

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10681 OF 2016

Mr. Sagar Ramkrishna Patil and Anr. ...Petitioners

vs.

Mr. Prashant Madhusudan Naik and Ors. ...Respondents

WITH CONNECTED CIVIL APPLICATIONS

Mr. Nitin P. Deshpande for the Petitioner.

Mr. C. G. Gavnekar a/w Mr. G. S. Hiranandani for Respondent No.19.

Mr. A. P. Vanarse, AGP for the Respondent No.20.

**CORAM : B. P. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.**

DATE : 19/09/2019.

PC.:

. Heard for some time. Allotment of a plot of land vested in Municipal Council to an establishment viz., Shreebaug Co-operative Madhyavarti Ghauk Grahak Mandal Maryadi, Alibaug was questioned under section 308 of Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965 before the Collector, Raigad. The said proceedings on 30/11/2015 have been decided after obtaining reply of Municipal Council and others who were parties. The judgment is dated 22/7/2016. While rejecting the application the Collector has found that the advertisement of tender was published in two newspapers and consequential Resolution Nos.620 and 621 passed by Municipal Council on 1/6/2015 are legal.

2. Contention before this Court is allottee Co-operative Society

has been given land for commercial exploitation and no construction can be permitted upon it. It is further submitted that in copies of newspaper filed before the Collector by the petitioners the advertisement did not appear. Had there been proper publication of advertisement the Municipal Council would have been benefited.

3. Learned AGP for Respondent No.20-the Collector and learned counsel for Respondent No. 19-the Chief Officer of Municipal Council are opposing the petition. They rely upon impugned judgment. Impugned judgment shows that as per records of the Municipal Council the documents produced by it, in issue of newspaper dated 23/5/2015, said advertisement was published. It was at page 16 of DainikKrishival and at page 5 of DainikKarnala. The Collector has found that in copy of newspaper DainikKrishival produced by the petitioner pages 1, 2, 3, 4, 9, 10, 11 and 12 were available. Similarly, in copy of very same newspaper filed by other side pages 5, 13, 14, 15, 16 were also available. In other words, it appear that the petitioners did not supply complete newspaper to the office of the Collector.

4. In this situation, finding of the Collector that advertisement has been published cannot be said to be erroneous or perverse. Provision of section 92 permit Municipal Council to dispose of the property. It is not in dispute before us that the said provision has not been violated by publishing tender notice. Later on allotment in favour of Shreebaug Co-operative Madhyavarti Ghauk Grahak Mandal Maryadi has not been placed on record either before the Collector or before us. The said Society was not party before the Collector and is not impleaded even before us. The provision of section 92 are clear and after allotting, if the society has raised any structure in contravention thereof, it would not render resolution passed by Municipal Council illegal and action for violation of terms and

conditions of allotment can be independently taken against said Co-operative Society.

5. Allotment initially is only for three years and that period has already expired. Petitioners make a statement that the allotment has been renewed.

6. Again terms and conditions of initial allotment or renewal thereof are not before us. We have also to add that in absence of allottee Co-operative Society, we cannot make any observations to its prejudice in the present matter.

7. In this situation, without observing anything on merits and with liberty to the petitioners to take such other steps as are open in law, we dispose of the petition. No costs. Pending applications are also disposed of.

(SANDEEP K. SHINDE, J.)

(B. P. DHARMADHIKARI, J.)