

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 759 of 2018

The President, Municipal Council, Mangrulpir, Tal. Mangrulpir,
Dist. Washim and another

Versus

The Additional Commissioner, Amravati Division, Amravati and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.I.Dhatrak, Advocate for the petitioner.

Ms. H.N.Jaipurkar, AGP for the respondent nos. 1 and
2.

Shri Firdoz Mirza, Advocate for the respondent no.3.

CORAM : ANIL S. KILOR, J.

DATED : 12th JUNE, 2023.

Heard.

2. This writ petition arises out of the order dated 30th November, 2016 passed by the Additional Commissioner Amravati Division, Amravati under Section 318 of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965 (hereinafter referred as "Act, 1965") allowing the revision petition filed by the respondent no.3 Society challenging the order passed by the Collector Washim dated 4th November, 2015, observing that the resolution

passed by the Municipal Council on subject No. 10 dated 8th August, 2014, is not acceptable.

3. The matter pertains to Town Hall constructed by the Municipal Council on the land allotted to the respondent no.3-Society on lease by the Government. The resolution which was under challenge before the Collector at the instance of the respondent no.3-Society, was in respect of taking possession of the Town Hall by the Municipal Council.

4. The learned counsel for the petitioner at the outset has drawn attention of this Court to the affidavit filed by the Principal Secretary of the Government and submits that in the affidavit the Government is ready to handover the possession of the land in dispute along with the Town Hall to the Municipal Council. Thereupon, the learned counsel for the petitioner was asked to withdraw the petition, if according to him nothing survives in this writ petition. However, he states that this Court may pass the order on merit. Accordingly, I proceed to examine the matter on merit.

5. The land in question on which the Town Hall was constructed by the Municipal Council, was leased out to the respondent no.3-Society by the Collector.

6. Earlier, the lease was upto 2012 and it was renewed subsequently till December, 2016 and lastly it was renewed till December, 2031. Hence, the respondent no.3-Society is a lease holder of the land in dispute.

7. The Town Hall in question was constructed by the Municipal Council from the Vidharbha Development board's funds and was handed over to the respondent no.3 for maintenance by passing a resolution on 5th December, 2000.

8. In the resolution dated 5th December, 2000 there is no mention as regards any consideration to be paid by the respondent no.3-Society to the Municipal Council. However, the Municipal Council on 8th August, 2014 passed a resolution, resolving to take back the possession of the Town Hall from the respondent no.3-Society.

9. The said resolution was assailed by the respondent no.3-Society under the provisions of Section 308 of the Act, 1965 before the Collector who has passed the order dated 4th November, 2015 observing that the said resolution is not acceptable to him.

10. The respondent no.3-Society feeling aggrieved by the same carried the same in revision before the Additional Commissioner under Section 318

of the Act, 1965. The Additional Commissioner, vide impugned order dated 30th November, 2016, allowed the revision and set aside the order of the Collector. The said order is the subject matter of the present petition.

11. Shri Dhartak, learned counsel for the petitioners submits that once the land was donated by the respondent no.3-Society to the Municipal Council, the respondent no.3-Society cannot claim any right over the said land.

12. He further submits that the conditions stipulated by the Collector while granting lease in favour of the respondent no.3-Society, there is a condition no.8 that if in the opinion of the Collector the land is required by the Government or any local authority for any public purpose, Collector can cancel the lease by giving one month notice. He, therefore, submits that as the Municipal Council requires the land, the Collector by passing the order dated 4th November, 2015 has rightly confirmed the resolution dated 8th August, 2014, resolving to take possession of the land in dispute along with Town Hall. He, therefore, submits that no error was committed by the Collector, despite the same the Additional Commissioner erroneously set aside the order of the Collector.

13. He further submits that the respondent no.3-Society is earning lakhs of rupees from the Town Hall and he has not paid any amount to the Municipal Council and therefore the Municipal Council has rightly passed a resolution dated 8th August, 2014 and decided to take back the possession of the Town Hall. He, therefore, submits that impugned order needs to be quashed and set aside.

14. Shri Dhartak, learned counsel for the petitioner draws attention of this Court to the provisions of the Act, 1965 more particularly in Section 88(1)(f) of the Act, 1965 and submits that as the land has been gifted by the respondent no.3-Society, it has become a property of the Municipal Council.

16. He, lastly, submits that, as the Municipal Council has no power to lease out the Town Hall in question for more than nine years, on lapse of period of nine years the possession of the respondent no.3-Society over the Town Hall, is illegal.

17. On the other hand, learned Assistant Government Pleader strongly opposed the present petition and submits that the Additional Commissioner has rightly considered the fact that the respondent no.3 Society possesses the lease of the land in dispute and the fact that the possession of the town hall was handed

over by the Municipal Council for maintenance and without canceling earlier resolution whereby possession of the Town Hall was handed over to the respondent no.3-Society, the impugned resolution was passed. She therefore, submits that, the impugned order needs to be maintained and the petition is liable to be rejected.

18. Shri Mirza, learned counsel for the respondent no.3 reiterates the submission of the learned Assistant Government Pleader and pointed out that since the lease has been extended by the Collector, it cannot be said that the possession of the respondent no.3-Society is illegal.

19. He further points out that the submission made by the learned counsel for the petitioner that, after the period of nine years the possession of the respondent no.3 has become illegal as it is without authority, is not the ground for passing the resolution for taking possession. He, therefore, submits that the petitioner cannot add the grounds to the impugned resolution contrary to the law laid down by the Hon'ble Supreme Court of India in the case of Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others¹.

1 AIR 1978 SC 851

20. In the light of rival contentions of the parties, I have perused the record and the impugned order.

21. Admittedly, in this matter the respondent no.3-Society is a lease holder and lease granted by the Collector is upto December, 2031. Thus, the possession of the respondent no.3 over the land in question, is legal.

22. As far as the town hall is concerned, there is no dispute that it was constructed by the Municipal Council from the funds of Vidharbha Development Board, a statutory body and it was handed over to the respondent no.3 Society for maintenance vide resolution dated 5th December, 2000. In the aforesaid resolution, there is no condition to pay amount towards the rent or under any head to the Municipal Council and therefore the submission made by the counsel for the petitioner that the respondent no.3 Society is earning lakhs of rupees from the said Town Hall, may not be a relevant ground for taking possession of it.

23. The submission of the learned counsel for the petitioner that the respondent no.3-Society cannot claim any right over the land in question as the said land was gifted by the respondent no.3- Society to the Municipal Council, cannot be accepted and needs to be

rejected for the simple reason that, admittedly the respondent no.3 is not the owner but a lessee of the land in question and therefore there cannot be a gift deed transferring the title in favour of the Municipal Council. In the circumstances, Section 88(1)(f) of the Act, 1965 will not attract in this case and it is of no help to the petitioner.

24. Moving further, the Collector in its order dated 4th November, 2015 has categorically observed that under Section 92 of the Act, 1965 while leasing out the property to anyone the permission of the Government is necessary. The Collector has further observed that, while passing the resolution dated 5th December, 2000, no such permission was obtained from the State Government.

25. Nevertheless, the fact remains that there is no resolution passed by the Municipal Council till date, withdrawing the resolution dated 5th December, 2000 on the ground that, the said resolution was passed without obtaining the required permission of the Government as observed by the Collector.

26. In the circumstances, I do not find any perversity committed by the Additional Commissioner, Amravati to quash and set aside the order of the Collector.

27. At this stage, learned counsel for the petitioner-Municipal Council seeks a liberty to pass a fresh resolution under Section 92 of the Act, 1965 as there was no permission obtained from the State Government by the Municipal Council while handing over possession of the Town Hall or under any other provision as permissible under the law.

28. Shri Mirza, learned counsel for the respondent no.3 strongly opposed this request and submits that for passing such a resolution there is no need to have a liberty of this Court.

29. Considering the issue and particularly taking into consideration the public interest involved in the present matter, I am of the opinion that liberty needs to be granted as prayed for. Accordingly, it is granted.

30. The writ petition is disposed of.

[ANIL S. KILOR, J.]