

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

WRIT PETITION NO. 11718 OF 2019

The Ausa Municipal Council Through Its
President Shaikh Afsar Nawaboddin .. Petitioner

Versus

The State of Maharashtra Through Secretary and Others .. Respondents

Mr. Shaikh Tarek Mobin H., Advocate for Petitioner.
Mr. S. K. Tambe, AGP for Respondents-State.

**CORAM : S. V. GANGAPURWALA &
ANIL S. KILOR, JJ.**

DATED : 25th SEPTEMBER, 2019.

PER COURT:-

1. The petitioner has approached this Court challenging the order passed by the Collector invoking his powers under Section 308 of the Maharashtra Municipal Councils, Nagar Panchayat and Industrial Township Act, 1965 (hereinafter referred as the 'Act').
2. Mr. Shaikh, learned Counsel for the petitioner submits that the Collector acted in excess of his jurisdiction under Section 308 of the Act. The resolution was never passed under Section 308 of the Act. The Collector can only suspend the resolution. The Collector upon the reference being made by the Chief Officer suspended the notice and the order passed by the present petitioner who is directly elected President of the Municipal Council and directed to issue the work order. The learned Counsel submits that the order

of the Collector is without jurisdiction and as such this Court can entertain the petition under Article 226 of the Constitution of India. The learned Counsel relies on the judgment of the Division Bench of this Court in case of ***Nivrutti Sopan Waghmode Vs. The Collector, Nashik*** reported in 2010 (5) ALL MR 199 and the judgment of the learned Single Judge of this Court in case of ***Mehboobiya Education Society Vs. State of Maharashtra*** reported in 2017(3) ALL MR 318. The learned Counsel submits that alternate remedy is not a bar for this Court to exercise the jurisdiction when the order is without jurisdiction. The learned Counsel relies on the judgment of the Apex Court in case of ***Godrej Sara Lee Limited Vs. Assistant Commissioner (AA) and Another*** reported in (2009) 14 SCC 338 and another judgment of Division Bench of this Court in case of ***Sunil Manikrao Aparadhe Vs. State of Maharashtra and Others*** reported in 2006(2) Mh.L.J. 185.

3. The rule of alternate remedy is of self restraint. The jurisdiction under Article 226 of the Constitution of India is a discretionary, equitable and an extra ordinary jurisdiction. The Court may refuse to exercise the jurisdiction under Article 226 of the Constitution of India if original act is not founded on any principle of law.

4. In the present matter the petitioner, as a President of the Municipal Council rejected the tender. The reference is made by the learned Counsel for the petitioner to Section 58 of the Act. Reading and re-reading the said provision, the same does not authorize the President in his individual

capacity to sanction or cancel the tender. The functions of the President are detailed under Section 58 of the Act and same does not give such powers to the President. The Chief Officer referred the matter to the Collector under Section 308 of the Act.

5. Section 308 of the Act empowers the Collector to exercise his jurisdiction in the event if any order or resolution of the Council is likely to cause injury or annoyance to the public or against the public interest.

6. The Collector has found the act of the President to be in excess of his authority and has intervened in the matter.

7. The Government Resolution relied by the petitioner also does not come to the aid of the petitioner. The Government Resolution nowhere empowers the President to cancel the tender or allot the tender to a particular person.

8. The order of the President was beyond his authority. The Collector intervened in the matter. Even assuming for the sake of argument that Collector could not have intervened, however, initial act is in excess of the authority of the President. It is trite that availability of alternate remedy is not a bar to exercise the jurisdiction under Article 226 of the Constitution of India, however, as we have come to the conclusion that the petitioner is not entitled for invoking the equitable and extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. As such, this Court

refrains from exercising its jurisdiction under Article 226 of the Constitution of India.

9. The petition has another facet. The President cannot exercise powers of the Chief Officer. The petition is filed by Municipal Council represented through President. The President cannot represent the Municipal Council. The same would be against the provisions of Section 8 of the Act. The Municipal Council can sue or be sued through its Chief Officer only. On this ground also the petition is not tenable.

10. Even otherwise, the petitioner has remedy under Section 318 of the Act. The petitioner is free to avail the said remedy. In case of Nivrutti Sopan Waghmode (supra) the Court set aside the order of the Collector as the same was not a reasoned order. Reasons were not recorded. In case of Mehboobiya Education Society (supra) the learned Single Judge of this Court entertained the matter on the premise of Section 308 (3) and (4).

11. Writ Petition as such is dismissed. No costs.

(ANIL S. KILOR)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

P.S.B.