recovered, but the amount already fixed Rs.2,500/- per month is less than the market value.

17 Relevant provision of the Maharashtra Municipal Corporation Act is Section 79 and the portion, which needs to be used

is Section 79(a) to (f) and it is as under:

"**79. Provisions governing the disposal of municipal property.**

With respect to the disposal of property belonging to the Corporation other than property vesting in the Corporation exclusively for the purposes of the Transport Undertaking the following provisions shall have effect, namely:–

(a) the Commissioner may, in his discretion, dispose of by sale, letting out on hire or otherwise, any moveable property belonging to the Corporation not exceeding in value, in each instance five hundred rupees or such higher amount as the Corporation may, with the approval of the State Government, from time to time determine, or grant a lease of any immovable property belonging to the Corporation including any right of fishing or of gathering and taking fruit, and the like, for any period not exceeding twelve months at a time:

Provided that, the Commissioner shall report to the Standing Committee every lease of immovable property within fifteen days of the grant thereof unless it is a contract for a monthly tenancy or the annual rent thereof at a rack rent does not exceed three thousand rupees;

(b) with the sanction of the Standing Committee, the Commissioner may dispose of by sale, letting out on hire or otherwise any moveable property belonging to the Corporation, of which the value does not exceed five thousand rupees; and may with the like sanction grant a lease of any immoveable property belonging to the Corporation, including any such right as aforesaid, for any period exceeding one year or sell or grant a lease in perpetuity of any immoveable property belonging to the Corporation the value of premium whereof does not exceed fifty thousand rupees or the annual rental whereof does not exceed three thousand rupees;

(c) with the sanction of the Corporation, the Commissioner may lease, sell, let out on hire or otherwise convey any property, moveable or immoveable, belonging to the Corporation;

Provided that, where the immovable property or any right belonging to the Corporation has been leased or otherwise transferred in accordance with the provisions of this section by following due procedure of public auction, then it shall be lawful for the Corporation to subsequently renew the said lease or transfer of the immovable property, in accordance with the rules framed by the Government in this behalf.

(d) the consideration for which any immovable property or any right belonging to the Corporation may be sold, leased or otherwise transferred shall not be less than the current market value of such premium, rent or other consideration;

(e) the sanction of the Standing Committee or of the Corporation under clause (b) or clause (c) may be given either generally for any class of cases or specially in any particular case;

(f) the aforesaid provisions of this section and the provisions of the rules shall apply, respectively, to every disposal of property belonging to the Corporation made under or for any purposes of this Act:

Provided that, –

(a) no property vesting in the Corporation for the purpose of any specific trust shall be leased, sold or otherwise conveyed in such a manner that the purpose for which it is held will be prejudicially affected;

(b) no property transferred to the Corporation by the Government shall be leased, sold or otherwise conveyed in any manner contrary to the terms of transfer except with the prior sanction of the appropriate Government."

18 New provisio to Section 79 added in the year 2018 shows that the Corporation has duty to see that the rent is not less than the market value. That is why the aforesaid circular was issued by the Government.

19 Provisions of Chapter XXVIII of the Maharashtra Municipal

Corporations Act, 1949 show that the resolution made by the Corporation can be challenged by making complaint to the State Government if the Corporation had exercised the power beyond its jurisdiction or the resolution could not have been passed in view of the provisions of Corporation Act. It is already mentioned that the resolution is not challenged by any of the Petitioners. In any case, the decision to charge the rent at higher rate is within the powers of the local body and it can be said that new rate is also below the rate, which ought to have been fixed by the local body. Thus, there are no merits in the proceeding.

20 The Petitioners have produced some record like copy of agreement in respect of Shop No.12 from Site No.110 of 2009. It is not in respect of Petitioners and it is not in respect of Site Nos.111 and 112. The Petitioners were treated as encroachers and shops are given on rent basis and as per the resolution to them. To the person to whom shop No.12 of Site No.110 is allotted was not encroacher and agreement is made in his favour of giving of occupancy right for 30 years and so there are different conditions in respect of that person. The amount collected from him is also different. On the other hand, a copy of rent note in respect of Shop No.58 of Site No.112 shows that it

was made clear that rent would be as per the rent determined by the Public Works Department of the Government or by three member committee. Thus, the agreement of Petitioners is of different kind and so, the agreement in respect of Shop No.12 from Site No.110 cannot be considered in favour of the Petitioners. This Court holds that the rent cannot be less than market value in such cases.

21 The learned counsel for Petitioners placed reliance on the observations made by this Court in ***Writ Petition No.1274 of 2003*** (*Deepak Eknath Khairnar & Ors. Vs. The State of Mah. & ors.*). This is in respect of premium payable by the Petitioners of that proceeding to the local body. There was agreement to fix rent for the use of land given. Thus, the structure on the land was not constructed by the local body and the facts of the matter were different. This case can be of no help to the Petitioners. In view of the aforesaid discussion, this Court holds that there are no merits in the petition. However, in view of the depreciation of value of rupees, this Court holds that the amount of Rs.1,00,000/-, which was taken as deposit can be allowed to be deducted every month from rent amount, which is fixed. In the result, the following order is passed:

ORDER

I. The petition is dismissed. However, direction is given to the Corporation to see that the amount which was accepted at the time of construction of Rs.1,00,000/- is deducted every month proportionately from the rent charged.

II. Pending civil application is disposed of.

[SUNIL K. KOTWAL, J.] **[T. V. NALAWADE, J.]**

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