

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4448 OF 2013**

**PRASHANT BHAGWANTRAO
PALANDE,**

Age 42, Occupation Business,
Residing at Building No. 28, Flat No. 103,
New Harsh Accord, Shanti Park,
Mira Road (East) 400 107,
Taluka and District Thane.

... **PETITIONER**

versus

- 1. MIRA-BHAYANDAR MUNICIPAL CORPORATION**, through its Commissioner having its office at Chatrapati Shivaji Maharaj Road, Bhayandar (West) – 401 101, Taluka and District Thane.
- 2. STATE OF MAHARASHTRA**, through Principal Secretary, Urban Development Department, Mantralaya, Mumbai 400 032.
- 3. COWTOWN LAND DEVELOPERS PVT LTD.**, A Pvt Ltd Company under the Indian Companies Act, 1956, having its office at: 216, Shah & Nahar Industrial Estate, Dr. E.Moses Road, Worli, Mumbai 400 018 having correspondence address at: Lodha Excelus Level L2, Apollo Mills Compound, NM Joshi Marg, Mumbai 400 011

4. **SUDHIR SHRIDHAR RAUT**,
Deputy Commissioner, Kalyan
Dombivli Municipal Corporation,
Kalyan 321 301 ... Respondents

APPEARANCES

FOR THE PETITIONER	Mr Ganesh Sovani.
FOR RESPONDENT NO. 1	Mr NR Bubna.
FOR RESPONDENT NO. 2- STATE	Mrs Ashwini A Purav, AGP.
FOR RESPONDENT NO. 3	Mr Milind Sathe, Senior Advocate, <i>with Ms Nikita Panse, i/b Veritas Legal.</i>

CORAM : **S. C. DHARMADHIKARI &
G. S. PATEL, JJ**

DATED : **13th June 2019**

ORAL JUDGMENT (per S. C. Dharmadhikari, J)

1. This Petition has been pending admission since 2013 when it was filed. It has been amended several times since then. Affidavits in Reply have been filed. Hence, Rule. Respondents waive service. By consent, Rule made returnable forthwith, and taken up for hearing and final disposal.

2. Heard learned Counsel for both sides.
3. By this Petition under Article 226 of the Constitution of India the Petitioner challenges the agreement dated 30th June 2011 executed by the Mira-Bhayandar Municipal Corporation with the Respondent No.3.
4. Having found that during the time this Petition was pending admission there were subsequent developments, the Writ Petition was amended and three other reliefs were sought. The three reliefs sought by way of amendments are as under:

“27(b-ii) this Hon’ble Court may be pleased to declare that an act of or the decision of the Respondent No.2 as conveyed to the Respondent No.1 vide its letter bearing No. MBM/AN.S.No.20/Pra. Kra 274/11/Navi-28, Dt. 24.06.2014 of not interfering with the decision taken by the Respondent No.1 of entering into agreement with the Respondent No.1 dated 30.06.2011 of selling the open amenity space to the Respondent No.3 is illegal, bad in law, malafide and it may be set aside and annulled.

(f) That the Hon’ble High Court may be pleased to stay the order of stay granted by the Respondent No.2, vide its order Dt.20.01.2016 on the representation filed by the Respondent No.3 challenging the legality and the validity of

the Resolution No. 32 passed by majority in the General Body Meeting held on 13.07.2015 till the disposal of the Petition,

(g) that the Hon'ble Court may be pleased to further direct the Respondent No.2 dispose of the representation @ appeal filed by the Respondent No.3 in respect of the Resolution Dt.13.07.2015 within a specific time period or in time bound manner after the Petitioner makes an application in the same as per the order Dt. 15.02.2016 passed by this Hon'ble Court.”

5. Very few facts are required to appreciate the arguments of Mr Ganesh Sovani appearing for the Petitioner.

6. The Petitioner before us is a resident of Mira Road (East), which falls within the Municipal limits of the Mira-Bhayandar Municipal Corporation, the 1st Respondent. The Petitioner says that he is an active social worker and was also once a Corporator of this Corporation.

7. The 1st Respondent is a body corporate constituted under the then Bombay Provincial Municipal Corporation Act 1949 and now the Maharashtra Municipal Corporation Act 1949 (“**the MMC Act**”). The 2nd Respondent is the State of Maharashtra through the

Principal Secretary, Department of Urban Development. It is stated that the State has an overriding power of control conferred by Section 451 of the MMC Act. The 3rd Respondent to this Petition is a private limited company engaged in the business of developing properties. The 4th Respondent is the Deputy Municipal Commissioner of the 1st Respondent Corporation.

8. The 3rd Respondent to this Petition claims to be the owner of a certain immovable property that is more particularly described in paragraph 6 of the Petition, with development rights therein.

9. On 5th August 2010, the 3rd Respondent obtained a development permission under Section 44 of the Maharashtra Regional and Town Planning Act 1966 (“**MRTPA Act**”) in the form of a commencement certificate in regard to this property. This development permission was conditional, and one of the conditions was that it would cede a part of the property for a public amenity, viz., a school and a public playground. That land had to be surrendered to the 1st Respondent Corporation. In the commencement certificate, a copy of which is at Exhibit “A” to the

Petition, the Municipal Corporation (which is the Planning Authority) categorically stated that the plot of land was earmarked in the building plans for educational purposes. Therefore, the development in terms of the commencement certificate had to abide by this and other conditions imposed on the 3rd Respondent. Pertinently, it was stated that the school building plot would have to be handed over to the Municipal Corporation. It was proposed that the surrendered public amenity land would be leased to the 3rd Respondent at monthly rent. The 3rd Respondent wrote a letter dated 12th May 2011 to the 1st Respondent urging that as per the valuation made by the valuer the ideal monthly rent of the construction to be used as a school should be Rs.1,87,230/-. The 3rd Respondent also stated that all the terms and conditions imposed were agreed save and except with regard to the lease rent.

10. However, on 18th May 2011 the Municipal Corporation informed the 3rd Respondent that out of the total area of the plot, an area admeasuring 7,781.02 sq. mtrs has to be earmarked as an amenity open space. That was handed over to the Municipal

Corporation. In that area, the construction of a library, art gallery, and a welfare centre had been proposed by one Shri Pratap Sarnaik, a MLA. Since this plot falls within the urban area, the Development Control Regulations would apply and particularly DC Regulation 33 with Annexure IV(6). It was therefore stated that in the event this amenity space was handed over to the Municipal Corporation the development permission as sought by the developer would be granted.

11. The Petition alleges that on 19th May 2012 the 1st Respondent again wrote a letter and stated that the demand made by the 3rd Respondent for fixing the monthly rent at Rs. 1,87,230/- could not be accepted. Thereafter the 3rd Respondent said that it was reluctantly accepting that the monthly rent would be Rs. 2,75,000/-.

12. It is then stated that the 3rd Respondent was not issued the necessary approvals and permissions because of some complaints made by local representatives. We are not concerned with this, for the Petitioner himself in the further paragraphs says that the 3rd

Respondent had in fact executed an agreement on 30th June 2011 with the 1st Respondent Municipal Corporation. That agreement contained a stipulation that the 1st Respondent permitted the 3rd Respondent to construct, develop and operate the school on the plot of land that was earmarked on the open amenity space, and for this the 3rd Respondent would pay to the 1st Respondent an amount of Rs. 2,75,000/- as monthly rent.

13. The Petition alleges that the 1st Respondent's conduct is dubious in the sense that the Municipal Corporation's Commissioner was not available for certain duration. During his absence, the 4th Respondent was holding the temporary charge. This decision was taken in that interregnum, viz., while the 4th Respondent was holding temporary charge.

14. The allegation of the Petitioner is that the 1st Respondent has been virtually awarded and gifted a valuable plot of land reserved exclusively for amenity open space. This contravenes the mandate of Article 14 of the Constitution of India. All public properties and Government lands are to be dealt with by a process of public tender

and a public auction. Without such a tender or public auction being held, this property has been handed over to the 3rd Respondent and the agreement as also the acts in pursuance thereof are contrary to law and violative of the mandate of the Constitution of India. They also violate the mandate of the Maharashtra Municipal Corporations Act 1949.

15. When this Petition was filed in this Court on 11th March 2013 and was posted before a Division Bench, a request was made initially to amend the Petition to incorporate a challenge to the Resolution dated 9th February 2011 passed by the Municipal Corporation. Leave to amend was granted. The Petition was then placed before a Division Bench of this Court and a reply was sought from the Respondents. Time for filing a reply was granted.

16. On 18th March 2014, the Division Bench of this Court passed the following order:

“1. We have perused the affidavit-in-reply of Shri Satyawan Dashrath Dhanegave, the Assistant Town Planner of the first Respondent Corporation. The

annexures to the said reply show that the hearing had taken place before the State Government on 6th April 2013.

2. We direct the State Government to take appropriate decision in the matter as expeditiously as possible and in any event within a period of four weeks from today. The decision shall be communicated to all the concerned parties who were called for hearing.

3. Place this Petition for admission on 22nd April 2014 in the category of “Fresh Matters”.

17. After that order was passed on 22nd April 2014, it was reported to the Division Bench that the Government has not taken a decision, but that it would do so and communicate it to the parties. The Division Bench granted time of three weeks from 22nd April 2014 for this purpose. After that date, this Writ Petition appeared on 4th June 2014 but the decision was still not taken.

18. On 3rd July 2014, the Division Bench was informed that the necessary decision had been taken by the State Government. The decision taken was placed on record, and leave was granted to the Petitioner to challenge it by amending the Petition.

19. Thereafter the amended memo was served on the parties and time was sought by the Respondents to file a detailed reply to the amended memo.

20. On 15th February 2016, when the Petition was taken up again, it was stated that the Resolution dated 13th July 2015 passed by the 1st Respondent Municipal Corporation is a further event which should be noted. A subsequent development was an order passed on 20th January 2016 by the State Government in purported exercise of power under sub-section (1) of Section 451 of the Maharashtra Municipal Corporation Act 1949. The order of the Division Bench dated 15th February 2016 reads thus:

“1. We have heard the learned counsel appearing for the Petitioner, the learned counsel appearing for the first Respondent, the learned counsel appearing for the third Respondent and the learned AGP for the second Respondent State.

2. The Resolution dated 13th July 2015 passed by the first Respondent Municipal Corporation is tendered across the bar. The order dated 20th January 2016 passed by the State Government in purported exercise of powers under Sub-section (1) of the Section 451 of the Maharashtra

Municipal Corporation Act 1949 (for short ‘the said Act of 1949’) is tendered across the bar.

3. The learned counsel appearing for the Petitioner seeks leave to amend for the purposes of incorporating a challenge to the order dated 20th January 2016 and for the purposes of relying upon the Resolution dated 13th July 2015. In view of the subsequent events, we grant leave to amend. Amendments is permitted for incorporating the additional averments, grounds and additional prayers. Amendments is also permitted to annexe additional documents. Amendment to be carried out within a period of three weeks from today. Consequential amendments to be carried out even to the synopsis within a period of three weeks from today.

4. Place this Petition on 14th March 2016 in the category of “Fresh Matters”.

5. We have perused the order dated 20th January 2016. Prima facie, it appears to us that an order under Sub-section (1) of Section 451 of the said Act of 1949 cannot be for an indefinite duration. Sub-section (1) of Section 451 of the said of 1949 requires the State Government to specify the period for which the order is to operate. However, such period is not mentioned in the order dated 20th January 2016. In any case, the State Government will have to pass final order under Sub-section (3) of Section 451 of the said Act of 1949.

6. It will be open for the Petitioner to make an appropriate representation to the State Government as regards the said order under Sub-section (1) of Section 451 of the said Act of 1949. The order, if any, passed under

Sub-section (3) of Section 451 of the said Act of 1949 shall be placed on record on or before the next date. It will be open for the Respondents to file additional reply to the amended Petition.”

21. The Petition was then placed for admission on subsequent occasions. Finally, on 26th July 2017, a final order of the State Government was sought by this Court, and if that had not yet been passed, the Government was directed to do so. Pursuant to that direction, the final order has indeed been passed and a copy is placed before us. That final order is dated 4th July 2018.

22. We also have on record the Affidavits in Reply. The Assistant Town Planner of the 1st Respondent has stated that initially, after converting the land in question from industrial to residential zone, a development permission was granted on 25th July 2007 by designating/reserving 20% portion of the said land, that is 7161.11 sq. mtrs, as amenity space. Thereafter, certain other plots were amalgamated with original plots and accordingly revised plans were sanctioned in which the reserved amenity space increased to 7781.02 sq. mtrs. This reserved amenity open space was transferred to the Corporation by registered agreements dated 27th February

2009 and 5th June 2010. Now the name of the Municipal Corporation has been entered in the revenue record in respect of this reserved amenity space.

23. A school is an “amenity” within the definition of that term in the MRTP Act 1966. Therefore, on 15th July 2010, 50% portion of the said amenity space 3,890.51 sq. mtrs was designated as a school and the remaining 50% for a garden. This was done by the Municipal Corporation as per Rule 26 of the Development Control Regulations. The 3rd Respondent was directed to develop the same. Thereafter, a commencement certificate was issued for the construction of school building on the amenity open space on certain terms and conditions. Condition No. 32 made it mandatory to reserve 50% seats in this school for students recommended by the Municipal Corporation. Condition No. 33 stated that the decision of the Corporation regarding rent of the land would be final. Condition No. 35 said that a no objection certificate from the Education Department would be mandatory before starting the school. All these conditions make it amply clear that plot reserved for amenities

and handed over to the 1st Respondent Municipal Corporation was to be developed by the 3rd Respondent as provided by the Development Control Regulations.

24. It is then said that the empowering provision in so far as granting of this property on lease is concerned is to be found in Section 79(c) of the MMC Act. The rent was fixed, and accordingly the General Body resolutions were passed, and the benefit obtained for the Municipal Corporation, or, rather, the local residents.

25. It is in these circumstances, and specifically urging that the 3rd Respondent could not dictate and has not dictated any terms to the 1st Respondent Municipal Corporation, particularly any stipulation with regard to the monthly rent, that it is said that this action of the Municipal Corporation is transparent and does not violate and contravene the law. This affidavit on behalf of the 1st Respondent Corporation is dated 17th February 2014.

26. Prior thereto, there is an affidavit of the 3rd Respondent which says that this 3rd Respondent is the owner of the plot. It is

very clear that the 3rd Respondent and the 1st Respondent, Municipal Corporation entered into the agreement by which the 3rd Respondent accepted the position that an amenity open space can be reserved within the layout or plot and carved out for transfer and vesting in the Municipal Corporation. This amenity open space was directed to be used for a school and play ground. It is that which is put in place under the agreement. The whole process was transparent. It was not a unilateral act, but the General Body of the Municipal Corporation as also the State Government had ratified it. The State Government found that it could not have interfered with such a transaction in exercise of its powers under Section 451 of the Maharashtra Municipal Corporation Act, 1949 since the pre-requisite or precondition for exercise of that power has not been satisfied, in the sense that this transaction does not contravene public policy nor is it contrary to public interest. In fact, that public interest is sub-served because of the handing over and vesting of amenities like school and playground in the Municipal Corporation. In turn it is for operation and functioning that the agreement has

been executed and monthly rent to the tune of Rs. 2,75,000/- is also obtained along with other benefits by the Municipal Corporation.

27. It is on the above material that we have heard Mr Ganesh Sovani appearing for the Petitioner. In the backdrop of this, the argument of Mr Sovani is that the whole transaction and deal is one-sided, unilateral and contravenes the mandate of both the statutory provisions enacted in the Maharashtra Municipal Corporation Act, 1949 and Article 14 of the Constitution. It sets a very wrong precedent firstly because municipal property has been frittered away. Municipal property could not have been given away or wasted in this manner. This is nothing but a deal which benefits a developer. In this deal, the developer has obtained all the benefits whereas the Municipal Corporation has surrendered its statutory rights and abdicated its statutory duties under the Act. Besides that, when the Respondent No. 1 was to be represented by the Municipal Commissioner, in his absence a Deputy Municipal Commissioner has struck and finalized the deal, which now binds the Municipal

Corporation. Merely because the General Body has ratified it does not mean that in the writ jurisdiction we cannot interfere.

28. Our attention has been invited to Section 79(c) of the Maharashtra Municipal Corporation Act 1949 and to two Division Bench judgments delivered by this Court. Mr Sovani thus submits that there is no quarrel so far as the development of a public amenity space by means of a public-private partnership or proposal. However, that amenity open space of a school and a playground was to vest free of any encumbrances in the Municipal Corporation. After that transfer and vesting, the Municipal Corporation should not have allowed the 3rd Respondent-Developer to run the school. There may be others interested in running the school. They might have offered better terms including higher monthly rent. It is this surrender of public property and at a throwaway price which contravenes the mandate of Section 79(c) and Article 14 of the Constitution of India. Hence, Mr Sovani would submit that these judgments are apposite for our purpose.

29. Per contra Mr Sathe, learned Senior Advocate for the 3rd Respondent, would submit that there is no substance in any of these contentions. This is not a case that attracts Section 79(c) at all. This is a case where a private property belonging to the 3rd Respondent could have been developed only with a rider or a condition. Throughout, the Municipal Corporation was insisting on the property being developed as a school. Throughout, the Municipal Corporation has not given up this stand. Throughout, the 1st Respondent Municipal Corporation has demanded that the 3rd Respondent must construct the school. The 3rd Respondent abided by this condition as is apparent from the agreement executed between the parties. The 3rd Respondent accepted all the terms and conditions of the commencement certificate and accordingly developed the property as an amenity open space. In that development, the Corporation obtained for itself 50% of the area as a fully-developed school, and the balance 50% area as a public playground. All that has happened is that, for operational purposes, the 3rd Respondent was permitted to run the school. That is an arrangement which is carved out and which also does not grant any

absolute right. The property continues to be a municipal property. It is so shown in the land records. A limited interest for purposes of running the school and maintaining the premises and the playground has been created in favour of the 3rd Respondent. That is wholly bona fide and does not smack of any arbitrariness or mala fides. Once the 1st Respondent Municipal Corporation's acts have been found to be not fit for interference by the State Government on not one but two occasions, then this is all the more reason we should not interfere in writ jurisdiction, is his submission.

30. For appreciating these rival submissions, we must first notice Section 79 of the MMC Act. Section 79 falls in Chapter VIII, which is titled "Municipal Property". It firstly contains provisions relating to "Acquisition of Property", namely, Sections 76 to 78. The provision dealing with Disposal of Property is Section 79, and Section 79 reads thus:

"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 movable 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 1 [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: Providing 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 movable 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 immovable 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 immovable property belonging to the Corporation the value or premium whereof does not exceed fifty thousand rupees or the annual rent 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, movable or immovable, 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 the transfer except with the prior sanction of the appropriate Government.

(g) [notwithstanding anything contained in this section, the Commissioner may, with the sanction of the Corporation and with the approval of the State Government grant a lease, for a period not exceeding thirty years, of a land belonging to the Corporation. —

(i) Which is declared as a slum area under the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, to a co-operative society of eligible slum dwellers; or as the case may be, to the eligible slum dweller individually, at a premium to be decided by the State Government and subject to the prescribed terms and conditions; or

(ii) to person who are dishoused as a result of the implementation of any Development Scheme of the Corporation or to the Co-operative Housing Society formed exclusively by persons who are dishonoured as a result of the implementation of any Development Scheme of the Corporation; or

(iii) to any Department or undertaking of the Government of Maharashtra or of the Government of India, for the public purpose; or

(iv) to a public trust, society or company registered exclusively for medical and educational purposes, under the Maharashtra Public Trusts Act, or the Societies Registration Act, 1860, or the Maharashtra Co-operative Societies Act, 1960 or the Companies Act, 2013, as the case may be; or

(v) to a public trust registered under the Maharashtra Public Trusts Act, or a society registered under the Societies Registration Act, 1860, or the Maharashtra Cooperative Societies Act, 1960, or a company registered under the Companies Act, 2013, or any person, for the purposes of the provisions of public latrines, urinals and similar conveniences or construction of a plant for processing excrementitious or other filthy matters or garbage,

at such rent, which may be less than the market value of the premium, rent or other consideration, for the grant of such lease, and subject to such conditions as the Corporation may impose.

The approval of the State Government under this clause may be given either generally for any class of cases of such lands or specially in any particular case of such land:],

Provided that, where the Municipal Corporation has granted approval to the implementation of the Pradhan Mantri Awas Yojna of the Central Government on the land belonging to it, the Commissioner shall grant lease of such land to the eligible individual beneficiary in the manner, as may be notified by the State Government:

Provided further that, the Commissioner may in like manner renew, from time to time, the lease for such period and subject to such conditions as the Corporation may determine and impose.”

That this provision has been complied with is not disputed for there is a sanction of the 1st Respondent Municipal Corporation, and it is

with and pursuant to this sanction that the Municipal Commissioner executed the agreement in favour of the 3rd Respondent.

31. The argument of Mr Sovani is that even such disposal by the Municipal Corporation has to abide by the mandate of Article 14 of the Constitution of India. Reliance is placed on the judgment of the Supreme Court in the case of *Akhil Bhartiya Upbhokta Congress v State of Madhya Pradesh & Ors.*¹ In that case, the Supreme Court held there must be non-discrimination and non-arbitrariness in policy implementation and execution. Allotment of land, grants of quotas, permits, etc must be founded on a sound, transparent, discernible and well-defined policy. Allotment of land on applications made by individuals or bodies de hors an invitation or advertisement by the state is liable to be treated as arbitrary and discriminatory, and an act of favouritism violating the soul of the equality clause in Article 14.

32. The principles enshrined in the judgments of the Supreme Court preceding the decision in *Akhil Bhartiya Upbhokta Congress* as

1 (2011) 5 SCC 29 : AIR 2011 SC 1834.

also succeeding it are of course salutary. No public property can be disposed of without adherence to the mandate of Article 14 of the Constitution of India. The disposal has to be in a transparent, open, fair, just, non-arbitrary and non-discriminatory manner.

33. In the instant case what we have found from the annexures to the Petition itself and particularly with reference to the agreement dated 30th June 2011 is that negotiations took place with regard to the rent and to be paid from month to month. The offer of the 3rd Respondent was Rs. 1,87,230/-, whereas the Municipal Corporation relied upon valuation reports to contend that while the municipal valuer may have termed this figure to be fair, once the General Body passed a resolution which was intimated by 19th May 2011 communication, the monthly rent could not be less than Rs.2,75,000/-. The 3rd Respondent agreed to pay this significantly higher monthly rent. After all this, the representatives of the people questioned this whole deal by corresponding with the Government and the Municipal Corporation. Then there followed the agreement executed between the 1st Respondent Municipal Corporation and

the 3rd Respondent. We have carefully perused the terms of this agreement. The agreement itself in the recitals say that the 3rd Respondent is a private limited company. It is absolutely seized and possessed of or otherwise well and sufficiently entitled to the plot more particularly described therein admeasuring 7,781.02 sq. mtrs or thereabouts. It is stated that as per Development Control Regulations of the Corporation and a Notification of the Urban Development Department dated 19th June 2007 an area of 7,781.05 sq. mtrs is required to be surrendered by the party of the second part, namely, the 3rd Respondent, to the party of the first part, namely, the Municipal Corporation, for amenity purpose and that possession of the land admeasuring 7,781.05 sq. mtrs has actually been handed over to the Municipal Corporation. Now the Corporation is absolutely seized and possessed of otherwise well and sufficiently entitled to the amenity open plot. It is the Corporation's desire to develop this plot to the extent of 3,809.50 sq. mtrs as a school. The proposal for entrusting this property for development, operation and maintenance of the aforesaid amenity open space plot as school to a voluntary organization for better

upkeep and maintenance was under consideration. The 3rd Respondent made an application on 26th November 2009. That application was considered at all levels. It was also placed before the Corporation. It is the Corporation's decision under Section 79(c) vide resolution dated 1st February 2011 which enables the officer concerned to execute this agreement.

34. So seen, we do not think that this is a disposal of the municipal property in a unilateral, non-transparent manner. What we have found from this peculiar deal is that it was a private property earmarked in the layout plan for purpose of a school. That the school is an amenity is not disputed by the Petitioner. That the school now belongs and vests together with the land beneath it in the Municipal Corporation with an additional amenity as a public play ground is also not disputed by the Petitioner. That for operational and maintenance purposes that has been allowed to be operated by the 3rd Respondent and that too under an agreement is also not disputed. All that the Petitioner would submit is that this could have been a 'better' deal, in the sense the Municipal

Corporation might have obtained a higher price if the school was handed over to some other voluntary organization.

35. The fundamental flaw in the Petitioner's argument is the assumption that the public amenity land (for a school and a playground) was from inception municipal land. It was not. It was in private ownership. The 3rd Respondent did not ask to be allotted this land. It owned this land and it was under a reservation for public amenities. The 3rd Respondent could not develop its own land without ceding or handing over this public amenity land to the Municipal Corporation. The land was empty. A school had to be constructed and then operated.² The Petitioner assumes that this had been done and that all that remained was to lease it out at the best price. This is also incorrect. The entire amenity including the school with all facilities and the adjacent playground had to be properly developed by investment and deploying resources. The 3rd Respondent agreed to do all this, viz., to hand over the reserved land to the 1st Respondent Municipal Corporation (which was done), to

² This is materially different from the facts in *Akhil Bhartiya Upbhokta Congress* where the convenor of a trust requested that it be allotted some 30 acres of government-owned land.

construct the school and develop the playground, and asked to be allowed to operate it and, even for that, agreed to pay a negotiated monthly rent higher than the municipal valuer's assessment. What the Petitioner is in fact suggesting is that the 3rd Respondent should have been asked to give up or surrender the land under reservation, fully develop the same, and then the Municipal Corporation should have offered it to a third party.

36. To our mind, even if this agreement executed between the 1st Respondent and the 3rd is in force, in the event the 1st Respondent Municipal Corporation feels that the terms and conditions have to be altered or bettered or negotiated further, and if a higher price can still be obtained, nothing has prevented it nor can anything prevent it in law from re-negotiating the terms including the monthly rent. If the rent that the Municipal Corporation then demands is not acceptable to the 3rd Respondent, the Municipal Corporation can always terminate the deal with the 3rd Respondent and offer the amenity to be operated by any member of the public. Mr Sovani does not say that this course is not open any longer to the Municipal

Corporation or that all options of the Municipal Corporation are foreclosed. We do not think that the mandate of Section 79(c) is in any way breached or violated if the transaction and deal is viewed in this manner. The Municipal Corporation has not lost the plot or its right in the plot meaning thereby the land beneath. It has also not lost the school. The amenity belongs to and vests in the 1st Respondent Municipal Corporation for the benefit of the public. The 1st Respondent Municipal Corporation has also not lost the playground. It is available for the public. All that has happened is an agreement with the 3rd Respondent for operating and maintaining the school and the playground. If that is a deal which was not palatable or acceptable, the Petitioner could have still pointed out to the Municipal Corporation that it must re-visit or revise its concluded deal with the 3rd Respondent and re-negotiate the price. It was open to the Petitioner as a vigilant Citizen or Resident of Mira Bhayandar to bring before the Commissioner a better and beneficial deal. He could have obtained a Valuation Report at his cost, which values the Monthly Rent and pegs it to Rs. 3,00,000/- or much more per month. He did nothing of this kind. In the whole

petition we do not find a single averment to this effect. We also do not find a rejoinder affidavit which would controvert the assertions in the affidavits of the 3rd Respondent and particularly the additional affidavit of the 3rd Respondent.

37. In the additional affidavit which deals with the amended petition, it is stated that the deal is such that not only has the ground rent being fixed at Rs. 2,75,000/- per month but there is a General Body resolution of the Municipal Corporation which says that there would be a 10% increase in the rent every five years and after a period of 30 years, a new proposal for increase would be submitted. The rent payable was fixed at a reasonable price and it is not contended that it is below the market value. Therefore, there is no question of a financial loss. To our mind, nothing prevented the Petitioner from controverting these assertions of the 1st Respondent Municipal Corporation as also the 3rd Respondent.

38. The 1st Respondent Municipal Corporation also says that such a proposal, which was negotiated and ultimately agreed upon,

does not amount to surrender or sacrificing the interest of the public or of the Municipal Corporation.

39. The writ petition may have been amended but in the amended memo of the Petition also we do not find that the Petitioner has made any study much less any research before asserting that all the acts of the Municipal Corporation are contravening the provisions of the MMC Act and the mandate of Article 14 of the Constitution of India. The assertions and grounds in the amended memo also do not demonstrate that the Petitioner obtained for himself any information with regard to similar deals or such projects which are implemented by other Municipal Corporations adjoining the Mira Bhayandar, particularly in the Thane District. Merely saying that there is a financial loss to the Corporation which might not have happened if Respondent No. 1 had called for tenders after acquiring the excess land from the 3rd Respondent is not enough. It is a statement that is purely conjectural and speculative. To our mind, therefore, there is no substance in any of the contentions of the Petitioner.

40. In the decision relied upon by Mr Sovani in *Vijay Krishna Kumbhar v Collector, Pune & Ors*,³ we find that the Petition was filed by a petitioner claiming to be a co-owner for a direction to the Pune Municipal Corporation to cancel an allegedly sham and bogus lease executed by it in favour of the 6th respondent and to then issue tenders by calling competitive bids from all interested persons for granting a lease for a sports complex. The case of the petitioner has been summarized in the subsequent paragraphs up to paragraph 11. Thereafter the stand of the Municipal Corporation was noted. This Court found that it was incumbent upon the respondent to call for tenders simply because it failed to demonstrate that the deal benefited the public. The Municipal Corporation was unable to satisfy this Court that its deal was for land belonging to it. It was found that the land belonged to the Government, which handed over the land to the respondent-Corporation for the purposes of developing a garden. Once it belonged to the Government, and was not transferred to the Municipal Corporation, and it was also stated that the Municipal Corporation has no authority to itself construct

3 2004 (2) ALL MR 31.

on the land, then the construction itself was contrary to law. The Municipal Corporation was asked to show cause as to how such a construction was ever allowed. Apart from that, the construction of a sports complex was sought to be dealt with by the Municipal Corporation contrary to the mandate of the Act and Article 14 of the Constitution. Thus, on facts it was found that the mandate of the above was breached and violated. We do not think that this decision has any application to the facts before us.

41. In the second decision cited by Mr Sovani, *Sonalaxmi Macchimar Sahakari Society Ltd v State of Maharashtra & Ors*,⁴ public contracts were to be executed only by the mode prescribed by law. Section 79(c) of the MMC Act and Articles 298 and 299 of the Constitution require a contract by a statutory body or the Government to be in a particular format and in the prescribed manner. A public body is required to give contracts by way of advertisements or by way of inviting tenders. There is only one exception to it. In the case before the Division Bench it was found that the cooperative society was given a contract of boating in

4 2010 (6) All MR 106.

Masunda Lake situate in the heart of Thane. When the lease was about to expire and during the existence of that lease, the Municipal Corporation executed an agreement of fishing, cleaning and boating with the 6th respondent for a period of 25 years. The petitioner prayed that there was already in existence a lease with it and this further lease, therefore, was not in accordance with law. That is why the Court was requested to direct the Corporation to invite tenders. It is in this factual background the Court came to the conclusion that the 6th respondent was continuing with the contract and that should be allowed to be operated, but the interests of justice as also the Constitutional and the legal mandate demanded that the Municipal Corporation should execute such agreements only after it had invited bids and offers from the public. It was once again clearly a violation of the Constitutional mandate.

42. We do not think that there is any quarrel with this principle. All that is required to be considered is whether this mandate and the principle would apply to the facts and circumstances of a particular transaction and case before us. We do not believe it can or will, for

the reasons we have already set out in detail. Once the principle is applied in this manner, then we do not think that even this decision will carry the case of the Petitioner any further.

43. On the question of Section 79 of the MMC Act, and disposal of land, Mr Sathe invites our attention to the decision of the Supreme Court in *Lokprakashan Ltd v Kanchanbhai Kanbhai Tadvani & Ors.*⁵ There, land was sold at a price found to be reasonable and not below market price. Payment was made in compliance with Section 79 of the Bombay Provincial Municipal Corporations Act, 1949 as applicable to the State of Gujarat. The sale procedure was found to be fully compliant. The Supreme Court therefore held that the sale was not in violation of any rules or regulations. The principle enunciated is that it is not every disposal of land under Section 79 that is axiomatically or ipso facto suspect or per se violative of the mandate of Article 14. Something more must be shown, and an otherwise valid transaction disposing of government land, when shown to be in conformity with the statute, cannot be set

5 (2009) 9 SCC 43.

aside on mere speculation, surmise or conjecture of what might have been.

44. As a result of the above discussion, this writ petition fails. Rule is discharged. There will be no order as to costs.

(S. C. DHARMADHIKARI, J.)

(G.S. PATEL, J.)