

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2718 OF 2013

1. Gurabai Gurmukhdas Mattani
Aged about 68 yrs
R/o Dasturnagar, 3rd Lane,
Amravati
 2. Vishandas Gopaldas Sayyatta
Aged about 55 yrs
R/o Dwarkanath Colony,
Near Dasturnagar, Amravati
 3. Baskar Holomal Waswani
Aged about 50 yrs
R/o Baba Hardasram Society,
Near Kanwar Nagar, Amravati
 4. Gopal Kanhaiyalal Sachdeo
Aged about 35 yrs.
R/o Rampuri Camp, Amravati
 5. Nilkamal Sanjay Mattani
Aged about 44 yrs,
R/o SSD Vihar, Chimote Nagar,
MIDC Bypass Road, Amravati
- ... Petitioners

-vs-

Amravati Municipal Corporation,
Through its Commissioner,
Amravati, Dist. Amravati

... Respondent

WITH
WRIT PETITION NO.2010 OF 2014

1. Nandlal Suganchand Tardeja
Through Power of Attorney Holder,
Shri Vijay Suganchand Tardeja,
aged about 55 years, Occ. Business,
R/o Dastur Nagar, Amravati
2. Ishwarlal Nebhraj Verma,

Aged about 60 years
Occ. Business, R/o Satya Krupa
Colony, Near Dwarkanath Nagar,
Amravati

3. Gurumukhdas Ganesharam Mattani,
Aged about 74 years, Occ. Business,
R/o Dastur Nagar, Amravati
4. Dayanand Khemchand Popali,
Aged about 74 years Occ. Business,
R/o Madhuban Colony, Dastur Nagar,
Amravati
5. Sudhir Govindram Tardeja,
Aged about 38 years, Occ. Business,
R/o Dwarkanath Nagar, Amravati
6. Kanta wd/o Rajkumar Motwani
Aged about 52 years, Occ. Business,
R/o Madhuban Layout, Near Municipal
Primary School, Dasturnagar, Amravati
7. Mahendra Laxmandas Ghundiya
Aged about 45 years, Occ. Business,
R/o Dastur Nagar, Amravati
8. Chandanlal Ganeshyaram Tardeja,
Aged about 58 years, Occ. Business,
R/o Jai Bharat Nagar, Amravati

... Petitioners

-vs-

Amravati Municipal Corporation,
Through its Commissioner,
Amravati, Dist. Amravati

... Respondent

WITH
WRIT PETITION NO.2450 OF 2015

1. Nandlal Vasantlal Arora
Aged 48 yrs. Occu. Business
R/o Dwarkanath Colony,
Near Dastur Nagar, Amravati
2. Jairam Kanhailal Dara
Aged 52 yrs. Occu. Business,

R/o C/o Dr. C. K. Dara,
Dwarkanath Nagar, Amravati

3. Amarlal Tirathdas Kukreja,
Aged about 60 years, Occu. Business
R/o Dastur Nagar, Amravati ... Petitioners

-vs-

Amravati Municipal Corporation,
Through its Commissioner,
Amravati, Dist. Amravati ... Respondent

Shri P. S. Khubalkar, Advocate for petitioners.
Shri R. D. Dharmadhikar, Advocate for respondent.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE : September 29, 2022

Common Judgment : (Per : A. S. Chandurkar, J.)

Since similar questions arise in these writ petitions, they have been heard together and are being decided by this common judgment. For sake of convenience, facts in Writ Petition No.2718/2013 are being referred to.

The petitioners are occupiers of individual commercial premises at plot Nos.75/2 to 75/15 on the Western side of the outer boundary of Joshi market in the area known as Dwarkanath market in the city of Amravati. By virtue of perpetual lease dated 24/03/1964, the petitioners claim interest in the said land. The Municipal Corporation decided to develop the market area known as Dwarkanath market as well as Joshi market. Insofar as the petitioners are concerned an agreement dated 19/05/2006 was entered into by each petitioner with

the Municipal Corporation and under that agreement the Municipal Corporation was to undertake construction of a commercial complex and thereafter each petitioner was to be delivered shop premises commensurate with the area occupied by him/her. Clause-17 of the said agreement being relevant is reproduced herein :

“ Clause-17. The party of Second part shall keep the shop structure insured at his cost. The party of Second Part shall not be entitled to pay the maintenance charges. That the party of Second Part shall be entitled to make internal changes by partition walls and will not be entitled to make any main structural changes.”

2. Pursuant to the aforesaid agreement, the Municipal Corporation issued a notice inviting bids so as to undertake construction of the commercial mall. To facilitate all activities to be undertaken in that regard, each petitioner executed a document of Power of Attorney in favour of the Deputy Municipal Commissioner of the Municipal Corporation. The Municipal Corporation accordingly took various steps to commence the construction of the commercial premises. A project agreement was thereafter entered into between the Commissioner, Amravati Municipal Corporation and the Developer. In the year 2011 it was proposed to execute a tri-partite agreement between the Municipal Corporation as lessor, the petitioners as lessee and the Developer. The petitioners were called upon to sign the said

tri-partite agreement. Clause-12 of the said tri-partite agreement which has resulted in disputes arising between the parties reads as under :

“ Clause-12. That the water charges, electricity charges and other charges which will include the charges for sanitation, security guards, lift charges and generator charges and all other such charges shall be payable by the Lessee and the amount of said charges will be decided mutually between the developer and the Lessee.”

3. The petitioners were hesitant to sign the said tri-partite agreement in view of Clause-12 therein. In that regard the Municipal Corporation through its Officer issued notices dated 25/06/2012, 22/08/2012 and 12/04/2013 to the petitioners calling upon them to sign the tri-partite agreement and hand over possession of the premises in their occupation. The petitioners on 26/04/2013 issued a notice to the Commissioner protesting against inclusion of Clause-12 in the tri-partite agreement and there being no response to their grievance, the present writ petitions have been filed.

4. During pendency of the writ petitions, the following order was passed on 04/03/2015.

“ Seen the pursis filed vide Stamp Nos.2365 of 2015 and Stamp No.2308 of 2015 filed in both the matters.

The Municipal Corporation has no objection if interim

arrangement is allowed and made in terms of the pursis. However, Mr.J.B.Kasat, learned Counsel points out that the tripartite agreement referred to in the said pursis is Annexure P9 filed in Writ Petition No.2010 of 2014 at its page no.70. He further states that the only dispute between the parties is about amounts to be paid as per clause 12 of said tripartite agreement. Hence, separate account only in relation to appropriation under the head mentioned in paragraph no.12 needs to be maintained. Respective Counsel for the petitioners do not dispute this position. Accordingly, we accept the pursis.

The petitioners shall sign the tripartite agreement without prejudice to their rights and contentions raised in the petition. The respondent/Corporation shall maintain separate account only in relation to the amounts received by it under clause 12/para 12 of the tripartite agreement (Annexure P9 of page no.70 of the Writ Petition).

Payments made by the petitioners under the said paragraph 12 may be refunded to them if their grievance in the petitions are accepted.”

5. Pursuant to the aforesaid order, a tri-partite agreement in view of the said interim order came to be executed by the parties. The petitioners agreed to pay municipal and other taxes to the Municipal Corporation. They also agreed to pay water, electricity and all other charges in respect of the services that would be availed by them. The petitioners were to maintain the premises at their own cost. It was also agreed that the charges of sanitation, security guards, lift charges and generator charges would be payable by the petitioners after initially

depositing the amount with the Developer. This interim arrangement has been since continued to operate.

6. Shri P. S. Khubalkar, learned counsel for the petitioners submitted that the dispute between the petitioners and the Municipal Corporation was specifically to the insertion of Clause-12 in the tri-partite agreement, draft of which was prepared in the year 2011. It was submitted that in the initial agreement dated 19/05/2006 the Municipal Corporation had accepted that the petitioners would not be entitled to pay any maintenance charges. This agreement being in the nature of a concluded contract between the parties, it was not open for the Municipal Corporation to require the petitioners to pay maintenance charges. Though Clause-12 of the tri-partite agreement refers to payment of water, electricity and other charges, it was submitted that the petitioners were willing to pay the actual water and electricity charges. The dispute was only with regard to payment of maintenance charges. It was not permissible for the Municipal Corporation to disregard Clause-17 in the agreement dated 19/05/2006. He submitted that the petitioners were willing to sit with the Developer so as to work out payment of maintenance charges to it but the petitioners had an objection to insertion of Clause-12 in the tri-partite agreement insofar as it related to the liability to pay the

maintenance charges. Placing reliance on the decisions in *Noble Resources Ltd. vs. State of Orissa and anr.* (2006) 10 SCC 236, *Kisan Sahkari Chini Mills Ltd. And ors. vs. Vardan Linkers and ors.* (2008) 12 SCC 500 and *Manualsons Hotels Private Ltd. vs. State of Kerala and ors.* (2016) 6 SCC 766, it was submitted that the Municipal Corporation being a public body it could not act in an arbitrary manner even in the matter of contract. It could not be permitted to disregard and deviate from the earlier concluded contract dated 19/05/2006. It was thus submitted that the petitioners were entitled for the relief as prayed for.

7. Shri D. L. Dharmadhikari, learned counsel for the Municipal Corporation opposed aforesaid submissions. At the outset he sought to urge that since there were various disputed questions that were sought to be adjudicated and the petitioners sought enforcement of the earlier agreement dated 19/05/2006, the writ petition was not liable to be entertained. Consideration of the prayers as made would result in affecting the rights of the Developer. The Developer was not a party to the proceedings and in his absence the objection to the inclusion of Clause-12 in the tri-partite agreement could not be considered. He further submitted that though three meetings were held in the year 2006, the challenge to Clause-12 was being raised at a belated stage.

Being occupiers of the premises in question that were to be constructed by the Developer, they could not deny the liability to pay maintenance charges. In that regard the learned counsel placed reliance on the decisions in *Pimpri Chinchwad Municipal Corporation and ors. vs. Gayatri Construction Company and anr. (2008) 8 SCC 172* and *South East U. P. Power Transmission Company Ltd. Lucknow vs. U.P. Power Transmission Corporation Ltd. Thr. Chairman and Others. (2019) 5 All LJ 69*. It was submitted that the writ petitions were liable to be dismissed.

8. We have heard the learned counsel for the parties at length and we have perused the relevant documents placed on record. At the outset the objection raised on behalf of the respondent to the maintainability of the writ petition can be considered. It is seen that the execution of the initial lease deed in the year 1964 in favour of the petitioners by the Municipal Corporation is not in dispute. Similarly, there is no dispute with regard to agreement dated 19/05/2006 between the petitioners and the Municipal Corporation. As per Clause-17 thereof it was agreed that the petitioners would not be entitled to pay maintenance charges. In the same agreement, it was agreed that the Corporation would construct a commercial complex wherein the petitioners were to be allotted shop blocks in view of the

fact that they had leasehold right in the property. In terms of this agreement dated 19/05/2006, the Municipal Corporation took further steps and sought to construct the premises by engaging the services of the Developer. With a view to facilitate such construction, a tri-partite agreement was sought to be entered into. As stated above, the grievance of the petitioner is with regard to Clause-12 of the tri-partite agreement insofar as it requires them to pay maintenance charges.

The only aspect that is proposed to be adjudicated is the insertion of Clause-12 in the tri-partite agreement disregarding Clause-17 of the agreement dated 19/05/2006 at the instance of the Municipal Corporation. In that regard we do not find any disputed question arises that seeks resolution. On the contrary, as held in *Noble Resources Ltd.* (supra), if it is urged that an action on the part of the State or any Authority is violative of Article 14 of the Constitution of India and a grievance made that there has been breach of promise on the part of the State or its Authority, a writ petition would be maintainable and it would not be correct to hold that under no circumstances would a writ lie only because it involved a contractual matter. With the aforesaid legal position in mind, the rival contentions can be considered.

9. As stated above as per Clause-17 of the agreement dated

19/05/2006, the Municipal Corporation had agreed that the petitioners would not be entitled to pay any maintenance charges. Thus while seeking to take steps as permissible under that agreement and requiring the Developer to undertake construction, the stand of the Municipal Corporation of seeking to require the petitioners to pay maintenance charges by disregarding Clause-17 of the earlier agreement appears to be directly in conflict with the same. While executing the tri-partite agreement, the rights accrued by the petitioners and the promises made to them by the Municipal Corporation cannot be permitted to be defeated. Thus to the extent of inclusion of Clause-12 in the tri-partite agreement by which the petitioners are required to pay other charges in the form of maintenance requires consideration. The insistence to that extent by the Municipal Corporation is not justified.

10. It is seen that pursuant to the interim order dated 04/03/2015 the petitioners have been paying other charges which include the charges of sanitation, security guards, lift charges and generator charges by mutual agreement. This arrangement is subject to the final adjudication of the writ petition. Considering the narrow dispute between the petitioners and the Municipal Corporation, we are of the view that both the parties ought to resolve the same through a

meaningful dialogue. We also note that the petitioners have expressed willingness to have a separate maintenance agreement with the Developer as the petitioners are only averse to inclusion of Clause-12 to that extent in the tri-partite agreement.

In the light of aforesaid the interests of justice would be met by issuing following directions so as to resolve the dispute between the parties :

- (a) The petitioners as well as the Municipal Corporation through its authorised Officer shall sit together and resolve the issue with regard to Clause-12 of the tri-partite agreement insofar as it refers to payment of maintenance charges by the petitioners. This shall be done by reconciling Clause-17 of the agreement dated 19/05/2006 insofar as it does not require the petitioners to pay maintenance charges.
- (b) It is clarified that Clause-12 of the tri-partite agreement insofar as it relates to payment of water and electricity charges is not objected to.
- (c) It is open for the petitioners to have a separate agreement with the Developer in the matter of payment of maintenance charges that have been otherwise referred in Clause-12 of the tri-partite agreement.
- (d) As per the interim order dated 04/03/2015 a separate account is being maintained by the Municipal Corporation with regard to payment being made by the petitioners under

Clause-12 of the tri-partite agreement. After deducting the actual amount spent, the balance amount if any shall be returned to the petitioners.

- (e) The Commissioner, Municipal Corporation Amravati shall take necessary steps to resolve the aforesaid dispute within a period of eight weeks from today. The petitioners shall co-operate with the Authorities in the matter.

The writ petitions are disposed of with aforesaid directions leaving the parties to bear their own cost.

(Urmila Joshi-Phalke, J.)

(A. S. Chandurkar, J.)

Asmita