

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

**WRIT PETITION NO.11762 OF 2010**

1. Rajkishor s/o Kantaprasad Modi,  
Age 47 years, Occu. Social Worker,  
and Elected Member of Municipal  
Council, Ambajogai, District Beed.
2. Sau. Babita Mahadeo Admane,  
Age 47 years, Occu. Household  
and Elected Member of Municipal  
Council, Ambajogai, District Beed.
3. Jaikumar s/o Pannalal Lodha,  
Age 47 years, Occu. Social Worker  
and Elected Member of Municipal  
Council, Ambajogai, District Beed.
4. Rachana Suresh Modi,  
Age 27 years, Occu. Household  
and Elected Member of Municipal  
Council, Ambajogai, District Beed.
5. Manoj s/o Mohanlal Lakhera,  
Age 42 years, Occu. Social worker  
and Elected Member of Municipal  
Council, Ambajogai, District Beed.
6. Latabai Nandkishor Vaishnav,  
Age 42 years, Occu. Social worker  
and Elected Member of Municipal  
Council, Ambajogai, District Beed. ...**PETITIONERS**

**VERSUS**

1. The State of Maharashtra  
through the Secretary,  
Urban Development Department,  
Mantralaya, Mumbai  
(Copy to be served on the  
Government Pleader, High Court of

Judicature of Bombay,  
Bench at Aurangabad)

2. The Collector, Beed,  
Taluka and District Beed.
3. The Municipal Council,  
Ambajogai, Taluka Ambajogai,  
District Beed,  
through Chief Officer
4. Prithviraj Shivajirao Sathe,  
Age 45 years, Occu. Social Worker and  
President of Municipal Council,  
Ambajogai, Tq. Ambajogai,  
District Beed.
5. Annabhau Sathe Majur Sahakari  
Sanstha Ltd., Ambajogai,  
Tq. Ambajogai, Dist. Beed,  
through its Chairman
6. Lokseva Majur Sahakari Sanstha  
Ltd., Ambajogai, Tq. Ambajogai,  
District Beed,  
through its Chairman
7. Siddharth Majur Sahakari Sanstha  
Ltd., Ambajogai, Tq. Ambajogai,  
District Beed,  
through its Chairman
8. Markas Majur Sahakari Sanstha  
Ltd., Ambajogai, Tq. Ambajogai,  
District Beed  
through its Chairman
9. Ambika Majur Sahakari Sanstha  
Ltd., Ambajogai, Tq. Ambajogai,  
District Beed,  
through its Chairman
10. Jaimahesh Majur Sahakari Sanstha  
Ltd., Ambajogai, Tq. Ambajogai,  
District Beed,  
through its Chairman

11. Radhamajur Majur Sahakari Sanstha Ltd., Ambajogai, Tq. Ambajogai, District Beed, through its Chairman
12. Raje Chhatrapati Majur Sahakari Sanstha Ltd., Ambajogai, Tq. Ambajogai, District Beed, through its Chairman
13. Navnirman Majur Sahakari Sanstha Ltd., Ambajogai, Tq. Ambajogai, Dist. Beed through its Chairman
14. Devidas Shivajirao Jadhav, Age major, Occu. Service, R/o Government Headquarters, Ambajogai, Tal. Ambajogai, District Beed. Currently working as C.E.O., Sonpeth, Taluka Sonpeth, District Beed.
15. Abdul Aziz Shaikh Bahadur, (Died), through L.R. Majed s/o Abdul Aziz, Age 28 years, Occu. Business, R/o Mangalwar Peth, Ambajogai, Tq. Ambajogai, Dist. Beed.
16. Abdul Gaffar Abdul Aziz, Age 52 years, Occu. Business, R/o Miyabhai Colony, Ambajogai, Tq. Ambajogai, Dist. Beed.
17. Shaikh Hussain Shaikh Maheboob, Age 68 years, Occu.Nil, R/o Gandhinagar, Ambajogai, Tq. Ambajogai, Dist. Beed
18. Mukund s/o Umaji Survase (Died), through L.R. Prakash s/o Mukund Survase, Age 42 years, Occu. Business, R/o Khadakpur, Ambajogai, Tq. Ambajogai, Dist. Beed

19. Ramling s/o Vishvanath Bhujbal  
Age 65 years, Occu. Business,  
R/o Mukundraj Colony, Ambajogai,  
Tq. Ambajogai, Dist. Beed.
20. Sharnappa s/o Tanappa Vyavare,  
Age 70 years, Occu. Business,  
R/o Mukundraj Colony, Ambajogai,  
Tq. Ambajogai, Dist. Beed.
21. Rajabhau s/o Dhondiram More,  
Age 68 yeas, Occu. Agriculture,  
R/o Poharegaon, Tq. Renapur,  
Dist. Latur
22. Masiuddin s/o Alimoddin,  
Age 55 years, Occu. Business,  
R/o Nurani Masjid, Ambajogai,  
Tq. Ambajogai, Dist. Beed
23. Hamidabi Shaikh Rahim  
(Died), through LR.  
Sheikh Chand Sheikh Rahim,  
Age 47 years, Occu. Business,  
R/o Gandhi Nagar, Ambajogai,  
Tq. Ambajogai, Dist. Beed
24. Ashok s/o Nivrutti Raut,  
Age 69 years, Occu. Business,  
R/o Guruwar Peth, Ambajogai,  
Tq. Ambajogai, Dist. Beed
25. Ramalu Ankam,  
Age 62 years, Occu. Business,  
R/o Mali Nagar,  
Swyanvar Mangal, Ambajogai,  
Tq. Ambajogai, Dist. Beed
26. Sheikh Qauyyum Sheikh Haji,  
Age 64 years, Occu. Business,  
R/o Sidharthnagar, Ambajogai,  
Tq. Ambajogai, Dist. Beed
27. Sheikh Aslam Sheikh Chand  
Age 38 years, Occu. Business,  
R/o Sadar Bazar, Ambajogai,

Tq. Ambajogai, Dist. Beed

28. Nasiruddin Azimuddin  
(Died), through L.R.  
Minajuddin Nasiruddin,  
Age 44 years, Occu. Business,  
R/o Sadar Baar, Ambajogai,  
Tq. Ambajogai, Dist. Beed
29. Sheikh Ayesha Sheikh Rais,  
Age 44 years, Occu. Business,  
R/o Mukundraaj Colony, Ambajogai,  
Tq. Ambajogai, Dist. Beed
30. Nawab Laxminarayan Varma,  
Age 70 years, Occu. Business,  
R/o Mandi Bazar, Ambajogai,  
Tq. Ambajogai, Dist. Beed
31. Mahemoodkhan Maheboobkhan  
(Died), through L.R.  
Khalil Mahemoodkhan  
Age 35 years, Occu. Business,  
R/o Miyabhai Colony, Ambajogai,  
Tq. Ambajogai, Dist. Beed
32. Bansilal s/o Balibadr Lal Ramdhami,  
(Died), through L.R.  
Ramratan s/o Bansilal Ramdhami  
Age     years, Occu. Business,  
R/o Sadar Bazar, Ambajogai,  
Tq. Ambajogai, Dist. Beed
33. Ganpatrao Jayawantrao Hawale,  
(Died), through L.R.  
Vasant s/o Ganpatrao Hawale  
Age 60 years, Occu. Business,  
R/o Housing Society, Ambajogai,  
Tq. Ambajogai, Dist. Beed
34. Satyanarayan s/o Mulchand Malpani,  
Age 41 years, Occu. Business,  
R/o Mukundraaj Colony, Ambajogai,  
Tq. Ambajogai, Dist. Beed
35. Kisan s/o Sakharam Babale,  
(Died), through L.R.

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Anand s/o Kisan Babale  
Age 50 years, Occu. Business,  
R/o Sadar Bazar, Ambajogai,  
Tq. Ambajogai, Dist. Beed

36. Gopinath Nawab,  
(Died), through L.R.  
Pratap Gopinath Nawab  
Age 55 years, Occu. Business,  
R/o Khadakpura, Ambajogai,  
Tq. Ambajogai, Dist. Beed
37. Sanjay s/o Tukaram Gaisamudre,  
Age 42 years, Occu. Business,  
R/o Sneha Nagar, Ambajogai,  
Tq. Ambajogai, Dist. Beed

**...RESPONDENTS**

.....  
Shri V.D. Salunke, Advocate for petitioners  
Shri S.P. Tiwari, A.G.P. for respondents No.1 and 2  
Shri Vivek Bhavthankar, Advocate for respondent No.3  
Shri H.K. Munde, Advocate for respondents No.6, 10, 11 & 13  
Shri S.G. Bhalerao, Advocate for respondents No.18, 19, 20, 22 to 27  
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**WITH**

**WRIT PETITION NO.8145 OF 2013**

1. Abdul Gafar s/o Abdul Aziz,  
Age 54 years, Occu. Business,  
R/o Miya Bhai Colony, Ambajogai,  
Taluka Ambajogai, District Beed.
2. Shaikh Hussen s/o Shaikh Maheboob,  
Age 77 years, Occu. Business,  
R/o Gandhi Nagar, Ambajogai,  
Taluka Ambajogai, District Beed.
3. Shaikh Majid s/o Shaikh Isak,  
Age 31 years, Occu. Business,  
R/o Mangalwarpeth, Ambajogai,  
Taluka Ambajogai, District Beed.

**...PETITIONERS**

**VERSUS**

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1. The State of Maharashtra  
through its Secretary,  
Urban Development Department,  
Mantralaya, Mumbai - 32
2. Municipal Council,  
Ambajogai, Taluka Ambajogai,  
District Beed,  
through its Chief Officer
3. The District Collector,  
Collector Office, Beed,  
Taluka and District Beed.

**...RESPONDENTS**

.....  
Shri V.J. Dixit, Senior Advocate, instructed by  
Shri V.R. Sonwalkar, Advocate for petitioners  
Shri S.P. Tiwari, A.G.P. for respondents No.1 and 3  
Shri Vivek Bhavthankar, Advocate for respondent No.2  
.....

**WITH**

**CIVIL APPLICATION NO.3958 OF 2014 IN  
WRIT PETITION NO.8145 OF 2013**

1. Kishore s/o Diliprao Jagtap,  
Age 45 years, Occu. Business/ Agriculture,  
R/o Mali Nagar, Ambajogai,  
Taluka Ambajogai, District Beed.
2. Deepak s/o Diliprao Jagtap,  
Age 30 years, Occu. Business/ Agriculture,  
R/o as above.
3. Anil s/o Baburao Waghalkar,  
Age 45 years, Occu. Business/ Agriculture,  
R/o Gaud Galli, Ambajogai,  
Taluka Ambajogai, District Beed.
4. Nanasaheb s/o Babasaheb Muley,  
Age 33 years, Occu. Business/ Agriculture,  
R/o Prashant Nagar,  
Behind Yogeshwari School,  
Ambajogai, Taluka Ambajogai,

District Beed.

5. Poonamchand s/o Balram Pardeshi,  
Age 40 years, Occu. Business/ Agriculture,  
R/o Sadar Bazaar, Mochi Galli,  
Ambajogai, Taluka Ambajogai,  
District Beed.

...**APPLICANTS**

**VERSUS**

1. Abdul Gaffar s/o Abdul Aziz,  
Age 55 years, Occu. Business,  
R/o Miya Bhai Colony, Ambajogai,  
Taluka Ambajogai, District Beed.
2. Shaikh Hussain s/o Shaikh Mahboob,  
Age 77 years, Occu. Business,  
R/o Gandhi Nagar, Ambajogai,  
Taluka Ambajogai, District Beed.
3. Shaikh Majid s/o Shaikh Isak,  
Age 32 years, Occu. Business,  
R/o Mangalwarpeth, Ambajogai,  
Taluka Ambajogai, District Beed.
4. The State of Maharashtra  
through its Secretary,  
Urban Development Department,  
Mantralaya, Mumbai - 32
5. Municipal Council,  
Ambajogai, Taluka Ambajogai,  
District Beed,  
through its Chief Officer
6. The District Collector,  
Collector Office, Beed,  
Taluka and District Beed.

...**RESPONDENTS**

.....  
Shri S.G. Chapalgaonkar, Advocate for applicants  
Shri V.J. Dixit, Senior Advocate, instructed by  
Shri V.R. Sonwalkar, Advocate for writ petitioners  
Shri S.P. Tiwari, A.G.P. for respondents No.3 and 6  
Shri Vivek Bhavthankar, Advocate for respondent No.5  
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**CORAM: S.V. GANGAPURWALA AND  
R.G. AVACHAT, JJ.**

Date of reserving judgment : 19th December, 2018

Date of pronouncing judgment : 22nd March, 2019

**JUDGMENT ( PER R.G. AVACHAT, J.)**

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel appearing for the parties.

2. Both the Writ Petitions and the Civil Application arising in one of them were taken up for hearing together and are being disposed of by this common judgment.

**W.P.No.11762/2010:**

3. Due to passage of time, and on completion of the construction of the commercial complex, on the land Survey No.612 and erection of kiosks/ tin sheds, on the land in front of Medical College, Ambajogai, other reliefs prayed for, have not been survived.

4. By this petition, the petitioners, the members of Municipal Council, Ambajogai, seek the following main reliefs.

(E) The respondent Nos.1 to 3 may kindly be directed to carry out allotment procedure of the tin sheds/ shops

constructed in front of Medical College and Hospital, Ambajogai and shops constructed in Survey No.612 at Shivaji Chowk, Ambajogai as per standing order Nos.24 and 39 respectively.

- (E-1) The respondent Nos.1 and 2 may kindly be directed to start departmental inquiry against respondent No.10 for having committed illegalities in allotment of construction work of 1.31 Crores in pieces contrary to the Government Circular dated 2.5.2006 at Exhibit 'A' and to take administrative action against respondent No.14.

**Prayers in W.P.No.8145 /2013**

- (a) The report of the Committee consisting of District Collector, Beed and Chief Officer of Municipal Council, Ambajogai , dated 1.7.2013 be quashed and set aside.
- (b) The respondent No.2 and 3 be directed to allot the shop Nos.65, 66 and 67 to the petitioners respectively.
- (c) The two member committee constituted by virtue of the order dated 4.12.2012, passed in Writ Petition No.11762/2010 and Writ Petition No.8336/2012 be directed to decide premium/ occupancy charges relating to the shops to be allotted to the petitioners.

**FACTS**

5. The petitioners in Writ Petition No.11762/2010 are/ were the elected members of the Municipal Council, Ambajogai. The respondent Municipal Council (hereinafter referred to as the 'Council') decided to construct a commercial complex (Vyapari Sankul) on the land Survey No.612, and erect kiosks on the land in front of the Medical College at Ambajogai. On both these sites, there were already existing shop blocks/ kiosks. Various shops and businesses were being operated therefrom by number of small businessmen as tenants. Number of litigations were pending between the Council on one hand and most of the occupants of the shop blocks/ kiosks on the other. The Council proposed to erect commercial complex and install kiosks after obtaining vacant possession of the existing shops. The Council, therefore, had negotiations with the persons doing businesses in those shop blocks. It was decided to allot the shops and kiosks in the new commercial complex to those who were already in possession of the existing shops and kiosks as tenants. With an understanding between the Council and those occupants/ tenants, the shop blocks came to be vacated. The proposed cost of construction of the commercial complex and the kiosks was more than Rs.1 Crore. The Council was, therefore, expected to float a tender inviting bids from the eligible Contractors for the

proposed construction. The respondent No.4, instead of going for tender process, assigned the work of proposed construction to the respondent No.5 to 13, the Co-operative Labour Societies, manned or headed by the close associates of the respondent No.4- President of the Council. The policy of the State Government was that the work of construction not costing more than Rs.5 Lakhs could be given to educated unemployed Engineers or Labour Co-operative Society. The work costing more than Rs.5 Lakhs could be assigned to the highest bidder on observing tender process. The Council has, in complete disregard to the said policy, split up the work of the proposed construction and assigned it to the respondent No.5 to 13. The Chief Officer of the Council was responsible for doing this mischief. The petitioners, therefore, urged for quashment of allotment of work to the respondent No.5 to 13. Since the construction of the commercial complex is complete, the prayer became redundant. The petitioners have also prayed for initiation of departmental enquiry and taking penal action against respondent No.14 in Writ Petition No.11762/2010.

6. It is also the contention of the petitioners that, the respondent No.4 allotted the shop blocks to the persons of his favour even before commercial complex came up. The persons to whom the shop blocks are shown to have been allotted, were

never in possession of any of the earlier existing shops as tenants. The petitioners also prayed for quashment of the decision allotting the shop blocks to those persons. The said relief also became infructuous.

7. The petitioners in Writ Petition No.8145/2013 claimed that, they had been in occupation of earlier existing 3 shop blocks. These petitioners had instituted civil suits against the Council for protecting their possession. The petitioners withdrew the said suits since the Council entered into an understanding with them with promise to allot them shop blocks in the proposed commercial complex. In Writ Petition No.11762/2010 and 8336/2012, the order came to be passed on 4.12.2012, constituting a two member committee comprising of the Collector, Beed and the Chief Officer of the Council. By the very order, the two member committee was directed to prepare a list of persons who shall be entitled to occupy the shops in the newly constructed commercial complex. The Committee was also directed to determine the monthly premium/ occupancy charges to be paid by the persons who would be allotted the shop blocks. The Committee went beyond its term of reference. The Committee found that no person was eligible/ entitled for allotment of the shops. The Committee further found the Council to have allotted the shops in complete violation of the statutory

mandatory provisions. The Committee suggested for allotment of the shop blocks by auction.

8. The petitioners claimed to have been entitled to occupy the shop blocks in the commercial complex. The petitioners have, therefore, prayed for quashment of the Committee report and consequential relief of allotment of the shop blocks to them.

9. Shri V.D. Salunke, learned counsel for the petitioners in Writ Petition No.8145/2013 took us through the Government Circular dated 2.5.2006, to submit that the Council, its President and the Chief Officer split up the proposed construction work so as to facilitate its allotment to the respondents No.5 to 13. It was in complete violation of the Circular. The learned counsel also invited our attention to Section 92 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as the Act) and the directions dated 28.10.2004, issued by the Commissioner-cum-Director, Municipal Administration, State of Maharashtra, in regard to giving on lease premises of the Municipal Councils. According to the learned counsel, when a Statute mandates to do a particular thing in particular manner, it has to be done in that way only or not at all. According to the learned counsel, the respondents No.15 to 37 were not eligible for allotment of shops in the proposed complex.

According to learned counsel, those persons were none other than relatives, close associates or followers of the President of the Council. The learned counsel also brought to our notice one document to indicate that one of such allottees executed the document indicating to have purchased existing shop block from its tenant, who had passed away long before the said document is shown to have been executed.

10. The learned counsel would further submit that, the shop blocks in the commercial complex have to be let out by observing the provisions of Section 92 of the Act and the directions issued by the Director, Municipal Administration vide Government Resolution dated 28.10.2004.

11. Shri V.J. Dixit, learned Senior Advocate for the petitioners in Writ Petition No.11762/2010 would submit that, the petitioners were in control of the Council at the relevant time. They were parties to the decision to go for construction of a commercial complex on the land Survey No.612 and allot the shop blocks therein to the persons including the petitioners in Writ Petition No.8145/2013, who were in occupation of the already existing shop blocks. The petitioners in Writ Petition No.11762/2010, therefore, cannot be allowed to turn around and take a position inconsistent with the decisions they took in their official capacity. According to the learned Senior Advocate, the

two member committee exceeded its brief. The Committee, instead of observing the directions given in the order dated 4.12.2012 has suggested for allotment of the shop blocks by conducting auction. According to the learned Senior Advocate, it was the conscious decision taken by the Municipal Council to allot the shops in the new complex to the old tenants in possession of the then existing shops at the very site. Had it not been done so, the proposal could not have been materialized. According to the learned Senior Advocate, the petitioners in Writ Petition No.11762/2010 are entitled for allotment of the shops.

12. Learned counsel appearing for the Council, the Chief Officer, made submissions consistent with their stand in the affidavits.

13. The land Survey No.612 belongs to the Council. Number of shops were existing on the said land. There were taparis/ kiosks on the land in front of the Medical College. The shop blocks/ kiosks were in occupation of tenants. The Council decided to redevelop both the sites by erecting a commercial complex on the land Survey No.612, and erecting kiosks on the land in front of the Medical College. The petitioners in Writ Petition No.11762/2010 were the parties to the decision of redevelopment.

14. The petitioner No.1 in Writ Petition No.11762/2010 was the President of the Council at the material time. He called meetings of old tenants in occupation of shop blocks standing on the land Survey No.612, for settlement. It would have taken a long time to get vacant possession from the old tenants by following due process of law. Number of meetings took place between the old tenants (some of the respondents in Writ Petition No.11762/2010- 15 to 37) and the President. An understanding was arrived at.

15. The petitioners in Writ Petition No.8145/2013 withdrew the suits filed by them against the Council. It was decided to accept some lumpsum amount from the old tenants to be allotted shop blocks in the proposed commercial complex. The petitioners in Writ Petition No.8145/2013 have paid more than Rs.1,50,000/- each. They agreed to pay rent to be fixed by the Committee. A resolution, therefore, came to be passed in General Body meeting. The old tenants started paying arrears of rent. They also paid towards estimated cost of shops in the proposed commercial complex. There were many tenants who had left the premises, giving possession to others. The Council decided to recognize the persons in actual possession on the date the redevelopment of both the sites was proposed.

16. There is evidence to indicate, the petitioners in Writ Petition No.8145/2013 to have been long standing tenants, in possession of three shop blocks already existing on the land Survey No.612. They have paid the Council towards deposits in respect of the shop blocks in the proposed commercial complex, to be allotted to them. It is true that, one Ayesha Begum claimed to have been in possession of one of the shops through one Babulal Daulatram Lakhera. A document was produced on record to indicate that, it was executed between Babulal Daulatram Lakhera and Ayesha Begum in respect of the shop block. There is also on record, death certificate to indicate that, Babulal Daulatram Lakhera passed away long before the said document came into being. The Council has, however, come with a stand to have recognised Ayesha Begum to be in possession of one of the shop blocks through old tenant Babulal Daulatram Lakhera.

17. Section 92 of the Act, empowers the Municipal Council to transfer its immovable property. The section reads as under : -

*“92. (1) No Council shall transfer any of its immovable property without sanction of the State Government.*

*(2) A proposal of such transfer shall be accompanied by resolution of the Council passed at a meeting*

*by a majority of not less than two-thirds of the total number of Councillors and shall in no way be inconsistent with the rules made in this behalf by the State Government.*

- (3) *Notwithstanding anything contained in sub-section (1), a Council may lease its immovable property for a period not exceeding three years, and the lessee shall not be allowed to make any permanent constructions on such immovable property. Such lease may be renewed by the Council beyond the period of three years so, however, that the total period of any lease shall not exceed nine years.”*

Sub-section (2) of the said section contemplates framing of Rules by the State Government in that regard.

18. True, Section 92(1) of the Act bars the Council from transferring any of its immovable property without the consent of the State Government. Sub-section (3) of Section 92 is in the nature of a proviso. It authorizes the Council to lease its immovable property for a period not exceeding three years. Such lease may be renewed by the Council beyond the period of three years. The total period of lease shall, however, not to exceed nine years. No such lease or any renewal thereof, shall be

granted unless supported by a resolution passed by the Council in its meeting.

Moreover, there is the Circular dated 10.8.2006, issued by the Directorate of Municipal Administration. The Circular prescribes procedure in respect of leasing out immovable properties of the Council. The conditions are :-

There has to be a resolution passed in a General Body meeting with a two third majority. The amount of deposit and the rent/ premium shall be decided by a Committee of three members, headed by the Collector. The property should be leased out by public auction. A notice of the proposed auction has to be published in a widely circulated daily. Leasing out should be made to the highest bidder.

19. It is also true that, in the case at hand, the Council has deviated from the statutory mandate contained in Section 92 of the Act and the conditions in the Circular dated 10.8.2006. The learned counsel for the petitioners in Writ Petition No.11762/2010 may, therefore, appear to have been justified in asking for the relief. In our view, however, the Council is justified from deviating from the mandatory provisions in respect of transfer of its immovable properties. It is reiterated that, at both

the sites, there were Taparis and shop blocks, occupied by tenants. There were litigations pending between the Council and some of the tenants/ occupants of kiosks and/ or shops. The petitioners in Writ Petition No.8145/2013 were the tenants in occupation of three shop blocks standing on the land Survey No.612. It was, therefore, just difficult for the Council to go for redevelopment of both the sites. The State Government had sanctioned some grants for the redevelopment. The grants would have lapsed. The petitioner No.1 in Writ Petition No.11762/2010 was the President of the Council at the material time while the other petitioners were the elected members thereof. They are the parties to the decision to go for redevelopment of both the sites and allot the shops and kiosks in redeveloped complex to the erstwhile tenants.

20. The Division Bench of this Court (Coram : Naresh H. Patil & Smt. Sadhana S. Jadhav, JJ), in Writ Petition No.11762/2010 and Writ Petition No.8336/2012, was pleased pass order dated 4.12.2012. The order records :

*“11) The issue in respect of terms of allotment of the sheds to the occupants is seriously questioned. The petitioners have raised objections in respect of eligibility of persons in whose favour the resolution*

*was passed by the Municipal Council who were sought to be entitled to occupy these shops. It was questioned that in case the shops are allotted to persons who were not entitled for the same then Municipal Council would suffer financial loss.*

- 12) *It is necessary to appreciate that the Municipal Council, in the present scenario, is burdened with financial constraints. It is necessary that adequate financial resources are made available to the Municipal Council. Financial resources available to Municipal Council are in fact limited in nature. Probably with this view the Municipal Council proceeded to construct these shops by collecting premium amount from the persons who were already occupying the subject plots.*
- 13) *The question remains as to on what terms the persons shall be allowed to occupy these shops/sheds. It is stated that the Municipal Council had maintained list of certain persons, who, according to the Council, deserve to be allotted these shops. One of the reasons put forth by the Municipal Council is that those persons had parted with substantial amount when construction was to be started.*
- 14) *At the same time, the fact cannot be lost sight of that the learned counsel appearing for the*

*respondents state that the monthly premium/ occupancy charges would be paid in accordance with the decision taken by three member committee.*

- 15) *During the course of hearing it was pointed out that the petitioners are not strangers to the subject matter of this petition. One of the petitioners was the President and others were members who were party to the passing of resolutions and aware of the substantial steps taken by the Municipal Council in the direction of construction of shops. The issue of public interest raised by the petitioners, therefore, requires to be considered in the light of the financial benefit which the Municipal Council would get. In case the subject structures are allowed to remain as it is without being put to use, the construction/ structure would get deteriorated. There would be further encroachments in and around the said premises. It would be difficult for the Municipal Council to keep constant vigil. It is very likely that multiplicity of litigation would take place. Considering all these aspects of the matter some viable solution to the problem is required to be reached which is in the best public interest.*

*After considering the matter in its entirety, we pass following order :--*

- A) *The Municipal Council is entitled to allot the shops/sheds constructed at the subject sites to the persons who were already occupying the plots.*
- B) *The list of persons who shall occupy these shops at both these places shall be prepared and finalized by a committee of two members consisting of the Collector Beed and the Chief Officer, Municipal Council, Ambajogai after going through the entire record.*
- C) *The persons whose names would be finalized by the two Member Committee shall be entitled to occupy these shops.*
- D) *The monthly premium / occupancy charges shall be determined in respect of both the sites by the three member Committee.*
- E) *We direct the Collector, Beed and the Chief Officer, Municipal Council, Ambajogai to complete this exercise within (8) weeks from the receipt of copy of this order.*
- F) *The actual possession of these shops shall be handed over after completion of the exercise stated above by the Municipal Council authorities.”*

21. It is clear from the aforesaid order that, the Division Bench had found the Council to have been justified to accommodate the old tenants in the newly constructed

commercial complex on the land Survey No.612 and the kiosks erected on the land in front of the Medical College. The two member committee was directed to prepare list of persons who shall occupy the shops at both the places. The list of persons, eligible to occupy the shops, was to be of the persons who are already occupying the old shops and kiosks. The petitioners in Writ Petition No.11762/2010 did not take exception to the order passed by the Division Bench on 4.12.2012. These petitioners, therefore, could not be heard to say that the new shops and kiosks should be let out by public auction. We found the two member committee to have gone beyond the terms of reference. It is just surprising that the Committee did not find a single person to be eligible or entitled for allotment of a new shop/ kiosk. The committee found the Council to have entered into an understanding with the occupants of the old shops illegally and without keeping in mind the interest of the Council. The Committee also referred to two instances relating to transfer of tenancy rights. One such instance pertains to the transaction between Smt. Ayesha Begum Shaikh and late Babulal Daulatram Lakhera, and another is that of Anusayabai Kachare and Salimkhan Bashirkhan. The Council, however, found these persons to have been in possession of the old shops on the day the proposal for redevelopment was floated. The committee also found that the Council committed breach of the provisions of

Section 92 of the Act and the Circular issued by the Directorate of Municipal Corporation issued on dated 10.8.2006. The committee, therefore, came to a conclusion that it was very difficult to prepare a list of persons to be eligible to occupy new shops. The committee, therefore, recommended to go for leasing out the shop blocks in compliance with the provisions of Section 92 of the Act and the relevant rules thereunder.

The reliance on the judgment of the Division Bench of this Court in case of Anil Tryambakrao Kokil Vs. Municipal Council, Nanded & ors. reported in [2002 (3) Mh.L.J. 762] is of no avail to the petitioner in view of the peculiar facts and circumstances of the case in hand.

22. We reiterate that the conclusion arrived at by the committee and the recommendations made by it are in complete breach of the order passed by the Division Bench of this Court. On the basis of the material on record, we found the Council to have been justified in taking a decision to allot the new shops to the old tenants or the persons in occupation through such tenants. We, therefore, again constitute a two member committee of District Collector, Beed and the Chief Officer of the Council to do the needful in consonance with the directions given

by the Division Bench of this Court on 4.12.2012. We also hold the petitioners in Writ Petition No.8145/2013, to be eligible/entitled to be accommodated in the commercial complex that came up on the land Survey No.612.

23. Admittedly, the cost of proposed construction of a commercial complex on the land Survey No.612 and erection of kiosks on the land in front of the Medical College exceeded Rs.1 Crore and Rs.50 Lakhs respectively. The Government Circular dated 2.5.2006, issued by Public Works Department, states that the work of construction costing less than Rs.5 Lakhs could be assigned either to educated unemployed Engineers or Labour Co-operative Societies. The Circular further states that, it was found that the work costing more than Rs.5 Lakhs is divided into such Units making each of the Unit costing less than Rs.5 Lakhs. It has specifically been directed to refrain from doing so, and any one who is found to have committed breach of the Circular, would be dealt with an administrative action, considering it to be a serious matter.

24. Admittedly, the Council and specifically the Chief Officer (respondent No.14 in Writ Petition No.11762/2010), who is a Government representative, committed breach of this Circular. It, therefore, could not lie in the mouth of the Council or

the concerned Chief Officer to contend that so as to get the work done quickly, the division thereof was made into 10. Admittedly, the work of each Unit of the division had been assigned to Labour Co-operative Societies, (respondent No.5 to 13 herein). It has been alleged in the petition that these Labour Co-operative Societies belong to the close associates of the President of the Council (respondent No.3 in Writ Petition No.11762/2010). Whatever explanation has been offered by the Council and the concerned Chief Officer is not acceptable as against the mandate of the Circular. The Chief Officer (respondent No.14 in Writ Petition No.11762/2010) is, therefore, required to be dealt with administratively/ departmentally.

25. In view of the above, both the Writ Petitions are disposed of in terms of the following order :-

**ORDER**

- (I) Report dated 1.7.2013 of the two member committee, comprising the District Collector, Beed and Chief Officer of Municipal Council, Ambajogai is hereby quashed and set aside.
- (ii) The two member committee comprising of the

Collector, Beed and the Chief Officer, Municipal Council, Ambajogai is constituted. The Committee shall verify the documents that may be produced by the tenants/ occupants of the shop blocks/ kiosks. If they conclude that the persons claiming to be tenants/ occupants were actually in possession and paying rent to the Municipal Council, then they will be entitled to the allotment of shops.

- (iii) We hold the petitioners in Writ Petition No.8145/2013 to be entitled for allotment of three shop blocks (one each) in the new commercial complex.
- (iv) The Committee shall also fix/ determine the rent/ lease amount of the shops.
- (v) The Committee shall complete the exercise within ten (10) weeks from the receipt of a copy of this order.
- (vi) Possession of the shops shall be handed over by the Municipal Council after completion of the exercise.
- (vii) The State Government/ the Directorate of Municipal Administration shall take necessary administrative/ departmental action against the respondent No.14, the then Chief Officer of the respondent No.3 Municipal Council (in Writ Petition No.11762/2010),

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for having committed breach of the Circular dated  
10.8.2006.

Rule made absolute in above terms.

In view of disposal of the Writ Petitions, Civil  
Application No.3958/2014 in Writ Petition No.8145/2013 stands  
disposed of.

**R.G. AVACHAT**  
**JUDGE**

**S.V. GANGAPURWALA**  
**JUDGE**

fmp/