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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

943 WRIT PETITION NO. 1512 OF 2024

**GOPAL HARIPRASAD KABRA AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS**

Mr.VA.Bagal, Advocate for the Petitioners.
Mr.S.B.Narwade, AGP for Respondent Nos. 1 to 4.
Mr.R.R.Chandak, Advocate for Respondent Nos. 5 and 6.
Mr.Y.R.Barhate, Advocate for Respondent No.7.
Mr.K.T.Taur, Advocate for Respondent No.8.

**(CORAM : RAVINDRA V. GHUGE AND
Y.G.KHOBRADE, JJ.)**

DATE : FEBRUARY 7, 2024

PER COURT :

1. The Petitioners are assailing the order of the District Collector dated 15.12.2023, passed by exercising jurisdiction u/s 308 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. On perusal of Sub Section 1, it is apparent that if a Council or a Committee resolves (by passing a resolution), contrary to the provisions of this Act or any other Law or Rules or bylaws or the government directions, then it would be the responsibility of the Chief Officer to send the said decision to the Collector for suspension of

execution of such a resolution or prohibiting implementation thereof, within 3 days, from the receipt of the resolution. The Petitioners further submit that Respondent no. 9 is an RTI activist and purportedly a social worker who had lodged a misconceived application.

2. The learned Advocate appearing on behalf of the Municipal Council points out that since Respondent No.9 appeared before this Court as a party in person in WP No.9269/2023 and since his only grievance was that his appeal is not being decided, this Court passed an order on 01.08.2023 directing the District Collector to decide the appeal. Though Respondent No.9 has set out in his application that it is an appeal u/s 308, it is in fact a grievance against an entry with regard to a property in the area of the Municipal council. The Municipal Council has not passed any resolution.

3. Respondent No.9, who had appeared before us as a party in person in WP No.9269/2023, is also before us today. He contends that his belief is that his appeal was rightly filed u/s 308. He only sought a direction in that petition so that the district collector would decide his application.

4. We had passed the order dated 01.08.2023 directing the District Collector to deal with the appeal of Respondent no.9 by following the due procedure laid down in Law. Had the District Collector noticed that the appeal could not have been filed by an individual u/s 308(1) and if there was no specific resolution or a decision of the Municipal Council and that he had no jurisdiction, he should have drawn a conclusion to that effect rather than exercising jurisdiction not vested in him by Law.

5. The learned Advocate for the Petitioners relies upon a judgment delivered by the Single Judge Bench of this Court at Nagpur dated 30.06.2021 in WP No.2219/2021, more particularly paragraph nos.10 to 16, which read as under :-

“10. The aspect of law brought to the notice of this Court is to be first considered, because it goes to the root of the matter. Section 308 of the aforesaid Act upon amendment reads as follows :

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

(1) If the Council or any Committee resolves contrary to provisions of this Act or any other law, or rules, bye-laws, or the Government directions, then it shall be the responsibility of the Chief Officer to send

it to the Collector for suspension of execution of such a resolution or prohibition of doing thereof, within the period of three days from the receipt of the said resolution. The Collector shall decide on such proposal within the period of thirty days from the date of receipt of such proposal. If it remains undecided within the said period, then the Collector shall submit the report thereof to the Director within ten days and the decision of the Director thereon shall be final. In such case, appeal against the order of the Director shall lie to the State Government.

(2) When the Collector makes any order under his signature, he shall forward to the Council affected thereby a copy of the order, indicating therein the reasons for making it and also submit a report to the Director, along with a copy of such order.

(3) Within 1[thirty days] from the receipt of such order of the Collector, the Council shall, if it so desires, forward a statement to the Director indicating therein why the order of the Collector should be rescinded, revised or modified. If no such statement is received by the Director within time, the Director shall presume that the Council has no objection if the order of the Collector is confirmed.

(4) On receipt of such report from the Collector and the Council's statement referred to in sub-section (3), if any, the Director may 2[within a period of six months, from the receipt of such report or within such period beyond six months as may, on the request of the Director, be extended by the State Government,] rescind the order or may revise or modify or confirm the order or direct that the order shall continue to be in force with or without modifications:

Provided that, the Director shall take into account the statement of a

Council, if received, before such an order is made by him."

11. *Prior to the amendment of sub-Section (1) of the aforesaid provision, it was stated that if the Collector was of the opinion that execution of any order or resolution of any Council was likely to cause injury or annoyance to public or to lead to breach of peace or is unlawful, he could suspend the execution or prohibit the doing thereof. This indicates that the Collector could exercise suo motu power and in a given case if a situation / resolution was brought to his notice he could exercise such power. But, after amendment of sub-Section (1) of Section 308 of the Act, it specifically provided that the Collector can exercise power under the said provision only after the Chief Officer of the Municipal Council sends such Resolution by moving a proposal before the Collector * for its suspension or prohibition of doing anything as per the Resolution. The Collector is then required to decide such proposal within a period of 30 days from the date of receipt of said proposal.*

12. *The learned Senior Counsel is justified in relying upon judgments of this Court in the cases of **Al- Waffi Agro Food Company, Balapur, Dist. Akola Vs. State of Maharashtra and others 2019 (3) Mh.L.J. 899** and **K.I.PL. Vistacore Infra Projects J.V Vs. Ichalkarnjee Municipal Council and others 2021 (3) Mh.L.J. 503.***

13. *In the case of **Al-Waffi Agro Food Company, Balapur, Dist. Akola Vs. State of Maharashtra and others** (supra), a learned Single Judge of this Court held in terms that after amendment of sub-Section (1) of*

Section 308 of the aforesaid Act, it becomes clear that a private person cannot approach the Collector to challenge any resolution of the Municipal Council and that it is only the Chief Officer, who can point out to the Collector that any resolution passed by the Municipal Council is contrary to the provisions of the Act or any other law, bye-laws or Government directions.

*14. In the case of **K.I.PL. Vistacore Infra Projects J.V Vs. Ichalkarnjee Municipal Council and others** (supra), a Division Bench of this Court specifically held that Government Circular dated 12/07/2019, being an execution instruction, would clearly not prevail over Section 308(1) of the aforesaid Act and that such circular sought to directly or indirectly modify the said provision, which could not be permitted. It is relevant that in the present case, the petitioner has relied upon the said Government Circular dated 12/07/2019, which is in the teeth of the said Judgment of the Division Bench of this Court.*

15. Therefore, the learned Senior Counsel appearing for respondents No.4 to 15 is justified in contending that the proceeding initiated by the petitioner before the respondent No.2 - Collector under Section 308(1) was itself still-born and that the Collector could not have entertained the same. This indicates that present petition is devoid of merits, considering the said settled position of law.

16. Even on facts, this Court is not at all impressed with the contentions sought to be raised on behalf of the petitioner. It is obvious that the Government Resolution / circulars being executive instructions

would not prevail over statutory provisions. Even otherwise, resolution of the Municipal Council was passed by majority and it is still in force. The resolution specifically states that the writing on the board on the new building of Municipal Council would be in Marathi at the top and below that in Urdu language. There cannot be any dispute about the fact that as per entry No.22 of the VIIIth Schedule of the Constitution of India, Urdu is very much included in the list of languages. Thus, this Court sees no reason to entertain the contentions raised on behalf of the petitioner. Accordingly, the Writ Petition is dismissed.”

6. It is, thus, apparent that the District Collector has probably passed the impugned order under the belief that if he does not obey the directions of this Court dated 01.08.2023, he might commit contempt of Court. We make it clear that when this Court passes orders to statutory authorities to take a decision, it does not mean that the issue of maintainability is to be given a go-by, as if our order would vest jurisdiction in the said authority and put the issue of maintainability to rest. Such authority is always at liberty to primarily consider whether it has jurisdiction vested in it by law.

7. In view of the above, **this Petition is partly allowed.** The impugned order dated 15.12.2023 is quashed and set aside. The

appeal preferred by Respondent No.9 bearing No.1/2021 is restored to the file of the District Collector in order to enable the District Collector to consider the provisions of Law. If the application is not maintainable, he would pass an order accordingly so as to enable Respondent No.9 to avail of a remedy as may be permissible in Law. Needless to state, the locus of Respondent no. 9 to file such an appeal or any other proceeding, is kept open to be considered in an appropriate case.

(Y.G.KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)