IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6194 OF 2021

Al Fatah Global Foods Through
Its Partner Ayaz Shaikh Amir
Maqbool Shaikh .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri N. E. Deshmukh, Advocate for the Petitioner.
Shri P. K. Lakhotiya, A.G.P. for Respondent Nos. 1 and 2.
Shri V. S. Bedre, Advocate for the Respondent No. 3.

WITH
WRIT PETITION NO. 6739 OF 2021

Al Fatah Global Foods Through
Its Partner Ayaz Shaikh Amir
Maqbool Shaikh .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri S. B. Talekar, Advocate i/by Talekar and Associates,
Advocate for the Petitioner.
Shri P. K. Lakhotiya, A.G.P. for Respondent Nos. 1 to 3.
Shri V. S. Bedre, Advocate for the Respondent No. 4.

CORAM : S. V. GANGAPURWALA AND
R. N. LADDHA, JJ.

CLOSED FOR ORDERS ON : 07.09.2021

ORDER PRONOUNCED ON : 29.10.2021.

<u>FINAL ORDER</u> (*Per S. V. Gangapurwala, J.*) :-

. The petitioner and respondents in both these writ petitions are same except respondent No. 2 in Writ Petition No. 6739 of 2021. In Writ Petition No. 6739 of 2021, the respondent No. 2 is the Director, Directorate of Municipal Administration. In Writ Petition No. 6194 of 2021, the petitioner is seeking directions against the respondents to continue the perpetual lease in favour of the petitioner for a duration of thirty years atleast, from the initial date of agreement made in the year 2014. The petitioner further seeks directions to issue the perpetual lease in favour of the petitioner, atleast for a duration of thirty years and also seeks directions to set aside the decision of the respondent No. 3 to scrap the further perpetual lease of the petitioner.

2. In Writ Petition No. 6739 of 2021, the petitioner challenges the order dated 01.01.2019 passed by the District Collector, Ahmednagar U/Sec. 308 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short "Act of 1965") and resolution No. 89 dated 06.11.2020 passed by the Municipal Council, Sangamner refusing to renew the lease of the petitioner and thereby cancelling the agreement. The petitioner also challenges the notice dated 06.01.2021 issued by the Chief Officer, Municipal Council, Sangamner directing the petitioner to pay the amount of Rs. 62,43,693/- and the legal notice dated 29.01.2021 informing the petitioner regarding termination of the lease agreement and directing the petitioner to vacate the premises of the Municipal Council. The petitioner

further assails the tender notice dated 20.05.2021 issued by the Municipal Council for leasing out the slaughterhouse. The petitioner also seeks directions against the respondent No. 1 to accord approval to the proposal dated 03.07.2018 for granting lease for a period of thirty years of the slaughterhouse constructed by the Municipal Council. It also seeks directions against the respondent No. 1 to decide the proposal dated 03.07.2018 submitted to it through the District Collector, Ahmednagar.

3. In Writ Petition No. 6194 of 2021, notices were issued after hearing the petitioner on 20th April, 2021 and the returnable date was 27th April, 2021. On 30th April, 2021 a request was made for an adjournment on behalf of the petitioner and the matter was adjourned to 10th June, 2021. On 11.06.2021, Writ Petition No. 6739 of 2021 is filed by the petitioner. Some of the reliefs in both the petitions overlap.

4. On 18.06.2021, the learned advocate for the petitioner made a request that, the earlier writ petition bearing No. 6194 of 2021 filed by the petitioner be allowed to be substituted by the Writ Petition No. 6739 of 2021.

5. In normal course, the petitioner ought to have first withdrawn the Writ Petition No. 6194 of 2021 before filing Writ Petition No. 6739 of 2021 and/or ought to have sought leave of the Court before filing Writ Petition No. 6739 of 2021.

6. Be that as it may, we have heard both the writ petitions on merits.

7. The respondent/Municipal Council had issued E-tender notice for letting out its slaughterhouse initially for a period of three years with a rider that, if, a bidder quoted for a longer period, the same shall be considered as per the Government rules. In the said E-tender process, the petitioner was declared as highest bidder. The bid of the petitioner was accepted. The petitioner paid premium of Rs. 88,01,000/- as non refundable premium on 01st November, 2014. On or about 28.11.2017, the respondent/Municipal Council resolved to grant an extension for further period of three years. On or about 03rd July, 2018, the respondent/Municipal Council forwarded the proposal for grant of lease for a period of thirty years to the Government. On 20.10.2018, the Municipal Council executed a registered lease deed in favour of the petitioner for further period of three years with effect from 01.11.2017. On or about 14th March, 2020, the Municipal Council sealed the slaughterhouse for non payment of outstanding dues. On or about 06.11.2020, the Municipal Council resolved to terminate the contract of the petitioner and rejected the proposal for grant of further renewal of the lease. It further resolved to issue fresh tender for grant of lease of slaughterhouse.

8. On or about 06.01.2021, the Chief Officer of the Municipal Council, Sangamner issued a notice informing the petitioner that the Council has rejected the application for renewal of lease and

called upon the petitioner to pay the outstanding amount of Rs. 62,43,692/-. The petitioner on 10.01.2021 requested to withdraw the notice and submitted that, it has complied with all the discrepancies pointed to it earlier. On 29.01.2021, the Municipal Council issued a legal notice informing the petitioner that, it's agreement has been terminated and called upon the petitioner to vacate the premises. On 15.02.2021, the petitioner replied the legal notice and requested to de-seal the premises and withdraw the legal notice. On or about 29.03.2021, E-tender notice was issued. The said tender notice was subsequently withdrawn and statement was also made in Writ Petition No. 6193 of 2021 that said tender notice shall be withdrawn. Subsequently on 20.05.2021, the respondent/municipal council has issued a fresh tender notice for lease of the slaughterhouse initially for a period of three years extendable to a longer period.

9. Mr. Talekar, the learned advocate for the petitioner strenuously contends that, the petitioner upon declared as successful bidder and tender having allotted to it paid non refundable premium of Rs. 88,01,000/-, even before executing agreement with the council. It is common knowledge that such a huge amount towards non refundable premium is paid for the lease of a longer period. The learned counsel submits that, though the agreement was executed and the possession was given to the petitioner, immediately, the petitioner could not commence the operation of the slaughterhouse for want of major repairs and renovation work including installation of Effluent Treatment Plant (E.T.P.) of higher capacity. The learned

counsel further submits that, though the registered lease deed was executed for three years from 01.11.2014 to 31.10.2017, the rider was that Municipal Council would submit the proposal for lease upto 30 years to the Government. The petitioner was required to spend huge amount for renovation, repairs and replacement of E.T.P. of higher capacity. Though the slaughterhouse was not operational, the petitioner went on paying rent regularly. After the term of lease expired on 31.10.2017, the Municipal Council resolved to renew the lease for further period of three years with 25% increase in the rent as per the Standing Order No. 24 of the Municipal Council. The Municipal Council, once again resolved to send the proposal for grant of lease for a period of thirty years to the Government as per Section 92 of the Act of 1965. The Municipal Council filed the final proposal for grant of lease for a period of thirty years as per resolution of the general body dated 31.05.2014 and subsequent resolution dated 28.11.2017. However, the Municipal Council forwarded the decision of the Council contained in Resolution No. 451 for renewal to the office of the District Collector as per Government notification dated 25.03.2011, which mandates to obtain prior approval of the Collector before renewing the lease by the Council. The Collector granted approval to the renewal of the lease for further period of three years on 08.03.2018. Accordingly, a registered lease agreement came to be executed between the parties for further period of three years i. e. from 01.11.2017 to 31.10.2020 under registered lease agreement dated 20.10.2018. The council forwarded the proposal for grant of lease of thirty years to the petitioner for further transmitting the same to the State Government on 03.07.2018. The State of Maharashtra failed to take any decision on the proposal submitted by the Municipal Council, through Collector for grant of lease for a period of 30 years.

10. Writ Petition No. 4217 of 2018 was filed by one M/s Al Jilaan Continental Foods Through its Partner Khan Haseeb Umar challenging notification dated 28.11.2017 for submitting proposal for grant of lease for a period of thirty years to the petitioner. This Court disposed of the writ petition on the ground of alternate remedy U/Sec. 308 of the Act of 1965 and directed the Collector to look into the aspect of resolution dated 31.05.2014 and take decision on the objection filed by the petitioner therein. The Collector considered the representation of the Municipal Council and observed that, there is no infirmity in passing the resolution, the objection of the objection petitioner was rejected and held that, the decision of the Municipal Council to renew the lease period was in consonance with the order No. 42 in the standing order dated 28.10.2004. The Collector, however, suspended the execution of the Resolution No. 451 dated 28.11.2017 to the extent of submitting the proposal to the Government for grant of lease for a period of 30 years. The Collector further held that, the Municipal Council should have invited fresh tenders to grant lease for such a longer period.

11. Mr. Talekar, the learned advocate further submits that, the order of the Collector is without jurisdiction. Under the unamended Section 308 of the Act of 1965, the Collector has wide

power to suspend the execution or prohibit the execution of any order or resolution of a Council, if the resolution is causing or is likely to cause injury or annoyance to the public or was against the public interest. However, amendment brought into force from 25.01.2018 curtailed the scope of powers of the Collector. Under amended Clause (1) of Section 308 of the Act of 1965, the Collector is empowered to suspend the execution of a resolution only on the ground that, the resolution passed by the Municipal Council or any Committee is contrary to the provisions of the Act or any other law or rules, bye-laws or with the Government directions and the proposal for suspension of the execution of the resolution of the Council is submitted by the Chief Officer of the Municipal Council within a period of three days from the date of receipt of said resolution. The requirement of submission of proposal for suspension of the resolution through Chief Officer of the Municipal Council is *sine qua non* or a prerequisite. The powers of suspension exercised by the Collector either suo-motu or on a complaint filed by a third party, which existed under the unamended Section 308 of the Act of 1965 are now expressly taken away by the amending Act of 2018. The learned counsel to substantiate his submissions relies upon the judgment of this Court in a case of **K. I. P. L. Vistacore Infra Projects J.V. Vs. Ichalkaranjee Municipal Council** reported in ***2020 SCC Online Bom 1901***.

12. The learned counsel further submits that, the powers to decide the proposal for suspension of resolution passed by the Municipal Council after a period of 30 days vests with the Director. The complaint was lodged with the Collector on

29.10.2018. The Collector should have decided the proposal within a period of 30 days i. e. till 28.11.2018. The Collector decided the same only on 01.01.2019 i. e. after statutory period. The order as such on the said count is also without jurisdiction. According to the learned counsel, the respondents cannot take stand that, this Court directed the Collector to decide under order dated 15.10.2018 in Writ Petition No. 4217 of 2018. The direction of the Court would not confer jurisdiction upon the authority, which it otherwise does not possess. Reliance is placed on the judgment of the Apex Court in a case of **Kalabharati Advertising Vs. Hemant Vimalnath Narichania and others** reported in ***(2010) 9 SCC 437***.

13. The learned counsel further submits that, the order dated 01.01.2019 is also not in conformity with Section 308 of the Act of 1965. The amended clause (1) of Section 308 provides that the Chief Officer should have submitted the proposal within a period of 3 days from the date of receipt of the resolution. However, the complaint was filed by the complainant after a period of more than three days from the passing of the resolution by the Council. In a case of **K. I. P. L. Vistacore Infra Projects Jv. Vs. Ichalkaranjee Municipal Council** (*supra*) it is held that, the period of three days is not directory, but mandatory. The learned counsel submits that, if a statute provides to do a particular thing in a particular manner, the same ought to be done in that manner only. Reliance is placed on the judgment of the Apex Court in a case of **Opto Circuit India Ltd. Vs. Axis Bank and others** reported ***2021 SCC Online SC 55***. The resolution No. 44 of 2015 was the first

resolution passed by the Municipal Council for granting lease to the petitioner for a period of 30 years. The resolution No. 451 of 2017 passed by the General Body of the Municipal Council was required to be read with the earlier resolution dated 31.05.2014. The resolution of the municipal council as well as the agreement executed between parties is in conformity with direction No. 24 of standing order as well as provisions of the Maharashtra Municipalities (Transfer of Immovable Property) Rules, 1983.

14. Section 308 of the Act of 1965 provides checks and balances to the orders passed by the Collector. Clause 4 of Section 308 of the Act of 1965 mandates that the Director may within a period of six months from receipt of such reports or within such period as may on the request of the Director be extended by the State Government, rescind the order or may revise or modify or confirm the order. More than two years have lapsed from the date of the order passed by the Collector dated 01.01.2019. However, the respondent No. 2/Director has not confirmed the passed by the Collector. The order dated 01.01.2019 has lost its efficacy.

15. The learned counsel further submits that, the petitioner was not able to operate the slaughterhouse for the reasons beyond its control, inter alia, the pandemic situation posed by COVID – 19 and as such an amount of Rs. 68,01,950/- became outstanding as on 31.03.2020. The details are given as under :

Sr. No.	Period	Rent towards	Amount	Reason for due
1	November 2014 to October 2017	ETP rent	Rs. 8,64,000/- @ Rs. 24,00/- per month	The plant had not yet commenced operation since the ETP plant was under expansion.
2	November 2017 to March 2014	ETP rent	Rs. 6,96,000/- @ Rs. 24,000/- per month	The petitioner had undertaken to pay the same. The petitioner had made the payment subsequently, the details of which are given hereunder.
3	-	ETP deposit	27,74,000/-	This deposit was to be given as against the 30 years lease period. Since the Municipal Council had not yet granted a 30 years lease to the petitioner, the amount of payment of the said amount did not arise.
4	April, 2019 to March 2020	Slaughter house rent	23,54,100/-	Could not pay due to operational difficulties.

16. The municipal council arbitrarily sealed the slaughterhouse premises on 14.03.2020 and took over the possession. The petitioner made a request to levy the rent towards ETP from November 2017 instead of November 2014 and further requested to waive off the rent towards the slaughterhouse during the period which it was not in operation. But to no avail. The Government of Maharashtra took policy decision not to terminate lease deeds and on the contrary granted time to pay the rent during pandemic. However, the Collector did not consider the fact that the slaughterhouse was closed due to restrictions imposed by the Government under the

Epidemics Act as well as the Disaster Management Act. The petitioner upon demands by the Collector gave representations to the Municipal Council and undertook to pay the outstanding amount within a span of few days. The petitioner requested to remove the seal of the slaughterhouse and handover the possession to it so that it can commence its operation and make up the losses incurred. The same was also not considered. The petitioner subsequently paid an amount of Rs. 35,00,000/- in three installments to the Municipal Council with an assurance that the Municipal Council shall renew the lease period for 30 years. The same communication is given on 14.09.2020. The petitioner, though had made payment of outstanding dues, the Municipal Council, once again issued letter to the petitioner directing the petitioner to resolve internal disputes between the partners and further make payment of outstanding dues. The partners of the petitioner firm personally met the Chief Officer and requested to renew the lease agreement and hand over the premises. The Municipal Council rejected the proposal for renewal of the lease agreement of the petitioner firm and resolved to terminate the lease agreement in its meeting dated 06.11.2020. The Chief Officer further called upon the petitioner to pay outstanding amount of Rs. 62,43,693/- payable by October 2020 within a period of 15 days. The petitioner already made payment of outstanding dues except an amount of Rs. 5,27,950/-.

17. The learned counsel for the petitioner further submits that, the resolution dated 28.11.2017 states that until the State Government accords an approval for execution of lease for a

period of 30 years, the Municipal Council was under an obligation to execute an agreement for lease for a period of three years till then. Clause 60 of the lease agreement stipulates that, once the Government accords approval, the lease shall be required to be registered after payment of the requisite stamp fees by excluding the present 3 years. Clause 55 of the agreement stipulates that, lessee shall abide by all such conditions to be put by the Government for the purpose of grant of long term lease. The petitioner complied with all the terms and conditions of the lease. The whole thrust of the dealings between the petitioner and the Municipal Council was to award the lease for a longer period, whereas the agreement was executed for a period of 3 years only as a stop gap arrangement. Unless, the Government refuses to accord an approval for grant of lease for 30 years, the Municipal Council could not have terminated the lease. The Municipal Council failed to afford an opportunity of hearing to the petitioner. The learned counsel further submits that, the municipal council could not have directed the petitioner to vacate the premises. The provisions of the Maharashtra Government Premises Eviction Act, 1955 have been made applicable to the municipal areas by virtue of Section 100-A of the Act. Even clause 9 of the lease agreement stipulates that the provisions of the Maharashtra Government Premises Eviction Act, 1955 (for short “Act of 1955”) would be applicable. Sub Section (2) of Section 11 of the Act of 1955 mandates that, before passing any order for eviction, it shall be mandatory for the authority to issue a show cause notice. Sub Section (6) of Section 11 of the Act of 1955 further stipulates that, once the person to whom show cause notice is issued complies with the defects pointed out therein, the eviction order shall be withdrawn forthwith.

18. Mr. Talekar, the learned counsel further submits that, the petitioner on assurance given by the Municipal Council made an investment of more than Rs. 14 crores in the slaughterhouse. The petitioner constructed boundary walls to the slaughterhouse, undertook several repairs and construction over a period of two years and nine months so as to make the premises operational. Moreover, ETP of higher capacity was required to be replaced to meet the parameters set by the Maharashtra Pollution Control Board (MPCB). The petitioner paid rent for the said period despite the fact that the slaughterhouse was not in operation. The petitioner made such huge investment by raising amounts from various sources including loans. The petitioner has acted upon the express assurance of the respondent/Municipal Council for long term lease and made huge investment and incurred huge debts. The petitioner has legitimate expectation that its lease is continued till the Government accords an approval, but at the same time, the respondent/municipal council is estopped from calling new tenders and appointing someone else to operate the slaughterhouse. The lapses are on the part of the municipal council in not forwarding the proposal to the Government for lease of 30 years and for the same the petitioner cannot be held liable. The impugned resolution of the municipal council of terminating the agreement is arbitrary, discriminatory, unjust and violative of the principles of promissory estoppel and

legitimate expectation. The learned counsel relies on the judgment of the Apex Court in a case of **Bannari Amman Sugars Ltd. Vs. Commercial Tax Officers and others** reported in ***(2005) 1 SCC 625***.

19. The learned counsel submits that, inviting fresh tender by the municipal council is affecting the rights of the petitioner. The Collector, Ahmednagar knew that earlier proposal for grant of long term lease in favour of the petitioner is pending before the Government has now forwarded the proposal for grant of long lease for new tenderer. The fresh tender issued by the Municipal Council is initially for a period of three years, however, extendable for a longer period. Unless the Government takes decision on the earlier proposal for grant of long lease, the question to pass fresh resolution by the Municipal Council and thereby terminating earlier agreement and issuing fresh tender does not arise.

20. The learned counsel further submits that, the petitioner had submitted an application for extension of ETP to the President as well as Licensing Officer of the Municipal Council on 04.10.2016. The slaughtering capacity of original ETP was 100 animals per day and same would not have been a feasible proposition. So the permission was sought to enhance the slaughtering capacity. The council after appreciating the gestures shown by the petitioner to bear the incurred expenses of ETP plant, of higher capacity i. e. slaughtering capacity of 600 animals per day, granted the permission to enhance the slaughtering capacity. The petitioner had to dismantle the

existing ETP and install new ETP of higher slaughtering capacity and incur expenses of Rs 12.5 crores.

21. The learned counsel further submits that, it would be in the best interest of all the parties including municipal council that the petitioner is allotted the slaughterhouse for a period of 30 years.

22. Mr. Bedre, the learned advocate for the respondent/Municipal council submits that, the respondent municipal council had filed the reply in Writ Petition No. 6194 of 2021 also. The petitioner did not challenge the order passed by the Collector on 01.01.2019 for more than two years. No explanation is given for not challenging the order of the Collector earlier. The disputed questions of fact are involved in these matters, as such this Court may not exercise the jurisdiction under Article 226 of the Constitution of India. It is not correct to say that the petitioner could not commence the operation for want of repairs. The respondent denies that the petitioner has incurred expenditure of Rs. 12.5 crores for repairs and renovation. Vague allegations are made by the petitioner without any proof of it. After the decision of the Collector on 08.03.2018, the petitioner executed agreement in favour of the municipal council on 19.10.2018 for a period of three years. The petitioner has not challenged the order of Collector permitting lease for three years and had executed agreement for three years without raising an objection. The learned counsel submits that, serious dispute exists amongst the partners of the petitioner firm

and the partners of the firm are making complaints with the municipal council on various grounds. One Javed Fateh Mohammad Chaudhari is partner of the petitioner firm. He had made a complaint to the municipal council that he is only entitled to sign the documents and Mr. Ayyaj Amir Shaikh another partner of the petitioner has no power to represent before the municipal council. He also filed a complaint that said Ayyaj Amir Shaikh has misused the signature over terms of agreement and has shown his ownership over the firm. He has further stated that, his share is 50% and NRI Ayyaj @ Amir Ahmmad Shaikh is 40% and others 10% and that same complainant Mr. Chaudhari is also the managing partner and the order passed by the Arbitral Tribunal confirms the same. He has also filed various complaints. He also further represented that slaughterhouse should not commence. The learned counsel submits that, the petitioner also committed breach of the agreement. It failed to pay the rent. The petitioner was called upon by the municipal council to pay the rent and premium. But the same was not paid. Various notices are issued. The petitioner did not comply with the same. As per the tender agreement, Clause No. 9 of agreement, on 14.03.2021, the slaughterhouse was sealed. The petitioner is not entitled for repayment or concession in the rebate as well as in the premium amount as per Clause 45 of the agreement. The learned counsel submits that, one M/s Al Quresh Export has informed the municipal council that partners of the petitioner firm have sub-let the property in favour of M/s Al Momin Exports, though there was a memoramdum of understanding between the petitioner and M/s Al Quresh. On 24.10.2020, Al Quresh had issued legal notice to the petitioner in respect of loss caused to M/s Al Quresh. M/s Al Quresh also requested not to release machineries installed in the slaughterhouse as M/s Al Quresh had filed regular suit bearing R.C.S. No. 78 of 2020 before the Civil Judge Senior Division Sangamner for recovery of the amount and injunction against the petitioner. According to the learned counsel no error has been committed in going for fresh tender and putting seal on the slaughterhouse, as the petitioner is guilty of non compliance.

23 We have considered the submissions canvased by the learned counsel for the parties.

24. The E-tender notice issued in the year 2014 pursuant to which the petitioner was successful bidder provided the terms of lease period for three year. It further had a rider if more period is claimed by the tenderer, then the process as per the rules would be adopted. The agreement executed between petitioner and the respondent/municipal counsil suggest that, till the approval is received from the Government, lease would be for a period of three years. The slaughterhouse is a ground plus one floor. Clause 1 of the agreement states that as per Section 92(3) of the Act of 1965, the lease is for a period of three years. The lessee is not entitled to sublet.

25. In the subsequent lease agreement dated 13.10.2018, 25% increase was agreed between the parties and said lease

agreement was for a period of three years from 01.11.2017.

26. It is a matter of fact that, the Government has not approved any proposal. The resolution passed by the municipal council bearing No. 451 is not approved in toto by the Collector. The question would be extent of interference of this Court in the lease agreement between the petitioner and the municipal council.

27. It is a fact that, the municipal council is not empowered to lease out the immovable property beyond nine years. Reference can be had to Section 92 of the Act of 1965.

28. The tender in question was in the nature of contingent contract. In fact, the agreement is executed between the parties for three years and is dependent upon the Government granting approval for a longer lease. In the present case, the matter never reached the Government. In fact, though the resolution was passed by the Municipal Council in the year 2014 and subsequently, also for long lease the Collector allowed the further renewal of agreement for three years only and as such agreement of lease pursuant to the tender entered into in the year 2014 i. e. on or about 01.11.2014 was renewed for further three years with effect from 01.11.2017 to 31.10.2020 and a registered lease agreement also came to be executed pursuant to the order of Collector dated 08.03.2018. The period under renewal of lease has also lapsed.

29. Section 92 of the Act of 1965 refrains the Municipal Council from transferring any of its immovable property without the sanction of the Government. Sub Section 3 of Section 92 of the Act of 1965 provides that notwithstanding anything contained in Sub Section 1 of Section 92 of the Act of 1965 a council may lease its immovable property for a period not exceeding three years and the leasee shall not be allowed to make any permanent construction 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 Section 92 of the Act of 1965 provides that, the proposal for such transfer as contemplated under Sub Section 1 shall be accompanied by the resolution of the council by the majority of not less than 2/3rd of the total number of councillors. Section 92 of the Act of 1965 puts an embargo on the powers of the municipal council to transfer a property without sanction of the State Government. Sub Section 3 of Section 92 of the Act of 1965 provides for relaxation to the extent that the municipal council may lease its immovable property for a period not exceeding three years. The renewal of lease is also permitted, however, the council on its own may not renew the lease for a total period exceeding nine years.

30. Leasing and transferring any immovable property beyond nine years requires sanction of the State Government.

31. In the present case, the petitioner claims that lease ought

to be for thirty years. The Government under resolution dated 25th March, 2017 delegated its powers U/Sec. 92 regarding renewal of leases of immovable property of B and C class municipal councils to the respective district collectors subject to the conditions enumerated therein. Clause (iv) of the said resolution authorizes the Collector for renewal of the lease for a period of original lease or thirty years whichever is smaller. Clause (v) provides that renewal of lease where breach of conditions is observed shall not be made without prior approval of the Government.

32. The respondent/Municipal council is “B” class municipal council. The contention of the petitioner is that lease is for a period of thirty years. However, initial lease is for a period of three years only. The proposal was moved to the Collector to be forwarded for forwarding it to the State Government. The Collector sanctioned the renewal of lease for three years only by exercising its delegated powers of the State Government. The fact remains that there is no approval from the Government for longer lease of thirty years as claimed by the petitioner.

33. The contract between the parties was contingent contract depending upon sanction of the Government for a longer lease of thirty years. It appears that, parties never approached the Government in that regard, even for seven years after the first agreement. The Government is not party to the contract. In fact, the correct procedure ought to have been that first obtain the permission from the Government for longer lease and then

issue E-tender notice. On the contrary, after e-tender notice is issued, the bidder is selected, a lease agreement is executed for three years and, thereafter, resolution is passed to move the Government. The Government is not bound to grant sanction even if the resolution is passed by the Municipal Council.

34. Section 92 of the Act of 1965 specifically places an embargo on the right of the Municipal Council to transfer any of the municipal property without the sanction of the State Government. Sub Section (3) of Section 92 of the Act of 1965 does not permit the municipal council to grant lease beyond nine years.

31. Much hue and cry is made by the petitioner of having invested huge amount. In the present case, there is no record placed by the petitioner having invested huge amount. The claim made by the petitioner is disputed by respondent. Disputed questions of fact exist in the present matter. It also appears that, dispute exists amongst the partners of the partnership firm. Suits are also filed. Applications are given by one of the partners of the firm that he is in fact managing partner and that lease should not be renewed. There is another objection by M/s Al Quresh Exports that though petitioner entered into memorandum of understanding with it, the petitioner sublet the property to M/s Al Momin. M/s Al Quresh has filed suit bearing R.C.S. No. 78 of 2020 before the learned Civil Judge Senior Division for recovery of amount and injunction against the petitioner.

32. It appears that, there is no consensus ad-idem amongst the partners of the petitioner firm. The partners appear to be contending in different directions. The dispute exists with the petitioner with regard to slaughterhouse in question with M/s Al Quresh also. The disputed questions of fact exist about the outstanding dues. The period of lease has also expired.

33. With the aforesaid disputed questions of facts, it would not be appropriate for this Court to pass orders directing the respondent/Municipal Council to grant longer lease to the petitioner.

34. If the petitioner has paid a non refundable deposit assuming the lease would be for thirty years, the petitioner may take steps against the respondent. To pass orders directing the respondents to grant a lease for thirty years would be granting a decree for specific performance of contract in writ jurisdiction on the basis of disputed questions of fact. The same would not be permissible.

35. The grant of lease for a period of 30 years was not an agreement between the parties, but was, contingent upon the sanction of the Government. As there was no order permitting the municipal council to grant long lease, the petitioner cannot claim as of right direction against the Municipal Council to execute lease for 30 years, nor the municipal council would be competent to do so.

36. In case the petitioner has sustained any losses, the petitioner may approach the competent Civil Court as may be permissible in law and in that event all contentions of respective parties are kept open.

37. In the light of the above, the both the writ petitions are disposed of. No costs.

[R. N. LADDHA, J.] **[S. V. GANGAPURWALA, J.]**

bsb/Oct. 21