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

PUBLIC INTEREST LITIGATION NO. 24 OF 2023

1. Mahendra alias Munna Naryansing Rathod,
2. Ramkrushna Vitthalrao Solanke.
3. Sameer Rameshrao Javnjal.
4. Pravin Ramkrushan Dange. **..PETITIONERS**

versus

1. State of Maharashtra, through Secretary, Urban Development Department, Mantralaya, Mumbai
2. Amravati Municipal Corporation, through its Commissioner
3. The Commissioner, Amravati Municipal Corporation, Amravati.
4. Dr. Praveen Ashtikar(IAS), Municipal Commissioner, Amravati Municipal Corporation, Amravati.
5. The District Collector, Amravati, (MS)
6. The Divisional Commissioner, Amravati Zone, Amravati.
7. M/s. Shankar Constructions, Nanded, through its Partner,

...RESPONDENTS

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Shri T. D. Mandlekar, Advocate for petitioners.
Shri D. P. Thakare, Additional Government Pleader for respondent nos.1, 5 & 6.
Shri M.G.Bhangde, Senior Advocate with Shri J. B. Kasat, Advocate for respondent nos. 2 to 4.
Shri Abhay Sambre, Advocate for respondent no.7.

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CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.
ARGUMENTS WERE HEARD ON : 28th JUNE, 2023.
ORDER IS PRONOUNCED ON : 28th JULY, 2023

P. C.

By the present proceedings filed in Public Interest the petitioners who claim to be public spirited citizens seek to raise a challenge to the Request For Proposal (RFP) published on 23.12.2022 inviting proposals for commercial development of land admeasuring 7442.70 square meters situated in the vicinity of Nawathe Square, Amravati - Badnera Road, Amravati. Principally, the petitioners contend that implementation of the aforesaid RFP would result in revenue loss to the Amravati Municipal Corporation (for short, AMC) thus compromising its interest.

2. We have heard the learned Advocates for the parties and we have perused the documents on record. Before proceeding to consider the grievance sought to be raised in the present proceedings, it would be necessary to consider the credentials of the petitioners since they have sought to invoke the jurisdiction of this Court in public interest. The petitioners nos. 1, 2 and 4 claim to be former Corporators of the AMC while the petitioner no.3 claims to be the District President of Congress Party Cell who is also engaged in business and undertakes the social work. In para 2-B of the proceedings it has been pleaded that there are no pending litigations against the petitioners except one offence against the petitioners vide F.I.R.No.0073 registered under Sections 353, 448, 341, 176, 501 and 135 of the Indian Penal Code at Police Station City Kotwali. In the additional affidavit that has been filed by each petitioner under Rule 7 of the Bombay High Court Public Interest Litigation Rules, 2010 (for short, the Rules of 2010), the petitioner nos. 1 to 3 have referred to the aforesaid offence registered against them while the petitioner no.4 has categorically stated that there is no civil or criminal litigation pending against him.

3. In the reply filed on behalf of the respondent no.7, it has been specifically pleaded that the petitioner no.1 has been prosecuted in twenty cases while two criminal cases against him are pending. The petitioner no.2 has been prosecuted in twenty-three cases. The petitioner no.3 has been prosecuted in fourteen cases while five criminal cases are pending against him. As regards the petitioner no.4, he was prosecuted in eleven cases and nine other cases are pending against him. These details are said to have been obtained by the respondent no.7 from the Website of the District Court, Amravati.

4. In reply filed by the respondent nos. 2 to 4 it has been specifically pleaded that the petitioner no.1 had earlier filed Writ Petition No.4674 of 2007 against the AMC as a public spirited individual seeking relief against a tenderer by alleging loss being caused to the AMC. The said writ petition came to be dismissed on 25.10.2007 and the petitioner no.1 was directed to pay costs of Rs.Ten thousand to the said tenderer.

5. After the aforesaid affidavits came to be filed on record, each petitioner has filed an additional affidavit under Rule 7 of the Rules of 2010. The petitioner no.1 in the said affidavit has stated that besides the criminal cases disclosed in the original affidavit, there was another criminal case bearing No.1538 of 2021 under Section 135 of the Indian Penal Code was registered against him. He has sought to tender unconditional apology for not disclosing the pendency of the aforesaid case while filing the present proceedings. The petitioner no.2 has not filed any such additional affidavit.

In the additional affidavit filed by the petitioner no.3 he has stated that besides the criminal proceedings referred in the earlier affidavit, there were three criminal cases pending against him. He has also sought to tender unconditional apology for not disclosing the other pending cases. In the additional affidavit filed by the petitioner no.4, he has stated that there were seven more cases pending against him. He has also sought to tender unconditional apology for not disclosing the pendency of the aforesaid proceedings.

6. Rule 5 of the Rules of 2010 requires the petitioner who initiates litigation in public interest to disclose details of any civil, criminal or revenue litigation which is or which could have legal nexus with the issues involved in the Public Interest Litigation. The object behind such disclosure is with a view to guage the standing of such petitioner as well as his bonafides in initiating such proceedings. No doubt, the said Rule requires disclosure of proceedings having nexus with the litigation initiated in public interest, nonetheless disclosure of pending proceedings is expected in the affidavit filed under Rule 7 of the Rules of 2010 so as to enable the Court to consider its implication on the proceedings. If, according to the petitioners, such pending proceedings do not have legal nexus with the issues involved in Public Interest Litigation, a statement to that effect can surely be made while furnishing the details of the same. It is for the Court to consider while taking cognizance of the issues sought to be raised in public interest as to whether the same warrants consideration at the behest of such petitioner or whether such petitioner ought to be replaced by another public spirited

citizen if the Court has a doubt about his credentials. In this backdrop, it was expected that the petitioners would disclose the pendency of various cases with a further statement that the same were not likely to have any legal nexus with the issues involved for being considered by the Court. The petitioners have however failed to do so.

7. Notwithstanding aforesaid, since an issue with regard to probable financial implications resulting in revenue loss to the AMC is sought to be raised in the present proceedings, we have examined the material on record to consider whether the proceedings deserve to be entertained in larger public interest. On behalf of the petitioners besides raising a challenge to the RFP dated 23.12.2022, the steps taken by the Municipal Commissioner, AMC in proceeding to pass Resolution No.33 in his capacity as Administrator, AMC, on 22.09.2022 has also been challenged by way of amendment.

8. According to the AMC, land admeasuring 7442.70 square meters was sought to be commercially developed. On 29.06.2017 the General Body of the Municipal Corporation had passed Resolution Nos.8 and 9 by which it had been resolved that the AMC itself would construct a multiplex complex on the aforesaid land located at Nawathe Plots. The amount required to be spent was approximately Rs.100 Crores. On the expiry of the elective term of the AMC, the Municipal Commissioner was appointed to act as 'Administrator' thereof. Resolution No.33 came to be passed on 22.09.2022 after noting that it was not possible for the AMC

to spend an amount of Rs.100 Crores coupled with the fact that the plot in question was lying vacant which could result in there being encroachment. It was thus resolved to adopt the Build Operate and Transfer Policy (BOT) by obtaining an amount of premium from the developer by leasing out the commercial complex for a period of thirty years. It was noted that if the expected amount of premium of Rs.10 Crores to 12 Crores would be deposited for a period thirty years in Fixed Deposit, the AMC would get revenue of Rs.100 Crores. On expiry of the period of thirty years, the complex would stand transferred to the AMC. Acting on the aforesaid Resolution passed by the Administrator, the RFP came to be published on 23.12.2022 inviting offers for grant of lease for such commercial development. The minimum reserve price was fixed at Rs.12 Crores and the lease was for a period of thirty years. The amount of bid security was Rs.75 Lakhs while the period of completion of the project was three years. On completion of the process of bidding, the work order came to be issued to the respondent no.7. On 21.03.2023 the present proceedings came to be filed by the petitioners.

9. Shri T. D. Mandlekar, learned Advocate for the petitioners submitted that the RFP prescribing the minimum reserved price of Rs. 12 Crores would result in revenue loss of Rs.348 Crores to the AMC. It is urged that the minimum reserve price of Rs.12 Crores has been fixed ignoring the fact that there is a litigation initiated by the earlier successful bidder M/s. Shriram Builtcon Private Limited seeking compensation of Rs.12.50 Crores from the AMC. In the contingency of such suit being decreed, the entire

amount of the reserve price would be required to be paid in the form of compensation to the said entity. Though the RFP indicates that the lease is to be granted for a period of thirty years, it further states that the same could be further extended and preference would be given to the tenant. Hence it was clear that the lease was for a perpetual term while the reserve price was fixed only at Rs.12 Crores resulting in revenue loss to the AMC. Reference was made to various provisions of the Maharashtra Municipal Corporations Act, 1949 and especially Sections 68, 79, 451 and 452 A thereof. Ignoring the statutory mandate as well as the restrictions placed therein, the RFP came to be issued in a manner that would cause prejudice to the financial interests of the AMC and to the public at large. The Resolution dated 22.09.2022 was passed in a manner contrary to the Act of 1949. It was further submitted that though the Municipal Commissioner/Administrator had been impleaded in his personal capacity, affidavit on his behalf had been filed by the Law Officer of the AMC. The said affidavit therefore did not deserve consideration. Since the land in question actually vested with the State Government and not the AMC, it was also necessary for the State Government to have looked into the matter. The learned Advocate referred to the decisions in *Ramana Dayaram Shetty vs. International Airport Authority of India and others* ***[(1979)2 SCC 489]**, Bahadursingh Lakhubhai Gohil vs. Jagdishbhai M. Kamala and others* ***[(2004) 2 SCC 65]**, Vijay Krishna Kumbhar vs. Collector, Pune and others* ***[2004 (2) Mh.L.J.636]**, Akhil Bhartiya Updhokta Congress vs. State of Madhya Pradesh and others* ***[(2011) 5 SCC 29]**, Centre for Public Interest*

Litigation and others vs. Union of India and others ***[(2012) 3 SCC 1]****, Natural Resource Allocation, In Re Special Reference No.1 of 2012* ***[2012(10) SCC 1]****, Writ Petition No.958 of 2002 (Sonalaxmi Macchimar Sahakari Soc. Ltd. vs. State of Maharashtra and ors) decided on 08.09.2010* and *Writ Petition No.527 of 2023 (Govind S.Agrawal and anr. vs. Nagpur Improvement Trust and ors.)* with connected writ petition decided on 15.06.2023 to urge that cognizance of the present proceedings required due consideration so as to safeguard the financial interest of the AMC.

10. Shri M.G.Bhangde, learned Senior Advocate for the respondent nos. 2 to 4 – AMC submitted that the petitioners had made various incorrect statements in the petition and on the basis of such incorrect information had filed the present proceedings. Though it was pleaded that as per the tender document the bidder would have to pay amount of Rs.12 Crores per year to the AMC, the same was not correct since the RFP merely referred to the amount of Rs.12 Crores without stating that the said amount was to be paid every year. It was submitted that there was no corrigendum issued by the AMC on this issue that the reserve price was liable to be paid for the entire period of thirty years and not each year as alleged. As regards, the statement in the petition that the requirement of Performance Security Deposit of Rs.Two Crores had been converted into refundable Bank Guarantee, it was submitted that the term with regard to Performance Security Deposit had not been included in the RFP document inadvertently. On realizing this mistake it was clarified that the Bid Security Amount or Rs.75 Lakhs would be converted into Performance Security Deposit and the

remaining amount of Rs.125 Lakhs (Rs. One Crore Twenty Five Lakhs) would be deposited by way of Bank Guarantee or Fixed Deposit receipt towards Performance Security Deposit.

As regards the allegation that the Floor Space Index - FSI would stand increased from 1.1 to 2.3 at the same amount of premium, it was submitted that there was no increase in the FSI. It was stated in the RFP notice that the basic FSI of 1.1 up to premium could be utilized which was in accordance with the Unified Development Control Regulations for Maharashtra State, 2020. The property card relied upon by the petitioners was incomplete and in fact, the land in question had been handed over to the Municipal Corporation vide order dated 01.10.2005 passed by the revenue authorities. Though it was urged by the petitioners that the reserve price determined did not represent the current market value of premium, there was no material brought on record by them to indicate the aforesaid. Attention was invited to the manner in which the amount of premium of Rs.12 Crores was arrived at. The calculations in question had been accepted by the officers' of the AMC in accordance with law. The said calculations had not been challenged by the petitioners. It was also pointed out that the Municipal Commissioner had duly authorized the Law Officer to file the affidavit in the present proceedings and it was not open for the petitioners to make any grievance in that regard. It was thus submitted that in absence of any material on record to hold that financial loss was likely to be caused to the AMC, the present proceedings did not deserve to be entertained in public interest. Reference was also made to the decisions in

Vallianur Iyarkkai Padukappu Maiyam vs. Union of India and others ***[(2009) 7 SCC 561]*** and *Arun Kumar Agrawal vs. Union of India and others* ***[(2013) 7 SCC]*** to urge that challenge to the commercial decisions of the AMC need not be examined in public interest litigation.

11. Shri Abhay Sambre, learned Advocate for the respondent no.7 supported the stand taken by the AMC. In addition, he pointed out that besides the respondent no.7, there were two other bidders who had participated in the tender process. On acceptance of the bid of the respondent no.7, the other two unsuccessful bidders did not challenge the award of work to the respondent no.7. The present proceedings were filed at the behest of the business rivals of the respondent no.7. The petitioners had belatedly approached the Court by filing the present proceedings on 21.03.2023 which was much after issuance of the RFP. It was thus submitted that no interference in the proceedings was called for.

12. We have given due consideration to the respective submissions and on the basis of the material on record, we are satisfied that there is no case made out to interfere in public interest with the issuance of the RFP. Though initially it was resolved by the General Body of the AMC on 29.06.2017 vide Resolution Nos. 8 and 9 that the Municipal Corporation would itself construct the multiplex complex, the same could not be done on account of financial constraints. This was taken into consideration and hence the Administrator who was in-charge of the affairs of the Municipal Corporation cancelled the said Resolutions and further resolved on

22.09.2022 that the construction should be undertaken on BOT basis. For determining the amount of premium, the opinion of the government approved valuer and architect was obtained. After considering the amount of Rs.161.4 per square meter as the amount of rent, it was found that the total rent after thirty years would be Rs.64,38,46,680/-. After addition of the amount of operations and maintenance costs of Rs.52,50,00,000/- the total rent after thirty years was found to be Rs.11,88,46,680/-. It is on this basis that the reserve price of Rs.12 Crores came to be fixed. The bid of the respondent no.7 for an amount of Rs.12.37 Crores being the highest came to be accepted. There is no material on record to hold that by determining the minimum reserve price at Rs.12 Crores, the financial interests of the AMC have been compromised. It has not been demonstrated that the said minimum reserved price would result in financial loss to the AMC. Since the petitioners have sought to invoke the jurisdiction of this Court in public interest, it was expected that they would place on record credible material to substantiate their claim and indicate the manner in which the minimum reserve price of Rs.12 Crores would cause financial loss and further that if the reserve price was determined in another manner, same would result in higher revenue to the AMC. That effort does not appear to have been taken by the petitioners. This was expected of the petitioners since they seek to contend that they are concerned with loss being caused to the AMC by virtue of the RFP.

13. With the clarification given on behalf of the AMC that the lease period is of thirty years and the reserve price of Rs.12 Crores is for the entire

period, it becomes clear that at no point of time was the reserve price indicated to be Rs.12 Crores per year. An option given for renewal of the lease after expiry of thirty years would naturally be subject to fresh terms and conditions and the same cannot mean that the interest of the AMC has been compromised.

14. Coming to the challenge raised to Resolution No.33 that has been passed by the Administrator/Municipal Commissioner on 22.09.2022 vide Civil Application No.852 of 2023, it would be necessary to refer to certain provisions of the Act of 1949 in this regard. According to the petitioners the aforesaid Resolution passed by the Municipal Commissioner while acting as the Administrator was contrary to the provisions of the Act of 1949 which further resulted in causing loss to the AMC. The elective term of the Members of the Municipal Corporation came to an end in March, 2022 and therefore, the General Body of the AMC was dissolved on 08.03.2022. Under Section 452A(1) the State Government can appoint a Government officer or officers to exercise all powers and to perform functions and duties of the Corporation under the Act of 1949. By virtue of sub-section (1A) thereof, when the State Election Commission is unable to conduct general elections especially due to outbreak of COVID-2019 pandemic, the State Government can appoint a Government officer or officers and at the request of the State Election Commission also extend such period till 30.04.2021 to exercise all powers and perform all functions and duties of the Corporation. Under sub-section (1B) thereof, the period of appointment can be further extended at the request of the State Election

Commission. It is in this capacity that the Administrator/Municipal Commissioner discharged duties and functions of the AMC. In the present situation, the provisions of Section 452 of the Act of 1949 are not attracted since it is not a case of dissolution of the Corporation as contemplated therein. The appointment of the Municipal Commissioner as Administrator is not under challenge and hence it is not necessary to dwell further in this regard.

15. Under Section 73 of the Act of 1949 the Commissioner is empowered to execute contracts on behalf of the Municipal Corporation. Section 79 thereof deals with the manner of disposal of municipal property. The Commissioner can act in accordance therewith and let out on hire or lease the property belonging to the Corporation with the sanction of the Corporation under Section 79(c). Under Section 79(d) the consideration for which any immovable property is leased should not be less than the current market value of such premium, rent or other consideration. As stated above there is no material produced by the petitioners to indicate that the current market value of the property leased is more than the consideration for which it was leased. The calculations submitted by the AMC for determining the amount of premium has also not been challenged. The further contention that the property leased belongs to the State Government is also not supported by any material inasmuch as the revenue records in the form of property card produced by the AMC indicates that the land belongs to the AMC. Reliance placed on the provisions of Section 43 of the Act of 1979 in the present proceedings is also misplaced for the reason that said provision

would apply when the General Body, Standing Committee alongwith other Statutory Committees are in existence. As stated above, since the elective term of the Members of the General Body had come to an end, the Municipal Commissioner was appointed as the Administrator. It is also to be noted that by the order dated 09.01.2019 in Writ Petition No. 4178 of 2017 (*Shriram Buildcons Private Limited vs. Amravati Municipal Corporation and others)* liberty was granted to the AMC to invite fresh tenders for going ahead with the construction of the multiplex. It is pursuant to this liberty that further steps have been taken by the Administrator.

16. From the aforesaid, we find that there is no material to hold that the provisions of the Act of 1949 have been violated while passing Resolution No.33 on 22.09.2022. The actions taken by the Administrator are in accordance with the provisions of the Act of 1949 pursuant to his appointment as such on 03.03.2022. We may note that even under the provisions of Section 451 of the Act of 1949 it was open for the petitioners to bring to the notice of the State Government their apprehension that by undertaking the activity of leasing out municipal land for construction of the multiplex, the same was likely to result in compromising the financial interest of the AMC or larger public interest. No such steps have been pointed out to have been taken by the petitioners.

17. Since the petitioners have sought to question the RFP published on 23.12.2022 by urging that the decision in that regard is likely to cause financial loss to the AMC, the said aspect of the matter has been

examined. While doing so, we have kept in mind the observations of the Honourable Supreme Court in *Villianur Iyarkkai Padukappu Maiyam* and *Arun Kumar Agrawal* (supra) and we have restricted our consideration of the said issue only to the extent of examining whether the financial interest of the AMC has been compromised in any manner whatsoever.

Though the learned counsel for the petitioners sought to support his contentions by relying upon the decisions that have been referred to in paragraph 9 (supra), we do not find that the financial interest of the AMC has either been compromised or has been affected pursuant to the determination of the amount of premium as well as the Resolution dated 22.09.2022 passed by the AMC in the matter of development of the multiplex.

18. Thus, after considering the entire material on record and keeping in view the legal position referred to in the decisions relied upon by the learned Advocate for the petitioners, we do not find that there is any case made out for this Court to intervene in Public Interest. Public Interest Litigation No.24 of 2023 thus stands dismissed with costs.

(MRS. VRUSHALI V. JOSHI, J.) **(A.S.CHANDURKAR, J.)**

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