

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

WRIT PETITION NO.9498 OF 2021

Surendra Shamsundar Jeware

] .. Petitioner

Vs.

- | | | |
|---|---|----------------|
| 1. The State of Maharashtra, |] | |
| Through its Principal Secretary, |] | |
| Urban Development Department, Mantralaya, Mumbai. |] | |
| 2. The Director of Town Planning, |] | |
| Maharashtra State, Mumbai. |] | |
| 3. The Commissioner and the Director, |] | |
| Directorate of Municipal Council Administration, Mumbai |] | |
| 4. The Divisional Commissioner and Regional Director, |] | |
| Municipal Council Administration, Pune Division, Pune |] | |
| 5. The District Collector, Pune |] | |
| 6. Baramati Municipal Council, Baramati, Dist. Pune |] | |
| 7. Natraj Natya Kala Mandal, Baramati, Dist. Pune |] | |
| 8. Kiran Babanrao Gujar |] | .. Respondents |

Mr. S.B. Talekar, with Ms. Madhavi Ayyappan, i/by Talekar and Associates, for the Petitioner/s.

Mr. R.A. Thorat, Senior Advocate, with Mr. P.P. Kakade, Govt. Pleader and Mr. R.A. Salunkhe, AGP for Respondent Nos.1 to 5.

Mr. S.R. Nargolkar, with Mr. Arjun Kadam, for Respondent No.6.

Mr. Abhijit Kulkarni for Respondent Nos.7 and 8.

ALONG WITH

PUBLIC INTEREST LITIGATION NO.96 OF 2021

Rahul Nandu Kamble

] .. Petitioner

Vs.

1. The State of Maharashtra,]
Through its Principal Secretary,]
Urban Development Department, Mantralaya, Mumbai.]
2. The Director of Town Planning,]
Maharashtra State, Mumbai.]
3. The Commissioner and the Director,]
Directorate of Municipal Council Administration, Mumbai]
4. The Divisional Commissioner and Regional Director,]
Municipal Council Administration, Pune Division, Pune]
5. The District Collector, Pune]
6. Baramati Municipal Council, Baramati, Dist. Pune]
7. Natraj Natya Kala Mandal, Baramati, Dist. Pune]
8. Kiran Babanrao Gujar] .. Respondents

Mr. Sushant Sudhakar Prabhune, Advocate for the petitioner.

Mr.R.A. Thorat, Senior Advocate Special Counsel a/w. Mr.P.P. Kakade, GP a/w.

Ms. R.A.Salunkhe, AGP for respondent Nos. 1 to 5.

Mr. S.R. Nargolkar and Mr. Arjun Kadam, Advocate for respondent No.6.

Mr.Abhijit Kulkarni, Advocate for respondent Nos. 7 and 8.

**CORAM : PRASANNA B. VARALE &
KISHORE C. SANT, J.J.**

RESERVED ON : 26TH AUGUST, 2022.

PRONOUNCED ON : 4TH OCTOBER, 2022

J U D G M E N T [PER : KISHORE C. SANT, J.] : -

1. Rule. Rule made returnable forthwith, by consent of learned counsel for the respective parties.

2. This petition was initially filed as a Public Interest Litigation bearing PIL No.86 of 2021. Upon objection raised by learned counsel for respondent nos.1

to 5 and 6 that the petitioner has personal interest in allotment of the writ lands in his favour and pursuant to request made by learned counsel for the petitioner, this court (*Hon'ble the Chief Justice & M.S. Karnik J.*) vide order dated 20th December 2021 was pleased to allow conversion of Public Interest Litigation into a Writ Petition. PIL No.86 of 2021 is thus treated as Writ Petition bearing No.9498 of 2021.

3. The petitioner by way of this petition seeks relief of quashing Resolution No.18 dated 28th May 2021 passed by respondent no.6–Municipal Council, Baramati (*"the Council"*), whereby the Council has resolved to allot the writ lands admeasuring 3,408 sq.mtrs. in favour of respondent no.7–Natraj Natya Kala Mandal (*"the Trust"*). The petitioner further prayed for quashing of Resolution No.5 dated 12th July 2021 passed by respondent no.6–Council, whereby the Council has resolved to move an application for change of user in respect of the writ lands. The petitioner has further prayed for quashing of an order dated 18th August 2021 passed by respondent no.1–State granting approval to the proposal of respondent no.6–Council, thereby permitting allotment of land in favour of respondent no.7–Trust on a long term basis.

4. By way of amendment, the petitioner prayed for allotment of the writ lands bearing Survey Nos.908 to 914, situated at Baramati City for any of the public purposes, if at all the said lands are not required by respondent no.6–

Council in the foreseeable future either by public auction or by inviting tenders from public or by inviting applications from persons or bodies of persons eligible for allotment of plots etc.

Brief facts :-

5. One Advocate Amarendra Dattatray Mahadik, the Executive Chairman of respondent no.7-Trust, had made an application to the President, Municipal Council, Baramati on 18th May 2021 requesting for allotment of an area of 183.90 sq.mtrs. out of lands bearing City Survey Nos.908 to 913, to respondent no.6-Council on a long term / perpetual lease at a nominal rate. The application further states that this land is required by Natraj Natya Kala Mandal, Baramati – respondent No.7, which is in existence since 1979 and is engaged in various cultural and social activities.

6. The said Natraj Natya Kala Mandal, respondent no.7 is registered as a Public Trust. The said Trust has arranged many public awareness programmes and conducted cultural and social activities. Presently, the trust is working from a building near ‘Teen Hathi’ Chowk, which is a land belonging to the Irrigation Department. In the said land, the respondent no.6-Council has resolved to carry a work of development and beautification of canal named as ‘Nira Dawa Kalwa’. Due to the said work, the building from which the work is being carried out is getting affected. Since the project of development and beautification of canal undertaken by respondent no.6-

Council is an important project, adding beauty of the city, the Trust is ready to handover lands in its possession for the said project. Thus, after surrendering possession of the land to the Irrigation Department, the Trust needs another land. The lands bearing City Survey Nos.908 to 914 are adjacent to the earlier plot of land that was in possession of the Trust. It is further stated in the application that the land applied by the Trust is reserved for open area theater and since the applicant is also desirous to carry on similar activities, it would help respondent no.6-Council to develop the said plot of land for the purpose for which it is reserved.

7. Thereafter, it was realized that there is also a land bearing Survey No.914, adjacent to S.No.908 to 913 admeasuring 3,408 sq.mtrs. Another application was made on 19th May, 2021 by Advocate Amarendra Dattatray Mahadik on behalf of respondent nos.7 and 8, including land bearing City Survey No.914 totally admeasuring 3,408 sq.mtrs.

8. The Chief Officer of respondent no.6-Council prepared an agenda dated 20th May 2021, for the General Meeting to be held on 28th May 2021 through video conferencing, which was published under the signature of President of the Baramati Municipal Council. In the said agenda, application of respondent nos.7 and 8 dated 18th May 2021 was listed at Subject No.18 for consideration and appropriate decision. The Chief Officer of respondent no.6-Council prepared a note on all the subjects to be discussed in the

General Meeting. Accordingly, in relation to Subject No.18, the Chief Officer noted that, in the Development Plan (as per second correction) prepared for developing original limits of Baramati Municipal Council, the lands bearing City Survey Nos.908 to 914 are shown to have been reserved partly for *“recreational activities and open space”* and partly for *“commercial purpose”*. The Chief Officer recorded in the note that if land out of City Survey Nos.908 to 914 is decided to be allotted as per the provisions of Section 92 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 [hereinafter referred to as “The Act” for the sake of brevity] and Maharashtra Municipalities (Transfer of Immovable Property) Rules, 1983 [hereinafter referred to as “The Rules” for the sake of brevity], then prior approval from the State Government is necessary and therefore it would be appropriate that respondent no.6–Council take a policy decision in its General Meeting.

9. After getting knowledge about placing of application of respondent nos.7 and 8 in the agenda of the General Meeting, the petitioner raised objection for placing application of respondent nos.7 and 8 before the General Meeting of the Council, vide intimation–cum–notice dated 27th May 2021, addressed to the President, Party Leader, Leader of opposition and Councilor of respondent no.6–Council, and requested to remove subject no.18 from the agenda of the meeting. It is further stated in the said notice that the subject lands are owned by the Council. It is alleged that Natraj Natya Kala

Mandal is established by one of the members of the Council.

10. This institution, therefore, cannot derive any benefits from the Council as per law. Trust is carrying out activities arbitrarily and encroaches upon the writ land and gives such land for commercial use by charging rent. There are various such type of complaints made to the Municipal Corporation and Irrigation Department. The Baramati Irrigation Department had even issued notices to the respondent no.7-Trust for cancellation of the lease in respect of the subject land, which has been permitted to be used by the Trust. The petitioner had protested such activities and had even gone on a hunger strike, whereupon Council had assured the petitioner in writing that upon carrying out measurement the subject land would be protected by raising compound wall. The petitioner further stated that it is the prime responsibility and duty of the councilors to take care of the property of the Council, to protect financial interests of the Council as also to protect rights of the tax payer citizens and to see that the interests of the Council are not jeopardized. Petitioner has further stated that the subject land would fetch crores of rupees and he ultimately prayed that Subject No.18 may be removed from the agenda and may not be placed in the General Meeting. The petitioner further stated that even after giving notice in advance, if any resolution is passed in favour of respondent nos.7 and 8, then the petitioner would take up the matter to the court of law or approach the competent authorities for making enquiry into the matter.

11. On the same day, i.e. 27th May 2021, the petitioner also sent letter to the Chief Executive Officer of Baramati Municipal Council stating that the value of the writ lands is in crores of rupees and that he is ready to pay four times of the amount of rent that has been offered by respondent no.7-Trust or whatever rate is decided by the respondent no.6-Council. The petitioner has also shown willingness to use the land for the purpose for which it would be allotted by the Council by adhering to the legal provisions.

12. Subject No.18 was ultimately discussed in the General Meeting of respondent dated 28th May 2021. The minutes of the meeting records the discussion. One Sunil Saste, Councilor, raised objection to the application submitted by respondent nos.7 and 8 stating that he is having copy of the application submitted by respondent no.7-Trust requesting for allotment of the writ lands, however the said application is not on the letterhead of the Trust and that it does not bear any registration number. It is not clear as to what is the entity of the said Trust. The Councilor – Sunil Saste further raised objection by pointing out that during last four and a half years span, some of the Councilors have submitted many documents, but none of those had ever been placed bearing name of any Councilor in the General Meeting of the Council; however, the applications received on 18th and 19th May 2021 immediately came to be placed in the meeting scheduled to be held on 28th May 2021. The valuation of the subject land is approximately Rs.30 to Rs.35 crores. It is further alleged by the Councilor Mr. Sunil Saste that a decision is

being taken only to favour a specific institution. One more Councilor – Navnath Ballal also took part in the discussion and objected to passing of the resolution on the application of respondent nos.7 and 8. It was ultimately resolved to approve Subject No.18. It was further resolved to allot the land to respondent no.7-Trust on lease for a term of 99 years at a nominal rent and without calling for auction. It was further resolved to submit a proposal to that effect to the State Government for its approval. The said resolution came to be passed by majority.

13. Pursuant to passing of the resolution on the application of respondent no.7-Trust by the General Body, the Chief Officer (in-charge), Baramati Municipal Council addressed a communication to the Principal Secretary, Urban Development Department-2 vide letter Ref. No.BMC/Adm-8/95/2021 dated 22nd June 2021, stating that respondent no.7-Trust is engaged in various cultural and social activities since 1979. The Trust is carrying out various public, cultural and social activities. The Trust is also conducting personality development programmes for school-going students in the vicinity of Baramati city. The Trust is also carrying out various other activities like holding workshops for drama, conducting various projects run by the Social and Cultural Department of the State of Maharashtra, conducting 'Tamasha Mahotsav', 'Kirtan Mahotsav', Training Centers for Dance and Drama for children. The Trust has produced and organized 40 Dramas. The Trust has received awards for some of the dramas in the State Drama

Competition. The Trust has also made available funds and donated the same in the form of ‘Samajik Krutadnyata Nidhi’ for heart surgeries, kidney surgery etc. Trust also assisted in rehabilitation of the flood affected people in Baramati and provided free medical services to approximately 15,000 patients during Covid pandemic by running seven Covid Centers. Trust has also been awarded with various prizes. Trust proposes to construct an Art Gallery, which would be the first Art Gallery in Baramati. The Chief Officer (i/c) of respondent no.6-Council has also annexed with the communication a chart providing information about the writ lands to be allotted to respondent Trust on long term lease. Perusal of the chart shows that Resolution No.18 has been passed by majority of 31 against 2. It further shows that the land was to be given on 99 years long term lease and at nominal rent, as per Resolution No.18 passed in the General Body Meeting. This communication has been sent through proper channel i.e. through the Collector, Pune.

14. Collector, Pune, on receipt of a copy of the communication dated 22nd June 2021 of the Chief Officer (i/c), addressed a communication dated 25th June 2021 to the Divisional Commissioner and Regional Director of the Municipal Administration Branch, Office of the Divisional Commissioner, Pune Division, Pune and thereby positively recommended the proposal with a request to the Divisional Commissioner to get the said proposal approved from the State Government.

15. On receipt of the proposal through proper channel, respondent no.1-State Government by a communication dated 4th August 2021 solicited information on e-mail in respect of the said proposal. Some more particulars were directed to be furnished raising doubts. It also called for clarifications. The Chief Officer (i/c), Baramati Municipal Council, vide letter dated 9th August 2021, sent clarifications and further information as requested. It was mainly stated that though certain area of land, admeasuring about 460.80 sq.mtrs., bearing City Survey No.914 falls within the commercial zone, after excluding margin spaces from both the sides, the actual land that can be put to use would be only 85.58 sq.mtrs. and thus considering this aspect, Resolution No.18 came to be passed in the General Body Meeting.

16. On a query as to whether any dispute is pending as regards ownership of the writ lands, it was clearly stated that there is no dispute about ownership pending in any court of law or before any other authority. It is further stated in the chart that the lands bearing City Survey Nos.908 to 913 are included in the land bearing City Survey No.914. Therefore, the writ lands can be said to be a complete piece of land only if lands bearing City Survey Nos.908 to 914 are allotted together.

17. Upon being satisfied with the clarifications received from the Chief Officer (i/c) of respondent no.6-Council, the State Government, vide communication dated 18th August 2021, granted its approval to the proposal,

as per the provisions of Section 92 of the Act and Rule 21 of the Rules, to the effect that out of the total land bearing City Survey Nos.908 to 914, admeasuring about 3,408 sq.mtrs., the land to the extent of 2,947.20 sq.mtrs. only can be allotted to respondent Trust for 30 years lease, as the same is reserved for recreational activities and open space purposes, and the remaining land admeasuring about 460.80 sq.mtrs. is shown to have been reserved for commercial purposes. While granting approval to the proposal, the State Government relaxed conditions provided under Section 7 of the Rules by exercising powers under Section 26 of the Rules of 1983 and subject to following terms and conditions, granted approval for allotment of the writ lands to respondent no.7-Trust :-

- (i) The land admeasuring about 2,947.20 sq.mtrs. is being allotted on lease for a period of 30 years. The Municipal Council shall fix the amount of nominal rent by exercising its discretion, as provided under Rule 21 of the Maharashtra Municipal Council (Transfer of Immovable Property) Rules, 1983.
- (ii) The use of the proposed land shall be in accordance with the approved Development Control Rules and while carrying out construction on the proposed land, respondent no.7-Trust shall take necessary permission of the competent authority, as required under the provisions of Maharashtra Regional and Town Planning

Act, 1966.

- (iii) The Collector shall make sure that the proposed land is being used for the purpose for which it is allotted and shall take review of the same from time to time. If it is found that the land allotted is not being used for the purpose for which it was allotted, the Collector shall immediately make a report to the State Government.
- (iv) While executing a lease agreement with the respondent no.7-Trust, the respondent no.6-Council, if found necessary, may impose any other terms and conditions.

18. Though respondent no.6-Municipal Council by Resolution No.18 recorded that the land may be allotted on 99 years lease, the request made in the application is for allotment of land on long term lease at a nominal rent.

Submissions of the Petitioner :-

19. The petitioner, on the aforesaid background of the facts, has challenged the Resolution No.18 passed by respondent no.6-Municipal Council dated 28th May 2021, thereby granting approval to the application dated 19th May 2021 of respondent nos.7 and 8 seeking allotment of lands bearing City Survey Nos.908 to 914 for the purpose of "Open Air Theater", and the order dated 18th August 2021 passed by the State Government granting approval to the said allotment. The petitioner, in view of subsequent events, has added prayer clause (K) and requested that the petition be dealt with accordingly.

20. The principal ground raised by the petitioner is that the action of the Council of passing of Resolution No.18 itself is arbitrary. The resolution is passed only with a view to favour respondent no.7-Trust. It is alleged that the Trust is unduly favoured because of proximity of respondent no.8 with the then Dy. Chief Minister. The resolution is not passed in transparent and prescribed procedure by inviting tenders and/or by holding auction. The petitioner further submits that allotment of the writ lands is clearly in violation of Rule 7 of the rules framed under Section 92 of Act and Rules. The application filed by the Trust is not in a proper form since it is not submitted on the letterhead of the Trust. It is not clear in what capacity the respondent no.8 had signed the application for and on behalf of respondent no.7-Trust. The application is also not supported by any resolution passed by the Trust. Initially, by an application dated 18th May 2021, a request was made for allotment of the lands bearing City Survey Nos. 908 to 913, admeasuring about 183.90 sq.mtrs.; however, subsequently, by the second application dated 19th May 2021, a further request was made for allotment of the land bearing City Survey No.914, along with lands bearing City Survey Nos.908 to 913, admeasuring about 3,408 sq.mtrs. Though it is stated that the respondent no.7-Trust is established in the year 1979, in fact, the Trust is established in the year 1989. The petitioner further submits that the writ lands were reserved for recreational purposes. There was no material available along with the application to show that the Trust is carrying out activities as stated

above. He further submits that in view of Section 16 of the Act, there is a prohibition and allotment of land cannot be made in favour of any Member of the Municipal Council.

21. The petitioner, to substantiate the grounds of challenge, pointed out the events occurred within a short span of time. The agenda of the General Body Meeting No.1 of respondent no.6-Council, scheduled to be held on 28th May 2021, was prepared on 20th May 2021. An application was accepted from respondent nos.7 and 8 just a day before i.e. on 19th May 2021. Though in Subject No.18 on the agenda, the area of plot of land to be allotted is shown as 183.90 sq.mtrs., however, in effect, the area of the lands allotted is admeasuring about 3,408 sq.mtrs., as can be seen from Resolution No.18. In the petitioner's notice dated 27th May 2021 itself, the petitioner has clearly indicated malafides on the part of the respondent no.6-Municipal Council and respondent nos.7 and 8.

22. The petitioner further submitted that originally the lands were shown to have been reserved partly for "recreational activities and open space" and partly for "commercial purposes". However only to facilitate Trust, the purpose of the land is changed and later-on, a resolution has been passed and the proposal has been sent to the government for change of the user.

23. Petitioner thereafter pointed out conduct of the Chief Officer of the

Municipal Council. The learned Chief Officer has prepared a note, in which he has mentioned that the Trust carried out various activities without there being any material submitted along with the application. On a question being posed to the Chief Officer as to how and from where the Chief Officer got knowledge of the activities of the Trust and that the Trust has received various prizes, he informed that the Trust has conducted various workshops and also opened seven Covid Centers during the pandemic. The petitioner further states that the Chief Officer of the Municipal Council has clearly acted at the behest of some other person and has not taken into consideration interest of the Municipal Council.

24. It is the submission of learned Advocate for the petitioner that respondent no.7-Trust has become dysfunctional. The Trust does not have capacity to conduct the activities for which the land has been allotted. The Trust did not even file audit reports regularly. The change report and audit reports were not available since 1996. It is the note of the Chief Officer, which states various activities carried out by the Trust. If there was a material available, the respondent no.6-Municipal Council could have placed the same in the General Body Meeting.

25. It is further submitted by learned counsel for the petitioner that the proposal received from the Municipal Council with positive recommendation sent report to the State Government only on the basis of the Chief Officer's

report and no information to that effect has been gathered independently by the Collector. The learned counsel for the petitioner further states that when the petitioner solicited information under the Right to Information Act as regards the Trust, he has been provided only with two pages information. In view thereof, the petitioner submitted that without detailed information being available, Collector and the Chief Officer have sent a proposal. It is not clear as to from where these officers received information. As regards the queries raised by the State Government vide its letter dated 4th August 2021, the learned counsel for the petitioner states that those queries were raised by the State Government pursuant to complaint filed by the petitioner only with a view to create a farce that explanation has been called for on the said issue.

26. The learned counsel for the petitioner further states that there is already a Public Interest Litigation filed in this court in respect of the writ lands on 3rd September 2021 being Public Interest Litigation No.96 of 2021. The present petition is filed as PIL on 2nd September 2021 and the same is allowed to be converted into Writ Petition by this court on 20th December 2021. Thus, respondent no.6-Municipal Council was well aware about filing of PIL. However, while answering the query raised by the State Government at sr.no.6 in its communication dated 4th August 2021, as to whether any dispute is pending in any court of law or before any competent authority in relation to ownership of the writ lands, the learned Chief Officer (i/c) of the respondent no.6-Municipal Council stated that there is no such dispute

pending in respect of the writ lands in any court of law or before any competent authority.

27. In view of the subsequent developments, the petitioner has challenged the further action taken by the State Government, by which the government has accepted Resolution passed by the Municipal Council for change of user. Pursuant to the said resolution, the purpose/use of the writ lands has been changed to “public/semi-public purposes”. Thus, change in purpose was only with a view to favour the Trust. As regards action of the State Government in accepting proposal for allotment of the writ lands, the learned counsel for the petitioner submits that the government could have remanded back the proposal to the Municipal Council since part of the land admeasuring 460.80 sq.mtrs, out of the total land admeasuring 3,408 sq.mtrs., has been reserved for commercial purpose. The State Government has modified the proposal on its own and permitted to allot the lands to the extent of 2,947.20 sq.mtrs. A minor modification was thereafter carried in the Development Plan, as was proposed by Municipal Council, and reservation of the land is shown to have been for “public / semi-public purposes”. A resolution to that effect came to be passed much after the land was allotted, which clearly evidences that Trust is unduly favoured.

28. It is further submitted by learned counsel for the petitioner that if State Government is intending to change the purpose of the land, then it could have

obtained necessary permission from the court since the matter was pending before this court or at-least the writ lands could have been allotted subject to final outcome of the petition. However, without adopting any such course of action, the State Government has accepted the proposal and changed the purpose of the land.

29. Perusal of the record shows that while carrying out minor modifications, the State Government had called for objections and pursuant thereto, the present petitioner has also raised objection.

30. The learned counsel for the petitioner further submits that, firstly, when the land has been reserved for “recreational purpose”, the reservation of the said land could not have been changed to “public / semi-public purpose” and, secondly, since reservation of the land has not been changed till the application of respondent Trust was considered by respondent no.6–Municipal Council, the land could not have been allotted to the Trust. The change in purpose for which the land is to be allotted is clearly in violation of Regulation 11(1) of the Development Control & Promotion Regulation–2034 (***“DC Regulation”***). On legal submissions, the learned counsel for the petitioner states that the respondent no.6–Municipal Council has no authority to transfer the land in this fashion in view of Section 92 of the Act. He further submits that under Rules 2 and 4 of the Rules, the land which is not required by the Municipal Councils only can be transferred. Perusal of the note on

Subject No.18 and Resolution No.18 passed by respondent no.6–Municipal Council shows that there is no mention about the land not being required by the Municipal Council or that the land has been acquired for some purpose. The transfer is in the interest of the Municipal Council. Under Rule 7 of 1983 Rules, the manner of disposal of land is provided. Rule 7 is reproduced below for ready reference :-

"7. General :-

- (1) *All lands vested in and acquired by the Council shall be disposed of by the Council by -*
 - (i) *by holding public auction;*
 - (ii) *by inviting tenders by public advertisement;*
 - (iii) *by making offers to or accepting offers from any Government Local Authority, Public Sector Undertaking or a body corporate, which is owned or controlled by government;*
 - (iv) *by inviting applications from persons or bodies of persons, who are eligible for allotment of plots by public advertisement to be published at-least in one leading local newspaper in Marathi, on the basis of predetermined premium or other considerations or both and deciding these applications by drawing lots, if necessary, as it may determine from time to time in accordance with the rules hereinafter appearing.*
- (2). *Except as otherwise provided in sub-rule (1) and in Part VI of these rules, the buildings vested in and acquired by the Council shall be disposed of by the Council by -*

- (i) *inviting applications; or*
- (ii) *calling for public tenders; or*
- (iii) *auction*

along with such land and on such terms as my be agreed to by the Council and the transferee having regard to the use for which the building is intended, by public advertisement to be published at-least in one leading newspaper in Marathi on the basis of predetermined premium or other considerations or both by deciding these applications by drawing of lots, if necessary.”

31. In view of Rule 7, the respondent no.7-Trust is not eligible for allotment of the writ lands.

32. The learned counsel for the petitioner has further pressed into service newly added prayer clause (K). By this prayer, the petitioner has prayed that if the lands in question are not acquired by respondent no.6-Municipal Council, then the allotment of the said lands be done by holding public auction or by inviting tenders through public advertisements or by inviting applications from persons eligible for such allotment on a predetermined premium or consideration or otherwise by following the procedure prescribed under Rule 7 of the Rules. The petitioner has also made reference to his letter dated 27th May 2021 addressed to the Chief Officer of the Municipal Council. By the said communication, the petitioner apprised the Council that he came to know about placing of subject of allotment of lands, bearing City Survey Nos.908 to 914, to respondent Trust on long term lease at

a nominal rent, in the General Body Meeting of the respondent no.6-Municipal Council to be held on 28th May 2021. The petitioner further stated in the said communication that if Municipal Council is offering the said lands on long term lease at a nominal rent, then he is well aware of the valuation of the said lands considering the location at which these lands are situated and that he is ready and willing to pay four times more rent than that will be offered by respondent nos.7 and 8. It is in this set of facts that the learned counsel for the petitioner has further submitted that when the Municipal Council could have been benefited more as the writ lands had not been allotted by holding public auction or by following the procedure as prescribed under Rule 7 of the Rules, still the application dated 19th May 2021 of Advocate Amarendra Mahadik, who was not even office bearer of respondent Trust has been considered by respondent the Municipal Council. Learned counsel for the petitioner has produced on record the information received pursuant to application filed under the Right to Information Act, 2005. He applied for a copy of the application submitted by and on behalf of the Trust in the office of the Assistant Charity Commissioner, Pune showing the names of the trustees. Perusal of the said application shows that name of Advocate Amarendra Mahadik does not appear in the list of the trustees of respondent Trust.

33. The learned counsel for the petitioner has further relied upon Section 16 of the Act, which provides for disqualification for being a Councillor and

as per one of the conditions for disqualification is that the Councillor shall not derive any benefit from the Municipal Council. In these circumstances, no land could have been allotted to a Trust in which respondent no.8, who is a Councillor, is a President. Learned counsel for the petitioner has further pointed out that there is no post of Executive Chairman in respondent no.7-Trust and thus there was no question of signing the application for allotment of the writ lands by Advocate Amarendra Mahadik, posing himself to be Executive Chairman of the Trust.

34. Our attention is invited to Rule 9 of the Rules, which provides for mode of fixation of premium while disposing land by public auction or by inviting tenders. Further attention is invited of this court to Rule 10, which provides for the conditions of lease, wherein again premium is provided. It is submitted that State Government could not have allotted writ lands by invoking the powers under Rule 21 or by granting relaxation as provided under Rule 26 of the Rules.

35. Mr. Talekar, the learned counsel for the petitioner has thereafter brought to the notice of this court as to what constitutes “recreational parks, garden, open space, children play ground etc.” under Development Control Rules prepared under the Maharashtra Regional and Town Planning Act. He ultimately prayed that Resolution No.18 passed by respondent no.6-Municipal Council, resolving to grant approval to the application of

respondent Trust and accordingly send proposal to the State Government for allotment of writ lands to the Trust, and the order dated 18th August 2021 passed by respondent no.1-State Government granting approval to the proposal of the respondent-Municipal Council for allotting writ lands in favour of the Trust on a long term lease at a nominal rent, be quashed and set aside.

36. By subsequent prayer, the petitioner has prayed that this court may direct Municipal Council to allot the writ lands by holding public auction or by inviting tenders through public advertisements or by inviting applications from the persons eligible for allotment of the lands by following procedure prescribed under Rule 7 of the Rules.

Submissions in support of PIL :-

37. We have also heard submissions of Mr. Sushant Prabhune in PIL No.52 of 2001. At the outset, he submits that the application made by respondent no.7-Trust for allotment of land is for the purpose of "Open Air Theater". He has invited attention of this court to the queries raised by the State Government in relation to the proposal for allotment of land submitted by the Municipal Council, in which query no.2 was specific as to whether the land is required by the Municipal Council for any other purpose. The learned counsel submits that only the land which is not required by the Municipal Council can be allotted. Though the application states that the land is required for Open Air Theater, the purpose for which the land has been reserved does

not say so. He further submits that the petitioner had obtained information under the RTI information supplied shows that construction of an auditorium within the municipal limits has already been proposed and as such another Kaladalan or auditorium is not required. The petitioner has produced on record a copy of Resolution No.87 passed by the Municipal Council in its meeting held on 18th March 2020, whereby it was resolved to construct a new auditorium as the existing auditorium has become old and is in dilapidated condition. Though there has been no change of purpose for which the land was reserved till it is being allotted to the Trust, the learned counsel states that the Trust proposes to construct an Art Gallery and it has got terrace on the upper portion that would be used for commercial purpose. It is a case of the petitioners that there is in fact a requirement of garden and this land could have been put to use as garden. He states that there are no sufficient number of gardens in the city. Though the Trust is trying to demonstrate that the land is required for the purpose for which it has been allotted, upon perusal of the plan, it is clear that the land is not being used for the purpose for which it has been allotted. He has produced on record a brief compilation-of-documents consisting of copy of the Unified Development Control and Promotion Regulations for Maharashtra (UDCPR). He has invited our attention to Clause 3.4.1, which provides for "Recreational Open Space". Under this clause, it is specified that only 10% of the area under layout can be earmarked as recreational open space, which shall, as far as possible, be provided in one place. He has further invited our attention to Clause 3.4.7 to

show as to which structures are permitted in open space. This clause provides that there may be maximum two storeyed structure with maximum 15% built-up area of recreational open space, out of which built-up area on ground floor shall not exceed 10% etc. Further, Clause 3.5, which provides for “Provision for Amenity Space”. When the land was earmarked for a particular purpose, it could not have been allotted to the Trust for construction of an Art Gallery. It was only for the Municipal Council to develop the subject land for the purpose for which it was earmarked. Therefore, reference to Rules 21 and 26 of the Rules is immaterial. The petitioner in PIL 52 of 2001 has filed an elaborate complaint with the Directorate of Municipal Council Administration and has objected to the allotment of the subject land on the grounds, which also forms part of grounds of the present petition. This complaint is dated 16th August 2021, which has been forwarded by e-mail on 17th August 2021 at 4:45 p.m. In spite of filing specific complaint, while granting approval to the proposal of respondent no.7-Trust, the State Government has not taken into consideration this complaint. There is no whisper about the said complaint in the order dated 18th August 2021 passed by the respondent-State. Thus, he states that the entire process of allotting land needs to be set aside.

Submissions of the respondents in WP No.9498 of 2021 :-

38. We have heard the submissions of Mr. R.A. Thorat, learned Senior Advocate for the respondent-State. He has restricted his arguments to prayer

clauses (C), (D), (H) and (I) as these prayers are concerning with the respondent-State. He submits that the State Government has taken a decision by exercising powers vested in it under Rules 21 and 26 of the Rules. He submits that none of these rules have been challenged in this petition. It is further submitted that the dates on which various events took place are material in this case. He has invited attention of this court to the communication dated 9th August 2021 by the Municipal Council to State and submits that in March 2001, the adjoining plot of land, admeasuring 819.45 sq.mtrs., was allotted to respondent Trust by Maharashtra Krishna Valley Development Corporation (***"Krishna Valley"***). In May 2021, the Trust received a letter from Maharashtra Krishna Valley Corporation seeking possession of the said land for widening of 'Nira Dawa Kalwa'. The said plot of land was situated on the bank of Nira Dawa Canal. On 10th June 2021, the Trust handed over possession of the said land to Krishna Valley. Thereafter, the Trust made an application on 18th May 2021 seeking allotment of lands bearing City Survey Nos.908 to 913 and again by an application dated 19th May 2021, the Trust has requested for allotment of the aforesaid lands including land bearing City Survey No.914. The learned counsel for the respondent-State further states that in both these applications, it is clearly stated that if the aforesaid lands are allotted to the Trust, the purpose for which the lands have been reserved would be served. He further states that as the said lands were reserved for the purpose of "open air theater" and as the said work was to be carried out by Municipal Council, it would fulfill the

object of the Municipal Council.

39. The learned counsel further submitted that as a matter of fact there was material available with the State Government, in the form of resolution passed by the Municipal Council, while considering the proposal in the case of the Trust and the Collector, Pune and the Divisional Commissioner, Pune also have positively recommended the proposal. As regards Section 92 of the Act , the learned counsel for the respondent-State submitted that the said section provides for transfer of immovable property by a Municipal Council. Sub-sections (1) and (2) of Section 92 states that no Council shall transfer any of its immovable property without a sanction of the State Government and it is for the State Government to consider whether to sanction a proposal, subject to condition that a proposal should be moved and should be accompanied by a resolution of the Municipal Council passed in its meeting by a majority of not less than 2/3rd of the total number of councillors. Another requirement of sub-section (2) of Section 92 is that such proposal should not be inconsistent with the rules made in that behalf by the State government. Thus, all the requirements of Section 92 have been complied and the State Government has acted within its powers and no fault can be found in the order dated 18th August 2021 passed by respondent no.1-State. Further submission is that vide a communication dated 4th August 2021, the respondent no.1-State had raised certain queries on the proposal submitted by the Collector and it is only upon satisfaction of those queries that the said proposal has been approved. The

State Government had raised specific queries as to (i) whether the land is required for any other purpose by the Municipal Council and when the land was reserved, whether there was any plan to develop the said land; (ii) whether the land is being used for the purpose for which it was reserved; (iii) whether the Municipal Council would earn financial gain upon development of the subject land since the said land is shown to have been partly reserved for commercial purpose; and (iv) whether there is any dispute pending in any court of law in relation to ownership rights of the subject lands. Certain other queries were also raised in relation to the subject lands. The learned counsel for the respondent-State submits that it is only after receipt of a report from the Chief Officer of the Municipal Council answering all the queries, that the State Government has passed an order dated 18th August 2021, which order is under challenge vide prayer clauses (C) and (D) of the petition. The learned counsel submits that the procedure as prescribed under the law has been followed while granting approval to the proposal of respondent no.6-Municipal Council for allotment of land in favour of respondent no.7-Trust and there is no challenge to the procedure that has been adopted.

40. The learned counsel for the respondent-State has further pointed out that the Municipal Council was directed to execute an agreement with the Trust, subject to imposing terms and conditions, as provided in the agreement dated 25th January 2001. Three main conditions in the agreement were that :-

- (i) upon completion of the term of the agreement, the possession of the subject land shall be handed over by

respondent no.7-Trust to the Executive Engineer, Irrigation Department, Pune and no compensation in lieu thereof shall be claimed by the Trust;

- (ii) in case Maharashtra Krishna Valley Development Corporation requires the subject land before completion of the agreement term, it would be binding upon the Trust to immediately handover possession of the subject land to Maharashtra Krishna Valley Development Corporation and the Corporation will not be responsible for any monetary losses that would be suffered by the Trust pursuant to handing over possession of the land;
- (iii) the subject land cannot be used for the purposes other than the purpose for which it was allotted; and

41. It is clear from record that the respondent no.5-Collector was directed to make sure that the proposed land is being used for the purpose for which it has been allotted and shall take review of the same from time to time. If it is found that the land allotted is not being used for the purpose for which it was allotted, the Collector shall immediately make a report to the State Government. Thus, a strict adherence to the conditions imposed was expected. From the agreement executed between respondent no.6-Municipal Council and respondent Trust dated 8th September 2021, it can be seen that all the necessary conditions have been incorporated in the said agreement.

42. The learned counsel for the respondent-State has pointed out that Commencement Certificate has also been issued by respondent no.6-Municipal Council on 1st October 2021. Even in the Commencement Certificate, there are necessary conditions mentioned including that if

construction is to be made, it should be strictly in accordance with Section 193 of the Act and Section 45 of the Maharashtra Regional and Town Planning Act (hereinafter referred to as “the MRTP Act”) . The learned counsel has further pointed out that the Notification dated 5th April 2022 is also not challenged by the petitioner.

43. While canvassing his points, the learned counsel for the respondent-State submitted that in view of Rules 14 and 21 of the Act and the Rules, which are specific in nature, in fact, no reference was necessary to Rule 26. Rule 21 provides for grant of land for educational, charitable and public purposes. In this case, the purpose for which the land was required is not falling under Rule 7 and therefore there was no question of following mandate of Rule 7. In view of the provisions of Rule 24, which provides for additional conditions to be annexed to concessional grant of land, the respondent-State has imposed additional conditions since the land was to be allotted at a concessional rate. To a query raised by the court that undue haste is observed in the entire process of allotment of subject land, the learned counsel for the respondent-State fairly states that he is not disputing the dates on which events took place in the entire process. He has mainly relied upon the aspect that the procedure prescribed under the rules has been followed and submitted that ultimately a decision has been taken in the interest of general public. He further submits that every decision taken by the government may not be viewed suspiciously. In this case, as a matter of fact,

the State Government has considered the material on record. The learned counsel for the respondent-State has further pointed out that, though it is technical, in fact, the petition is incomplete as it has not challenged the rules or the procedure that has been adopted in the entire process of allotment of land. He has further pointed out that the petitioner has also not challenged the proceedings initiated under Section 37 of the MRTP Act, though he had very well participated in those proceedings by raising an objection. In view of the aforesaid submissions, the learned counsel for the respondent-State prayed for dismissal of the petition.

44. We have heard Mr. Sudeep Nargolkar, the learned Advocate for respondent Municipal Council. He has submitted that action of the Municipal Council or the State Government cannot be said to be exercised in arbitrary manner. It does not amount to abuse of power at all. Merely because there is no auction, the action could not be necessarily said to be arbitrary action. The petitioner has challenged, firstly, the proposal sent by the Municipal Council and, secondly, exercise of power under Section 37 of the MRTP Act. Under MRTP Act, the State Government has given authority to exercise powers under Section 37. Such authority vests in the Planning Authority. The Municipal Council being the Planning Authority had given a public hearing including the petitioner. The learned counsel has further pointed out that the purpose defined as “public / semi-public” also is a reservation under the MRTP Act. Considering the exercise that has been carried out by following the due

procedure, the court may not interfere in the matter lightly. On the aspect of passing of Resolution No.18 by the Municipal Council, it is submitted that the municipal area is a small place where everyone knows the institution like the Trust and its activities. All the councillors being the persons from the same town need not be told or convinced about since they were aware of the proposed activities of the Trust and for this reason, no discussion was felt to be necessary in the general body meeting, as it not even a requirement of law. The application filed by the Trust covers the purpose and the subject for which the land was required. It was also clearly expressed in the application that the land was required on a nominal rent. All the relevant factors necessary for consideration were mentioned in the application in precise manner covering everything. No detailed project report is expected or contemplated along with the application. In the second application dated 19th May 2021, the only addition was inclusion of the land bearing City Survey No.914, along with lands bearing City Survey Nos.908 to 913, and there was no change in other text of the application that was filed on 18th May 2021. When Municipal Council or Elected Body takes any decision by voting, the said decision cannot be challenged on the ground of non-application of mind. The learned Chief Officer of the Municipal Council had prepared a detailed note in respect of Subject No.18. The Chief Officer has also made reference to the requirement under Section 92 of the Act and the Rules framed thereunder. A policy decision has been taken by the Municipal Council. As a matter of fact, even the members of the Municipal Council have participated in the

discussion held in the General Body Meeting. There was a reference to the PIL in the discussions held in the General Body Meeting. Thus, the impugned Resolution been passed after considering the relevant material on record and pursuant thereto, a proposal, along with all relevant documents, has been duly forwarded to the State Government. Upon perusal of the proposal, the State Government had also raised certain queries in relation to shortfalls in the proposal. The learned counsel for the Municipal Council has specifically pointed out one of the queries raised by the State Government as to whether any dispute in relation to ownership of the subject lands is pending in any court of law, which has rightly been answered as “NO”. It is the petitioner’s submission that, in fact, there was a dispute pending in one PIL 52/2001 in this court (which is still pending). The learned counsel for the Municipal Council submits that the said PIL is not in respect of ownership of the subject lands. He further submitted that it cannot be therefore said that the queries were not answered properly. By Rule 21 of the Rules power has been delegated to the State Government to grant land for educational, charitable and public purposes on a concessional premium, where Rule 7 has no application. Rule 7 is specifically about disposal of the land for commercial purpose. The case in hand is of allotment of land on concessional premium. The learned counsel for the Municipal Council has submitted that when a land is to be allotted for a social activity, consideration shall not be made applicable as per commercial allotment. Grant of land without holding public auction cannot be said to be unreasonable. By utilizing the land for social

purpose, in fact, Principles of Government of Social Upbringing is sought to be achieved. The learned counsel submits that a conscious decision has been taken at three different levels, firstly, at the level of Municipal Council forwarding proposal to the State Government through the Collector; secondly, the Collector recommending the proposal of the Municipal Council and forwarding the same to the State Government through proper channel and; thirdly, the State Government granting approval to the proposal. As a matter of fact that though the petitioner has applied just a day before the date of the General Body Meeting of the Municipal Council, he did not produce anything on record to demonstrate the activities carried out by the petitioner's Trust. The Municipal Council was to discharge its obligation by providing facilities for carrying out social and cultural activities, which is now sought to be achieved by respondent no.7-Trust. Since there is no auction, it cannot be said that the power exercised is ultra vires. When the object is being satisfied by some other persons, it is open for the Municipal Council to allot the land to such other persons. The land is not allotted permanently and ownership will always be with the Municipal Council. Even under Rule 7 of 1983 Rules, there are other options provided than the auction. Rule 21 has been rightly invoked by the State Government. Assuming that Rule 7 could have been pressed into service, Rule 26 has overriding effect. So far as change of user of the land is concerned, he submitted that even without changing purpose of the land, construction was permissible and therefore there is no material change achieved by changing the purpose for which the land was reserved.

45. The learned Advocate vehemently argued his case. At the outset, he submitted that all the allegations made in the petition are vague and the basic foundation is lacking. From the record, he pointed out that the proposal was sent along with all necessary documents. No other person or the body of persons can have possession of the documents, which were produced along with the proposal. Respondent Nos.7 and 8 have specifically denied the allegation that the application for allotment of land was made without furnishing necessary documents and was only a formal application. He further submits that neither Municipal Council nor Collector can have custody of these documents. He thus vehemently denied the allegation that the application was made casually, without furnishing the necessary documents. All necessary documents were produced at the time when the same were demanded. Municipal Council had directed the Trust to produce certain documents on record such as audit report etc. The audit report so demanded was submitted for the year 2014. It is on record that the Trust has produced and organized 40 Dramas and the Trust has received awards for some of the dramas in the State Drama Competition; made available funds and donated the same in the form of Samajik Krutadnyata Nidhi for heart surgeries, kidney surgery etc.; assisted in rehabilitation of the flood affected people in Baramati and; provided free medical services to approximately 15,000 patients during Covid pandemic by running seven Covid Centers. The material in relation to the aforesaid activities cannot be said to have been prepared overnight. It is also pointed out various other activities conducted by the Trust and budgetary

provisions made in relation thereto. From a copy of the Sovenier published in the year 2010-11 giving brief history of the various activities conducted by the Trust shows that the Trust is actively engaged in conducting various activities and that the Trust has good reputation. The members/councillors of the Municipal Council being local persons, they are very well aware about the activities conducted by the Trust from time to time.

46. Mr. Kulkarni, learned Advocate for respondent no.7-Trust submits that in the present case there would be practically no change of the purpose etc. There will be no denial of access to the general public at all. He states that the access would be given to the public at large. From clause no.6 of the Lease Agreement dated 8th September 2022, he points out that it is clearly mentioned that access would be given to all. It is also clearly stated in the said clause that the land would be put to use in consonance with the sanctioned Development Plan of Baramati City and that the respondent no.7-Trust has to obtain permission, as per the provisions of Regional and Town Planning Act, 1966, from the competent authority while carrying out construction on the said land.

47. The submissions made in relation to the Unified Development Control and Promotion Regulations for Maharashtra State (**"UDCR"**) are not pleaded in the petition and the respondents 7 and 8 have been taken by surprise. The arguments with regard to violation of UDCR are totally beyond the pleadings. He submitted that the construction on the earlier site allotted to the

respondent Trust was not possible because of the orders passed by this court in PIL and the said PIL is still pending. It is for this reason that the land was required to be given back to Maharashtra Krishna Valley Development Corporation. Even notices dated 10th September 2018 and 12th February 2019 and a communication dated 26th March 2019 were received by the Trust from the Irrigation Department, Baramati so that there will not be any use of the land made for construction of school. It is further submitted that only shed was erected on the subject land, which in the opinion of the authorities was for commercial purpose. In fact, there the land could not be utilized for the purpose for which it was allotted in view of operation of the stay orders. These are simple notices issued by the Irrigation Department of the respondent-State. However, no further action is taken by the Irrigation Department and possession of the land allotted for construction of school has been surrendered. The complaint made by the petitioner was emailed to the Directorate of Municipal Council Administration on 17th August 2021. One can hardly expect that such complaint would be received by the State Government in a short duration and that too when it has not been addressed to the State Government and that the same could have been considered by the State Government. The said complaint was not even marked to the Mantralaya and for this simple reason, the submission of the petitioner on this point cannot be considered. A decision has been taken at the State level to allot the land and such authority is not expected to consider the material which is not even received by it. In affidavit-in-reply filed on behalf of the Trust clearly a

reference has been made to PIL No.52/2001 challenging the allotment made by Maharashtra Krishna Valley Development Corporation in favour of the Trust. On one hand there is a stay operating, in view of which no construction could be made, and in the present petition now the stand is taken that the Trust is not using the land that has been allotted by the Maharashtra Krishna Valley Development Corporation. The learned counsel for the respondent no.7-Trust has therefore prayed for rejection of the present petition with costs and seeks to rely upon the arguments that he has advanced in response to the petition.

48. To criticize the submissions of the petitioner that there was no sufficient discussion taken place while passing the impugned Resolution No.18, it is submitted that Resolution No.18 has been passed by the members of the Municipal Council as per their free will and that it is not the requirement of law that before voting, the councillors must discuss the subject. Allotment of land is not in the hands of the Municipal Council alone. The decision taken by the Municipal Council, is not a final decision. Considering the nature and the purpose for which the land has been allotted, it does not attract the provisions of Rule 7 of the Rules, as the land is not allotted for any commercial purpose.

49. Construction on the lands allotted to the Trust by Maharashtra Krishna Valley Development Corporation, was not made as there was a stay granted

by this court in a Public Interest Litigation No.52 of 2001 (*Shyamsunder Potare and Ors. Vs. State of Maharashtra and Ors.*) since 2001. The petitioner had never made any demand for allotment of the subject land on lease and it is only after Subject No.18 was moved and Resolution No.18 came to be passed, the petitioner has offered to pay four times rent than that would be paid by respondent no.7-Trust.

50. In order to discharge the social responsibilities, the Municipal Council is expected to develop the land and utilize the same for the purpose for which the land has been reserved. The authorities have rightly considered this aspect by allotting the subject lands in favour of the Trust.

51. The Municipal Council had sought certain information from the trust, such as details of the Trust, registration documents, Trust Deed, details of the properties held by the Trust, Audit Reports etc. The entire material was produced by the Trust on demand made by the Municipal Council. The members of the Trust may be the persons from commercial zone or may be from business or political life. Merely because the members of the Trust happen to be belonging to some party in their personal capacities does not disqualify the Trust from carrying out the activities or will not dis-entitle the Trust from receiving any land etc. In addition to the earlier material, the learned counsel has also brought to our notice the material showing activities conducted by the Trust in social, medical and other fields, especially the

medical services provided by the Trust during Covid pandemic. There are photographs of the site to show that the subject land is open to all. The Trust was desirous of establishing an Art Gallery and since the subject land has been reserved for the same purpose, there is no illegality caused in the entire process of allotment of lands.

Submissions in response to PIL No.96 of 2021.

52. Mr. Thorat, learned Senior Advocate appearing for the respondent-State made submissions in reply to the PIL/96/2021. The complaint referred to and filed by the petitioner is dated 16th August 2021, whereas the order passed by the State Government on the proposal for allotment of land to respondent Trust is dated 18th August 2021. Thus, the contention that the complaint was not considered does not hold any merit as it is not clear as to whether the complaint dispatched on 16th August 2021 in fact reached the concerned authority of the State Government before the decision was taken on 18th August 2021. Rules 4 and 7 of the 1983 Rules needs to be read with Section 92 of the Municipal Council Act. Main requirements of Section 92 are that (i) the transfer must be with the sanction of the State Government and (ii) there has to be a proposal accompanied by a resolution of the Council passed at a meeting by 2/3rd majority. Both the conditions are fulfilled. Reliance on Rule 4 of the Rules is not material in this case as it is only a general rule. The Municipal Council is the sole authority to decide the purpose and the requirement for which the land is to be utilized. He elaborated further that

even Rule 7 is a general rule. It provides for transfer of land for commercial purpose. Rule 21 is under Part VI of the Rules, which is for a different purpose, under the head of “Grant of Land for Educational, Charitable and Public Purposes”. Thus, it cannot be equated with the allotment of land under Rule 7, which falls in Part “III” of the Rules under the heading “Manner of Disposal of Land”. In case of allotment of land under Rule 7, this court may put certain conditions since interest of the general public is going to be served by allotment of subject land to the Trust.

53. Mr. Nargolkar, learned counsel for respondent no.6-Municipal Council, in reply to the PIL, has submitted that the Trust has produced on record certain material along with its affidavit-in-reply, which was sufficient to consider the application of the Trust. There were various news articles published during period the work was being carried out by the Trust and the same was also annexed to the application. There were letters appreciating the work carried out by the Trust in Baramati City. There are total 23 gardens developed in Baramati either by the Municipal Council or by other entities. 13 gardens are proper gardens whereas 10 are layout gardens.

54. The learned counsel for the Municipal Council further submits that Rule 7 of 1983 Rules is in two parts and applied to totally different causes. Under Rule 7, there is no allotment for the purpose of social or cultural activities. Part VII of the 1983 Rules deals with miscellaneous provisions. Part IV provides for mode of fixation of premium. Thus, different parts deal with

different purposes. Part VI deals with grant of land for religious, educational, charitable and public purposes. He submits that disposal of the land and grant of the land are totally different issues. Disposal of the land is construed as surrendering ownership of the land permanently; whereas grant of the land is construed as not giving up ownership of the property. In the later cases, the ownership remains with the Municipal Council. In the case at hand, since the purpose for which the land has been allotted was for public amenity, it is only Rule 21 which is applicable in the present case. There need not be any relaxation of rules required, as provided under Rule 26. Lease Agreement shows that the lands allotted to the Trust are open to all. There is already a board put up at the construction site stating that the Art Gallery is open to all and the entry is free. While granting approval to the allotment of land itself, the consequences have been provided for violation of the terms and conditions.

55. The Municipal Council has also produced on record a list of the gardens, giving names of the gardens in Baramati City. Although the objection has been raised by Advocate for the petitioner to the said list of gardens saying that no such document can directly be tendered before the court or relied upon by the counsel, during the course of arguments, the learned counsel for the petitioner has made a statement that there are only two gardens in the city without any materials. Mr. Nargolkar further submitted that the queries raised by the respondent-State were properly answered by the Chief Officer

of the Municipal Council. In answer to the query put up by the State as to whether the subject lands to be allotted are to be allotted for the purpose for which they were reserved, it was made clear that the land admeasuring 460.80 sq.mtrs. out of City Survey No.914 is not available for allotment since the same has been reserved for commercial purpose. The learned counsel has further pointed out from the rules framed under the MRTTP Act that, in fact, there is no change of purpose/user for which the land has been reserved. He states that there is a change of designation of the user only.

56. While elaborating the difference between the “reservation” and “designation”, the learned counsel has submitted that if reservation is for “school”, it is called as “reservation”. When a school is specified as “primary school” or “secondary school”, then it would be a “designation”. In this case it is not a “reservation” but only a “designation”. While answering to the query that already there is an auditorium in Baramati city and that another auditorium is not required, the learned counsel for the Municipal Council submits that it is not open for the petitioner in PIL/96/2021 and the petitioner in the present petition to decide as to how many auditoriums are required or necessary in Baramati city or to approach the court of law for the said purpose. The concerned authority is the Planning Authority, who decides necessity or requirement of amenities. In the lands that have been allotted to the Trust, the Trust is constructing an Art Gallery, where exhibitions can be held. The purpose and object of the MRTTP Act is only to have a planned

development. Section 53 of the MRTP Act would show that the building and structure can be erected without permission and without prior application. Application for regularization can be filed even after the construction is completed. While regularizing the construction, the only requirement is to see that the construction is in consonance with the prescribed rules. The learned counsel for the Municipal Council also invited our attention to Clause 3.4.7 of the UDCPR and states that the building permission was duly sanctioned, as permissible under UDCPR. Clause 4.10 provides for “Public / Semi Public Zone”, as per sub-clause (v) of the said clause, “Public / Semi Public Zone” includes Libraries, Mangal Karyalayas, Gymnasia, Gymkhanas, Stadia, Community Halls, Civic and Cultural Centers, Religious Structures, Auditoria etc. Thus, he submits that there is no violation even of the rules framed under the MRTP Act or the Development Plan under the MRTP Act. The judgments on which reliance has been placed by the Advocate for the petitioner are only in relation to Rule 7 of the Rules. In this case the State Government has invoked powers under Rule 21.

57. The main argument in PIL/96/2022 as also in the present petition is that the Municipality is deprived of revenue and profit since the lands have not been allotted by holding an auction. Mr. Nargolkar submitted that auction is for maximization of profit. The legislature has consciously placed Rules 7 and 21 of the Rules in different chapters, that every allotment cannot be viewed or granted with the object of commercialization. It is for this reason,

Rule 21 provides that where lands are allotted for the purposes other than commercial purpose, profit is not the motive at all. While considering a proposal for allotment of land on lease basis by the State Government, it was sufficient that such proposal is backed by a resolution appropriately passed by the Municipal Council. As regards the contention of the petitioner that application submitted by the Trust is not on the letterhead of the Trust, it is stated that it is only for the Trust to raise such objection if someone uses the name of the Trust without its consent and authority. Here in the case at hand, the Trust has, in fact, acted upon pursuant to filing of the application and therefore it is not open for any other person like the petitioner to question the authenticity of the application.

Arguments in rejoinder in WP No.9498 of 2021 :-

58. Mr. Talekar, learned counsel for the petitioner has argued in rejoinder. He has relied upon Sections 22 and 50 of the MRTP Act to submit that construction is not in consonance with the scheme of the Act. In view of Section 50 of the MRTP Act that unless the reservation of the land is deleted, no further development could be done. The Development Control Rules are in the nature of sub-delegation and therefore statutory provision will prevail upon the D.C. Rules. There has to be a request from the authority on the aspect as to whether the same area is required or not. There is no sanction granted by the State Government to delete the reservation of the land prior to its allotment. The reservation of the land has been deleted after carrying out

construction. The deletion is ultimately sanctioned in the year 2022, by which time the construction of the building was complete.

59. So far as the judgments relied upon by the Trust are concerned, the learned counsel for the respondent-State submits that those were in respect of the contracts or the largesse granted by the State Government, which are referable to the powers under Articles 298 and 299 of the Constitution of India. Those are the cases of contracts entered into by the State Government. The learned counsel for the respondent-State submits that in the case at hand, a particular institution is picked up without inviting more persons and that there may be many more such institutions, which could have shown interest in the lands which have been allotted to respondent no.7-Trust. He states that the only judgment that can be taken into consideration or made applicable in the present case is in the case of *Pragati Mahila Mandal, Nanded Vs. Municipal Council, Nanded and Ors.*¹. It was a case of rental compensation. However, in that case, the allotment of land was also subject matter of a Civil Suit, which was dismissed and the said order had attained finality in the Hon'ble Apex Court and therefore, on facts, this case cannot be made applicable to the facts of the present case.

60. In support of the case of the petitioner, the learned Advocate Mr. Talekar has relied upon the following judgments :-

1 (2011) 3 SCC 464

- (i) *Zenit Metaplast Pvt. Ltd. Vs. State of Maharashtra and Ors.*²
- (ii) *Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Ors.*³
- (iii) *Humanity and Anr. Vs. State of West Bengal and Ors.*⁴
- (iv) *Institute of Law, Chandigarh and Ors. Vs. Neeraj Sharma and Ors.*⁵
- (v) *Transport Nagar Free Zone Co-operative Society Ltd. Vs. Nagpur Improvement Trust and Anr.*⁶
- (vi) *Chandra Prakash Vs. State of Rajasthan and Ors.*⁷
- (vii) *Bangalore Medical Trust Vs. B.S. Muddappa and Ors.*⁸
- (viii) *Purushottam Vs. State of Karnataka and Ors., along with connected matters*⁹
- (ix) *Municipal Corporation of Greater Mumbai and Ors. Vs. Kohinoor CTNL Infrastructure Company Pvt. Ltd. and Anr.*¹⁰
- (x) *Harijan Layout Sudhar Samiti and Ors. Vs. State of Maharashtra and Ors.*¹¹
- (xi) *Anjuman E Shiate Ali and Anr. Vs. Gulmohar Area Societies Welfare Group and Ors.*¹²
- (xii) *Superintendent & Legal Remembrancer State of West Bengal Vs. Corporation of Calcutta*¹³

2 (2009) 10 SCC 388

3 (2011) 5 SCC 29

4 (2011) 6 SCC 125

5 (2015) 1 SCC 720

6 2004 SCC OnLine Bom 836

7 2009 SCC OnLine Rajasthan 5551

8 (1991) 4 SCC 54

9 (2014) 3 SCC 721

10 (2014) 4 SCC 538

11 1997 (2) Mh.LJ. 98

12 2020 SCC OnLine SC 373

13 AIR 1967 SC 997

61. Mr. Abhijit Kulkarni, learned counsel for respondent nos.7 and 8 has relied upon the following judgments :-

- (i) *Pragati Mahila Mandal, Nanded Vs. Municipal Council, Nanded and Ors.*¹⁴
- (ii) *Netai Bag and Ors. Vs. State of West Bengal and Ors.*¹⁵
- (iii) *T. Damodhar Rao and Ors. Vs. The Special Officer, Municipal Corporation of Hyderabad and Ors.*¹⁶
- (iv) *Humanity, Salt Lake and Anr. Vs. State of West Bengal and Ors.*¹⁷

62. Mr. Nargolkar, learned counsel for respondent no.6-Municipal Council has relied upon the following judgments :-

- (i) *M.P. Oil Extraction and Anr. Vs. State of M.P. and Ors.*¹⁸
- (ii) *Kasturi Lal Lakshmi Reddy and Ors. Vs. State of Jammu & Kashmir and Anr.*¹⁹
- (iii) *Natural Resources Allocation, in RE. Special Reference No.1 of 2012*²⁰
- (iv) *G.B. Mahajan and Ors. Vs. Jalgaon Municipal Council and Ors.*²¹

14 (2011) 3 SCC 464

15 (2000) 8 SCC 262

16 1987 SCC OnLine AP 6

17 2021 SCC OnLine Cal 2610

18 (1997) 7 SCC 592

19 (1980) 4 SCC 1

20 (2012) 10 SCC 1

21 (1991) 3 SCC 91

63. Before advertng to the submissions made by learned counsel for the parties, it is now necessary to discuss the case laws cited by the learned counsel for the respective parties.

64. The learned counsel for the petitioner has placed reliance in the case of *Zenit Mataplast Pvt. Ltd. Vs. State of Maharashtra & Ors.*, and by inviting our attention to paragraphs 27 to 29 thereof submits that every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. The learned counsel submits that in the case at hand, the action taken by respondent no.6-Municipal Council was not fair and legitimate. It clearly shows that the impugned resolution has been passed only to favour of the Trust. The action taken by the Municipal Council as well as the State lacks bonafides and it is a case of colourable exercise of power. The relevant paragraphs 27 to 29 are reproduced below for ease of reference :-

“27. Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an impression of bias, favouritism and nepotism. The decision should be made by the application of known principles and rules and in general such decision should be predictable and the citizen should know where he is, but if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in

accordance with the rule of law.

28. *In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides as it would only be a case of colourable exercise of power. The rule of law is the foundation of a democratic society. In I.R. Coelho Vs. State of T.N.²², the Apex Court held as under :-*

“101. The State is to deny no one equality before the law.

105. Economic growth and social equity are the two pillars of our Constitution, which are linked to the rights of an individual (right to equal opportunity), rather than in the abstract.

129. Equality, rule of law, judicial review and separation of powers form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the violation was not subject to the judicial review.”

29. *In a case like this, when the applicant approaches the court complaining against the statutory authority alleging arbitrariness, bias or favouritism, the court, being custodian of law, must examine the averments made in the application to form a tentative opinion as to whether there is any substance in those allegations. Such a course is also required to be followed while deciding the application for interim relief.*

30. *Interim order is passed on the basis of prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status-quo till the matter is*

22 (2007) 2 SCC 1

decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final bearing. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial."

65. Further, the learned counsel for the petitioner has invited our attention to paragraphs 40 and 41 of the said judgment, wherein the Hon'ble Apex Court has discussed as to in what manner the application should have been dealt with. In that case, the application made by the applicant for allotment of adjacent land was disposed of without passing a reasoned and speaking order. It was a case of allotment of land by an authority and therefore the authority and the State Government was expected to pass a reasoned and speaking order. Here in the case at hand, for allotment of land within the jurisdiction the Municipal Council, the only requirement was that a decision to that effect is to be taken by 2/3rd majority of the members of the Municipal Council, supported by a resolution to that effect, subject to complying with the conditions provided under Section 92 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. The impugned Resolution No.18 was passed by the members of the Municipal Council with requisite majority. Hence, there is no substance in the argument that there was no application of mind while passing the impugned resolution by the Municipal Council. The Councillors are free to vote as per their conscience. Another condition was that approval shall be obtained from the

State Government, which condition is found to be satisfied in the present case. The State Government has thereafter taken a decision considering the interest of the Municipal Council and the citizens. In our opinion, this judgment cannot be made applicable to the facts of the present case.

66. In *Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh*, paragraphs 65 to 73 are read out. It is true that the State or its agencies / instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action / decision of the State and/or its agencies / instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy. Merely because the objectives of the respondent are laudable and that all the trustees there being members of a particular party and the entire exercise for reservation and allotment was then undertaken because of political functionaries of the State wanted to favour respondent no.5 in that case, an observation was made in the facts of that case that there was no provision in the Act or the Rules for allotment of land without issuing advertisement and/or without inviting applications from eligible persons. The Government of Madhya Pradesh had taken a decision to allot 20 acres of land to a Trust without any advertisement and without inviting other similarly situated organizations/institutions to participate in the process of allotment. The allotment made in this fashion was held to be in violation of Article 14 of the Constitution of India and the provisions of the

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973. In the case at hand, the Municipal Council very much have the power regulated by Section 92 of the Act the Rules. The State Government as well as the Municipal Council were within its power while taking a decision on the application of the Trust.

67. So far as a decision in *Humanity and Anr. Vs. State of West Bengal and Ors.*, is concerned, allotment of land was made in favour of a school by the State of West Bengal without following any procedure. There an advertisement was issued by the government for setting up of an integrated school from primary level to higher secondary level. It was stated in the advertisement that the school would basically be academic in nature with extra-curricular activities. However, one of the conditions in the advertisement was that *"the government however reserves the right to change the location of the land and revise the rate of salami at its full discretion. Such decision shall be final."* The land was thereafter allotted. By relying upon the project report, the allottee had stated that the school would be owned by a registered society/trust. The allottee was one of the applicants out of twenty. The land was allotted and the lease deed was executed. After the allotment was made, a letter was written by the allottee for allotment of a bigger plot as it was necessary considering the norms of "ICSE". It is thereafter that the government had allotted another land that was bigger in size. The challenge was therefore raised to the effect that there was no advertisement for

allotment of the subsequent plot. For allotting the subsequent plot, there was a condition to surrender the earlier plot; however, the same was also not done. It was done only after filing of the petition before the High Court. Then it was further stated that at the time of initial application itself, the norms of ICSE affiliation were already notified and the allottee must be aware of those norms, but the case was considered and it was held that setting up of a private school may have some elements of public interest in it and therefore the subsequent allotment was cancelled as there was no advertisement for allotment of subsequent plot. It was held that the government made allotment of new plot to the allottee on terms which were even more generous than the ones suggested by the allottee earlier. It was found that out of seven requests, five requests were made by the members from the same family, but there is clear observation made that the action taken was arbitrary.

68. In *Institute of Law, Chandigarh and Ors. Vs. Neeraj Sharma and Ors.*, the learned counsel for the petitioner has invited attention of this court to paragraphs 25 to 31, wherein it was held by the Hon'ble Supreme Court that allotment of land to educational institutions was without undertaking any systemic exercise by the administration of Chandigarh to identify the needs of different kinds of professional institutions required to be established etc.

69. The next decision is in the case of *Transport Nagar Free Zone Co-op. Society Ltd. Vs. Nagpur Improvement Trust and Anr.*²³, in which an

23 2004 SCC OnLine Bom 836

application was made by the petitioner for allotment of land. The Division Bench of this Court at Nagpur Bench has considered Rule 26 of the Rules. In that case, it was held that the power to relax the rule is necessarily required to be exercised in just and equitable manner and to mitigate undue hardship, if any, caused in a particular case. Thus, it was found that the government can exercise the power under Rule 26 and if the exercise of such power results in destroying the very scheme of the Rules, such power cannot be exercised by the State Government. In the case at hand, however, the State Government has considered the object for which the land was to be allotted and had taken proper care to safeguard the interest of the general public as well as of the Municipal Council.

70. In the case of *Chandra Prakash Vs. State of Rajasthan & Ors.* relied upon by learned counsel for the petitioner, the High Court of Rajasthan has observed that the petitioner therein had raised an objection before the learned Additional District Collector to the effect that the provisions of Rules 141 and 152 of the Rajasthan Gram Panchayat Rules, 1996 were not followed and the power under Rule 158 was invoked without any basis. The learned Additional District Collector, however, without discussing the objections and without recording judicial findings, passed a non-speaking order and therefore the same was set aside observing that it was necessary to follow principles of natural justice and to pass a speaking order. This case therefore will have no application to the facts in the present petition.

71. As regards the construction made by respondent no.7-Trust in the present case, the learned counsel for the petitioner has relied upon the judgment in *Bangalore Medical Trust Vs. B.S. Muddappa and Ors.*, in particular paragraphs 36 and 46 to 48 thereof, wherein open space was reserved for public park in the Development Scheme duly approved and published under the Bangalore Development Authority Act, 1976. The said reservation was changed, thereby ignoring welfare of the general public for the purpose of financial gain. To carry out the purpose for which the Bangalore Development Authority Act, 1976 was enacted, the Development Scheme framed by the Improvement Trust was adopted by the Development Authority. Any alteration in the Development Scheme could have been made as provided in sub-section (4) of Section 19 only if it resulted in improvement in any part of the Scheme. The exercise of the discretion must be for efficient and smooth functioning etc. In that case, the discretion was exercised to convert the site reserved for amenity as a civic amenity. When the power is conferred to act in one or the other manner, the authority cannot act whimsically or arbitrarily. The action be guided by reasonableness and fairness. The legislature never expects its authorities to abuse the law or use it in unfair manner. In the present case, we do not find that there is any violation of legislative intent as both the authorities have acted within their limits/powers and have taken a decision in the interest of Municipal Council as well as the general public.

72. The next decision relied upon in the case of *Purushottam Vs. State of Karnataka and Ors.*, wherein it was held that once site is reserved for a particular civic amenity, it cannot be transferred even for any other civic amenity without change in Development Plan. Civic amenity site, reserved for bank, was allotted for opening of petrol pump. In this case, as submitted and discussed in later paragraphs, there is a change in reservation. However, even without changing the reservation, the land can very much be utilized by the Trust for the purpose for which it was reserved. In the present case, the land was reserved for public parks, play grounds etc.

73. In the case of *Municipal Corporation of Greater Mumbai and Ors. Vs. Kohinoor CTNL Infrastructure Company Pvt. Ltd. and Anr.*, wherein a podium was constructed, which was permissible only on the plot admeasuring more than 1,500 sq.mtrs. and therefore it was held that the provisions of D.C. Regulations were not applicable to the plots smaller than 1,500 sq.mtrs.

74. In the case of *Harijan Layout Sudhar Samiti and Ors. Vs. State of Maharashtra and Ors.*, decided by this High Court, in paragraph 32 thereof, it was held that the open space in the government scheme is for better sanitation, environmental and recreational purpose of the residents of the locality. Once this area is earmarked / reserved in the plan, the Development Authority or the government cannot amend the plan which will change its

basic features. In the case at hand, the land was already reserved for public amenity and it has been utilized exactly for the purpose for which it was reserved.

75. So far as judgment in the case of *Anjuman E Shiate Ali and Anr. Vs. Gulmohar Area Societies Welfare Group and Ors.* is concerned, it was held that the two plots shown as reserved for open spaces / garden in the approved layout cannot be used for the purpose of construction. It was a case where large plot of land was allotted for the purpose of allotting small plots to the members of Dawoodi Bohra Community. Some plots were shown to be reserved for the authority. The Anjuman Trust had prepared a layout and submitted the plan to the competent authority showing two small plots as open spaces/garden. The said layout was approved. Later-on, it was found that those two plots were utilized for construction. It was held that the Anjuman Trust cannot claim that it was entitled to make constructions, based on Development Plan prepared by MHADA for the entire JVPD Scheme and the said layout was prepared in the year 1967 as a temporary measure. It was further held that such Development Plans were prepared by showing various zones such as residential, commercial, industrial etc. and it is fairly well settled that the open spaces/garden left in an approved layout cannot be allowed for the purpose of constructions. Here again it is found that this case is not applicable to the facts of the case in hand.

76. The learned counsel for the petitioner has lastly relied upon the judgment in the case of *Superintendent & Legal Remembrancer State of West Bengal Vs. Corporation of Calcutta*. We do not find that this case is applicable to the present case.

77. Now coming to the case laws relied upon by Mr. Abhijit Kulkarni, learned counsel for respondent nos.7-Trust, in the case of *Pragati Mahila Mandal, Nanded Vs. Municipal Council, Nanded and Ors.*, the Hon'ble Apex Court has considered the "public or semi-public use" and also the "educational, medical, religious, social and charitable purposes". Rule 21 of the Rules is considered in the said case and that this is a case which is applicable directly. In that case, the land was allotted to Pragati Mahila Mandal. The Municipal Council had passed a resolution to allot the land to the Pragati Mahila Mandal. After passing of the resolution, it was sent to the Collector for further necessary action. The Collector sent a proposal for sanction to the State Government. The Assistant Town Planner informed the government that rental compensation for the subject plot for giving it on long lease of 60 years was worked out to be @ Rs.6,816/- per annum. The Pragati Mahila Mandal made a representation for reconsideration of the rental compensation on the ground that it was a charitable trust working for the benefit of girls and women etc. On reconsideration of the representation, the sanction was granted and the rental was fixed @ Rs.11/- per annum by the Divisional Commissioner. In that case, the sanction was ex-post-facto. The

High Court had set aside the allotment. The Hon'ble Apex Court has considered that the plot was reserved for the object of conducting educational activities for girls and women. It was not disputed that the Pragati Mahila Mandal proposed a hostel for girls / working women. The Mandal used the land for construction of ladies' hostel on no profit basis. It was considered by the Hon'ble Apex Court that the hostel constructed for girls and working women would definitely be for public or semi-public purpose and that there was no deviation from the purpose for which the plot was earmarked and allotted to the Mandal. In the present case also, the land was reserved for recreational facility, which fall under public and semi- public purpose and therefore we do not find that in this case also the purpose that is changed.

78. The learned counsel for the Trust has then relied upon a judgment in the case of *Netai Bag and Ors. Vs. State of West Bengal and Ors.* and invited attention of this court to paragraphs 16, 17 and 18 thereof to point out that the initial burden to show that the impugned action is unconstitutional prima facie lies upon the petitioner. In this case, the submission was that the initial burden itself was not discharged by the petitioner.

79. Mr. Nargolkar, learned counsel for respondent no.6-Municipal Council by relying upon the judgment in the case of *M.P. Oil Extraction and Anr. Vs. State of M.P. and Ors., along with connected matter*, has invited attention of this court to paragraphs 41 and 45 thereof in support of his case, which are

reproduced below for ease of reference :-

“41. After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979, which was subsequently revised from time to time, cannot be held to be arbitrary and based on no reason whatsoever but founded on mere ipse dixit of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and not being informed by any reason whatsoever can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation

needs to be emphasized. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.

45. *Although to ensure fair play and transparency in State action, distribution of largesse by inviting open tenders or by public auction is desirable, it cannot be held that in no case distribution of such largesse by negotiation is permissible. In the instant case, as a policy decision, protective measure by entering into agreements with selected industrial units for assured supply of sal seeds at concessional rate has been taken by the Government. The rate of royalty has also been fixed on some accepted principle of pricing formula as will be indicated hereafter. Hence, distribution or allotment of sal seeds at the determined royalty to the respondents and other units covered by the agreements cannot be assailed. It is to be appreciated that in this case, distribution by public auction or by open tender may not achieve the purpose of the policy of protective measure by way of supply of sal seeds at concessional rate of royalty to the industrial units covered by the agreements on being selected on valid and objective*

considerations.”

80. Thus, we find that here action of the Municipal Council so also of the State Government is totally consistent with the policy framed by the government. These authorities were competent to take decision freely; firstly, by the Municipal Council by passing a resolution and, secondly, by the State Government by invoking Rules 21 and 26 of the Rules. The State Government was also competent thereafter to grant permission to the construction even ex-post facto. The D.C. Regulations recognized such a power with the State Government. The only thing that is required to be seen, as discussed in the earlier paragraphs of this judgment, is that the construction should be in consonance with the rules.

81. The learned counsel Mr. Nargolkar has further relied upon the judgment in the case of *Kasturi Lal Lakshmi Reddy and Ors. Vs. State of Jammu and Kashmir and Anr.* He mainly relied upon paragraphs 14 and 15 of this judgment and submits that in this case, the government has satisfied both the conditions i.e. the test of reasonableness and public interest. Here it would be necessary to reproduce paragraphs 14 and 15 of the said judgment for ease of reference :-

“14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the

element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of consideration which may have to be taken into account by the government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the government in taking a particular action, that the court would have to decide whether the action of the government is reasonable and in public interest. But one basic principle which must guide the court in arriving at its determination on this question is that there is always a

presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the government is unreasonable or without public interest because as we said above, there are a large number of policy considerations which must necessarily weigh with the government in taking action and therefore the court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the court under the Constitution to invalidate the governmental action. This is one of the most important functions of the court and also one of the most essential for preservation of the rule of law. It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of the law and if there is any transgression, the court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with

the rule of law and in this task, the court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable or lacking in the quality of public interest, is different from that of mala fides though it may, in a given case, furnish evidence of mala fides.

15. *The second limitation on the discretion of the government in grant of largesse is in regard to the persons to whom such largesse may be granted. It is now well settled as a result of the decision of this court in Ramana D. Shetty Vs. International Airport Authority of India, that the government is not free, like an ordinary individual, in selecting the recipients for its largesse and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the government need not deal with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the government is dealing with the public whether by way of giving jobs or entering into contracts or granting other forms of largesse, the government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the court as a rule of administrative law and it was also validated by the court as an emanation flowing*

directly from the doctrine of equality embodied in Article 14. The court referred to the activist magnitude of Article 14 as evolved in E.P. Royappa Vs. State of Tamil Nadu and Maneka Gandhi case and observed that it must follow

as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets that test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground.

This decision has reaffirmed the principle of reasonableness and non-arbitrariness in governmental action which lies at the core of our entire constitutional scheme and structure."

82. Mr. Nargolkar, learned counsel for respondent no.6-Municipal Council has thereafter relied upon the judgment in the case of *Natural Resources Allocation, In Re. Special Reference No.1 of 2012*. This case was decided by the Five Judges' Bench of the Hon'ble Apex Court. Learned counsel has relied upon paragraph 88 thereof. It is necessary to mention here that this was a

judgment in a case where His Excellency the President of India had made a reference under Article 123(1) of the Constitution of India. The learned counsel has invited attention of this court to paragraphs 58, 90, 93, 95, 107, 108, 111, 113, 114, 116, 119, 125 and 135 and various other paragraphs of this judgment. In para 135, it was held that the potential for abuse cannot be the basis for striking down a method as ultra vires the Constitution. It is the actual abuse itself that must be brought before the court for being tested on the anvil of constitutional provisions. In para 136 of the said judgment, it was held that one cannot dictate a method of distribution for natural resources, which violates the age-old established principle of non-interference by the judiciary in policy matters. The learned counsel has further relied upon paragraphs 139 and 150 of the said judgment.

83. Mr. Nargolkar has lastly relied upon the judgment in the case of *G.B. Mahajan and Ors. Vs. Jalgaon Municipal Council and Ors.* He especially relied upon paragraphs 41 to 46 of the said judgment. Thus, ultimately, it is submitted that the auction or the advertisement are not the only criteria to test the bona fides or mala fides of the government or its instrumentalities. He submits that everything need not be commercialized. Looking to the object with which the land is allotted, it is not desirable to auction the land for a profit-making purpose. The purpose for which the land is reserved is for a public / semi-public use. There Municipal Council is not expected to trade in terms of money or to earn profit. The Municipal Council is under obligation

to discharge its obligation to provide recreational facilities for its citizens. From the rules framed under the D.C. Regulations, he pointed out that the purpose for which the land has been allotted i.e. Art Gallery comes under the meaning of “recreational facilities”. It is also public / semi-public purpose. Whether there was change in the reservation or not does not violate any of the rules framed under the Development Control Regulations.

84. Considering all aspects of the matter, the submissions of learned counsel for the respective parties and considering the judgments cited by them, this court finds that the action of the Municipal Council in passing the impugned resolution and further action of the State Government granting sanction, by invoking Rules 21 and 26 of the Municipal Council Rules, to the proposal for allotment of land to respondent no.7-Trust is perfectly within its power. The action cannot be said to be unreasonable or unconstitutional. The action of change of designation / reservation also does not suffer from any arbitrary action. The change / modification in the Development Plan was done by following prescribed procedure. Even the petitioner had taken part in the said process by raising objection. After the decision was taken, the petitioner did not challenge the said decision, which shows that the petitioner has accepted the decision. The said aspect cannot be gone into now in the writ petition. Yet, we have also considered the submissions made in PIL/96/2021. By considering the submissions made in the petition as well as in the PIL, we are of the firm opinion that there is no illegality committed by any of the

authorities and we have no doubts that the petition and the PIL deserves to be dismissed. Accordingly, we pass the following order :-

ORDER

- (i) Writ Petition No.9498 of 2021 is dismissed.
- (ii) Public Interest Litigation No.96 of 2021 is dismissed.
- (iii) Rule is discharged.
- (iv) No order as to costs.

[KISHORE C. SANT, J.]

[PRASANNA B. VARALE, J.]