

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

WRIT PETITION NO. 13830 OF 2019

Girish s/o Yadavrao Nemmaniwar

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

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Mr. Sunil M. Vibhute, Advocate for the petitioner

Mr. P. S. Patil, AGP for respondent/State

Mr. C. V. Dhanorkar h/f Mr. B. A. Darak, Advocate for
respondent no. 3

Mr. V. P. Latange, Advocate for respondent no. 4

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**CORAM : C. V. BHADANG &
SANDIPKUMAR C. MORE, JJ.**

DATE : JUNE 30, 2022

PER COURT : -

1. By this petition, the petitioner, who claims to be the owner of 60 Ares land out of Survey No. 251 situated within the municipal limits of Kinwat, Dist. Nanded, is challenging the Resolution dated 04.10.2018 passed in the General Body of respondent no. 4 – Municipal Council, Kinwat and the order dated 29.05.2019 passed by respondent no. 2 – Collector in Proceedings No. 46/2018 under Section 308 of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965 (hereinafter referred to as “Act of 1965”).

2. The Chief Officer of the Municipal Council, Kinwat by an order dated 27.09.2018 had sanctioned the layout for residential plots in the aforesaid land which the petitioner claims to be the owner of. It appears that there was a complaint regarding the said conversion/layout on the ground that the said land is belonging to the Municipal Council and is not owned by the petitioner. The said matter was taken up by the General Body of the Municipal Council in its meeting dated 04.10.2018 and the order granting sanction to the layout has been cancelled. The Chief Officer of the Municipal Council, Kinwat by placing reliance over the said Resolution, cancelled the sanction granted to the layout.

3. The petitioner approached the Collector under Section 308 of the Act of 1965 for suspension of the execution of Resolution passed by the Municipal Council, Kinwat on 04.10.2018. The learned Collector has found that the dispute is of private nature. In that view of the matter, the Collector has refused to entertain the appeal by order dated 29.08.2019, which is subject matter of challenge in this petition.

4. We have heard the learned counsel for the parties. Perused record.

5. Section 308 of the Act of 1965 reads as under : -

308. Powers to suspend execution of orders and resolution of Council on certain grounds :

- (1) If, in the opinion of the Collector, the execution of any order or resolution of a Council, or the doing of any thing which is about to be done or is being done by or on behalf of a Council, is causing or is likely to cause injury or annoyance to the public or is against public interest or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof.
- (2) When the Collector makes any order under his signature, he shall forward to the Council affected thereby a copy of the order, indicating therein the reasons for making it and also submit a report to the Director, along with a copy of such order.
- (3) Within 1 [thirty days] from the receipt of such order of the Collector, the Council shall, if it so desires, forward a statement to the Director indicating therein why the order of the Collector should be rescinded, revised or modified. If no such statement is received by the Director within time, the Director shall presume that the Council has no objection if the order of the Collector is confirmed.
- (4) On receipt of such report from the Collector and the Council's statement referred to in sub-section (3), if any, the Director may 2 [within a period of six months, from the receipt of such report or within such period beyond six months 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 or direct that the order shall continue to be in force with or without modifications:

Provided that, the Director shall take into account the statement of Council, if received, before such an order is made by him.

6. It can thus be seen that as per sub-section (1) of Section 308 of the Act of 1965, the Collector derives powers to direct suspension of the resolution, if the same is causing or is likely to cause injury or annoyance to the public or is against public interest or to lead to a breach of the peace or is unlawful. It could thus be seen that the powers to suspend the execution of resolution is in the context of the resolution causing injury to the public or being detrimental to the public interest or is unlawful. In the present case, the Collector has rightly found that the dispute is of a private nature and refused to entertain the challenge. We, therefore, do not find any reason to interfere with the order passed by the Collector for the reason that the challenge did not fall within the ambit of Section 308 of the Act of 1965. The writ petition is **rejected**.

7. At this stage, the learned Counsel for the petitioner points out that the subsequent order passed by the Chief Officer of the Municipal Council, Kinwat, cancelling the layout has been challenged by him in an appeal before the Director of Town Planning. We make it clear that the rejection of this petition will not come in the way of the petitioner in prosecuting the said remedy, if available under law. We also make it clear that we have not examined the merits of the rival contentions as regards the cancellation of the layout. All the rival contentions are kept open.

SANDIPKUMAR C. MORE, J.

C. V. BHADANG, J.