

(2001) 07 BOM CK 0026
In the Bombay High Court
Case No : Writ Petition No. 925 of 1998

Anil Try Ambakaraok Kokil

APPELLANT

Vs

Municipal Council, Nanded and Others

RESPONDENT

Date of Decision : 17-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 92, 92(1), 92(3)

Citation : (2002) 3 MhLj 762

Hon'ble Judges : N.V. Dabholkar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : S.C. Bora, Amicus Curiae, for the Appellant; M.V. Deshpande, for Respondent No. 1, Arvind Tiwari, for A.B. Bajpai, for Respondent No. 2, K.K. Singhvi, Senior Advocate for Respondent Nos. 3 and 4, S.S. Choudhary, for Respondent No. 5, Pradip Deshmukh, for Respondent Nos. 6, 7 and 11, M.K. Pisolkar, for Respondent No. 12, R.R. Mantri, for Respondent No. 13, S.B. Talekar, for Respondent No. 18 and S.V. Chillarge, Assistant Government Pleader for Respondent Nos. 14, 15, 16, 19 and 20, for the Respondent

Judgement

B.H. Marlapalle, J.—This writ petition, filed in the public interest, has assailed the resolutions passed by the Nanded Municipal Council allotting plots of land to respondent No. 3 Pragati Mahila Mandal, respondent No. 4 Sai Sevabhavi Trust, shops granted on lease in the buildings constructed by the Municipal Council to respondent No. 4 -- Sai Sevabhavi Trust, respondent No. 5 -- Karmaveer Sahebrao Baradkar Pratishthan respondent No. 6 Daily Lokprerana, respondent No. 7 - New Jaibharat Shikshan Prasarak Mandal, and respondent No. 13 Dattatray Pandurang Savant. The Municipal Council had also passed a resolution for grant of donation of an amount of Rs. 1,00,000/- to the respondent No. 4 which is also sought to be challenged in this petition.

2. The petitioner, who was journalist at the relevant time, had also impleaded Shri Shankarrao Bhaurao Chavan, in his capacity as the then Chief Minister of

Maharashtra (respondent No. 17), Shri Ashok Shankarrao Chavan, the then sitting Member of Parliament and son of Shri Shankarrao Chavan (respondent No. 18) as well as Narendra Jasvantlal Barara (respondent No. 2), who was President of the Nanded Municipal Council, at the relevant time, in support of his contentions that all these allotments of lands/premises were made under the political influence and directions from the office of the Chief Minister. It is specifically alleged that the impugned decisions of the Municipal Council were influenced not only by political pressure but also by the actions/steps initiated from the Chief Minister's office and more particularly through the Personal Assistant Shri S.S. Raste.

3. Before the petition was admitted, by an order dated 12-8-1988 this Court had directed to delete the name of Shri Shankarrao Chavan from the array of respondents and the petition came to be admitted on 7-10-1988, while the prayer for interim relief, was refused.

4. During the pendency of this writ petition, the petitioner died and it was brought to the notice of this Court by the learned counsel for the petitioner, during the course of hearing on 16-1-2001 and nobody had come forward to agitate the cause of public interest as set out in the writ petition. However, this Court thought it appropriate to hear the parties to find out whether there is any substance in the petition and therefore, instead of dismissing the petition as infructuous, Shri Bora, learned counsel appearing for the petitioner was appointed as amicus curiae to assist the Court so as to understand the facts of the case and to find out if any decision is required to be given in the issues raised in the petition. It is in these circumstances, the petition remained pending for final decision.

5. The respondents Nos. 1 to 4, 6 to 9, 10 to 14 and 18 have appeared and filed respective affidavits and opposed the petition. The factual matrix could be stated as under :--

The respondent No. 3 claims to be a charitable trust, registered under the Bombay Public Trusts Act, 1950 and when the petition was filed Smt. Kusumtai w/o Shankarrao Chavan was the President of the said trust. It made an application to the Municipal Council on 14-10-1983 which was signed by one Dr. Mrs. Chitra Patil, requesting for allotment of plot out of the land belonging to the Municipal Council to start the educational activity, especially for girls school. In the year 1984, Administrator was holding charge of the Municipal Council and a resolution came to be passed on 20-10-1984 for allotment of plot admeasuring 75" x 350" from Survey No. 42 of village Asadullabad (Maganpura) -- the area within the municipal limits of Nanded town, on 60 year's lease. It was further resolved in the said resolution that nominal rental compensation amount shall be fixed on the basis of the rate to be worked out by the Assistant Town Planner, Nanded, and on compliance of the provisions of Section 92 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for the sake of brevity, hereinafter, referred to as "Municipalities Act"). The Assistant Town

Planner was also required to undertake the measurements and after fixing the boundaries, the plot came to be handed over to the respondent No. 3 on 25-10-1984, after drawing a possession panchanama. However, at that time, the nominal rental compensation was not decided and the State Government had not granted sanction as required u/s 92 of the Municipalities Act.

The Municipal Council submitted a proposal to the Collector seeking sanction of the State Government. In the meanwhile, the Assistant Town Planner by his communication dated 5-6-1986 informed the Municipal Council that the rental compensation for the subject plot for giving it on long lease of 60 years would work out to Rs. 6,816/per annum and by letter dated 8-5-1986, the plot came to be valued at Rs. 1,02,462. In the meanwhile, the Collector, vide his letter dated 12-11-1984, had submitted the proposal to the Divisional Commissioner, Aurangabad who was competent authority for granting sanction on behalf of the State Government.

While this proposal was pending for approval Shri Shankarrao Chavan took over as the Chief Minister of Maharashtra in March, 1986 and his Personal Assistant Shri S.S. Raste, addressed a letter dated 28-7-1986 to the Assistant Town Planner, referring to representation dated 24-7-1986 submitted by the respondent No. 3 to the Chief Minister at Bombay regarding the rental compensation of Rs. 6816/- worked out by him. The letter called upon the Assistant Town Planner to review the amount of compensation, having regard to the aims and objects of the respondent No. 3 trust and to charge nominal rental compensation. The letter also stated that an action taken report was required to be sent to the Honourable Chief Minister. Copies of this letter were marked to the Secretary of the respondent No. 3, the Chief Officer of the Municipal Council, Collector Nanded and Divisional Commissioner, Aurangabad.

The Standing Committee of the Municipal Council passed a resolution on 9-9-1986 and decided to charge only an amount of Rs. 117- per annum as nominal rental compensation, in respect of the said plot admeasuring 75" x 350". In this resolution, reference was also made to the letter dated 28-7-1986 addressed by Shri Raste, Personal Assistant of the Honourable Chief Minister. This resolution was approved by the general body on 26-10-1986 and was subsequently submitted to the Collector and Divisional Commissioner. Consequently, by order dated 12-11-1986, the Divisional Commissioner granted his approval u/s 92 of the Municipalities Act for allotment of the subject plot to the respondent No. 3 on lease for 60 years. This post facto sanction came after about two years from the date of handing over the possession of the plot. Lease deed was executed between the Municipal Council and the respondent No. 3 on 16-12-1986. We may also note that the Assistant Town Planner had communicated his no objection to the said proposal, vide letter dated 31-7-1986 addressed to the Collector.

6. On 8-7-1986, the Standing Committee of the Municipal Council passed a resolution to grant donation of Rs. 1,00,000/- to the trust by name Shri

Shankarrao Chavan Sevabhavi Trust, on the eve of his 67th birthday, to be celebrated on 14-7-1986. It appears that Shri Shankarrao Chavan was not in favour of lending his name for the proposed trust and therefore, the name of the trust was sought to be changed to Sai Sevabhavi Trust. The Standing Committee of the Municipal Council, thereafter, passed a fresh resolution on 11-5-1987 for granting donation of Rs. 1,00,000/- to the said newly proposed trust, subject to the requirements of section 49 of the Municipalities Act being complied with. The General Body of the Municipal Council approved this proposal vide resolution dated 15-9-1987, subject to the sanction from the State Government.

7. On 24-12-1987, Sai Sevabhavi Trust, which claims to have been registered under No. 167 of Nanded, submitted an application under the signature of the respondent No. 18 in his capacity as its President and a Member of Parliament, requesting the President of the Municipal Council Nanded for allotment of plot from the land situated between the swimming pool and Sardari Ginning and Pressing Factory on 99 years' lease or by way of sale for the purposes of Library and Hospital and other public purposes.

Immediately on the next day, i.e. 25-12-1987, the Standing Committee of the Municipal Council passed a resolution for granting on lease a plot out of the said land on nominal rent and without specifying the area of the land to be allotted. The General Body of the Municipal Council approved the resolution in its meeting held on 16-1-1988 and specifically stated that the plot will not be used for any other purpose than hospital and library and the President of the Municipal Council would be the permanent member of the said trust. The area of the plot was not mentioned in this resolution as well.

The Municipal Council vide letter dated 5-2-1988 approached the Assistant Town Planner requesting him to fix the price and annual rent of the plot. By his letter dated 26-2-1988, the Assistant Town Planner informed the President of the Municipal Council that the plot-reservation No. 34 -was reserved for cultural centre, garden and swimming pool as per the development plan approved for the Nanded town and unless the plan was amended for minor modifications u/s 37 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act, for short), the resolution passed by the Municipal Council could not be acted upon. A note was, therefore, put up on 30-8-1989 seeking approval on the proposal for minor modification for changing the nature of reservation on the subject plot and this was approved on 5-3-1990 by the Council. Nothing further happened till 15-10-1991 on which date the general body of the Municipal Council passed a resolution for the proposed minor modifications to be submitted to the State Government. The notification for publication in the Official Gazette was forwarded and published on 30-4-1993 in the local news paper while, it was gazetted on 26-6-1993. The proposal for minor modification was finally approved by the State Government in December, 1993.

In the meanwhile, the Assistant Town Planner was called upon to work out the nominal rental compensation on long lease basis. Vide his letter dated 12-6-1995

he informed the Municipal Council that for an area of 2381 sq. meters from the subject land, the price as per the prevailing market rate came to Rs. 9,76,210/- and the annual rent for lease of 99 years was fixed at Rs. 1,07,394/- per annum. The Municipal Council called for the legal opinion and it was advised to fix the nominal rental amount in respect of the said plot at Rs. 100/- per annum. In view of the provisions of Rule 21 of the Maharashtra Municipalities (Transfer of Properties) Rules, 1983 (for the sake of brevity, hereinafter, referred to as "the Rules of 1983").

The Municipal Council, therefore, passed a resolution on 1-2-1996 fixing the rental amount at Rs. 100/- per annum. It was also stated in the said resolution that for nine years, the Municipal Council was competent to grant lease and the rental charges would be at the rate of Rs. 100/- per annum for the said period and for the remainder period of 90 years, the approval from the Government was required to be sought. This resolution was opposed by four councillors. Possession of the plot was handed over to Secretary of respondent No. 4 on 1-11-1996, by drawing a possession panchanama.

The Municipal Council, therefore, submitted a proposal to the Collector for sanction by the State Government. However, by then the Municipal Council was converted into Nanded Waghala Municipal Corporation in 1997, the provisions of the Bombay Provincial Municipal Corporations Act, 1949 (BPMC Act, for short) became applicable. The Municipal Corporation, approached the State Government vide letter dated 21-1-1999 requesting to grant approval to the said proposal for allotment of land admeasuring 2381 sq. meters out of city survey No. 6047. The Principal Secretary in the Ministry of Urban Development, submitted a note on 14-3-2000 to the Honourable Chief Minister, who also holds * the portfolio of Urban Development Ministry. It was submitted that the proposal for fixing the nominal rental compensation at Rs. 100/- per annum, on the basis of 99 year's of lease be approved and the same was approved by the Chief Minister on 2-4-2000, obviously, by relying upon the provisions of Section 493 of the BPMC Act, which states that the resolutions passed by the Municipal Council would be executed by the Corporation as if they were passed under the provisions of the BPMC Act. The lease deed was executed on 11-9-2000 and in the meanwhile, rental compensation for 99 years amounting to Rs. 9900/- was remitted to the Municipal Council on/or about 30-9-2000. Admittedly, no construction as yet, has been made on the subject plot.

8. By resolution dated 15-2-1985, Municipal Council decided to allot land admeasuring 2.48 hectares from Survey No. 52 to the respondent No. 8 cooperative housing society floated by the sitting councillors. As there was demand for additional land, by another resolution dated 18-7-1986, land admeasuring 1.87 hectares from survey No. 54 of Village of Sangvi came to be allotted subject to the compliance of section 92 of the Municipalities Act. These two resolutions were subsequently cancelled by a fresh resolution dated 12-5-1987 and it was decided to allot the land from Survey No. 52/A/I

admeasuring 2.48 hectares, survey No. 54 admeasuring 0.59 hectares and Survey No. 55 admeasuring 1.28 hectares, thus making total of 4.35 hectares. By further resolution dated 16-1-1988, the Municipal Council allotted additional land from survey No. 55 and 50 admeasuring 3 acres and 11 gunthas and 34 gunthas respectively. These resolutions have also been assailed in the petition. However, in the return filed by the Municipal Council as well as the Collector, it has been clearly stated that the respondent No. 8, though had initially taken the possession of the subject land, had returned the land to the Municipal Council and not a single house was constructed on the same land by any of the members of the respondent No. 8 society. The subject land is thus restored to the Municipal Council and the impugned resolutions rendered redundant. We, are therefore, not required to examine the challenge against the said resolutions.

9. The Municipal Council has constructed stadium and in its gallery there are some shops, which were sought to be given on rental basis, so as to create additional sources of income. By resolution dated 9-9-1986, the Standing Committee of the Municipal Council resolved to allot shops Nos. 6 and 7 to the respondent No. 4 for the period of three years with effect from 8-10-1986 on monthly rent of Rs. 21/- per month. This resolution was confirmed by the general body on 16-11-1986. By further resolution dated 9-12-1987, the Standing Committee decided to increase the lease period from three years to seven years and without changing the rental compensation. This resolution was confirmed by the general body on 16-1-1988, subject to approval from the State Government, as required u/s 92 of the Municipalities Act.

On 9-9-1986, the Standing Committee passed a resolution allotting four shops on lease in favour of the respondent No. 5 Karmaveer Sahebrao Pratishtan for the purpose of D.Ed. college on monthly rent of Rs. 151/- for each shop for the period of three years and in addition, fixed deposit of Rs. 2,000/- per shop. This resolution was confirmed by the general body on 26-10-1986. By further resolution dated 16-11-1986, passed by the general body, rental amount was increased to Rs. 500/- per month for each of the shop and deposit amount was increased to Rs. 5,000/- per shop.

On 10-2-1988, the Standing Committee of the Municipal Council passed a resolution in favour of the respondent No. 6 dainik "Lokprerana" for allotting one shop on lease basis for a period of three years on a monthly rent of Rs. 500/-. However, the respondent No. 6 has filed an affidavit in reply and stated that this resolution was not acted upon and the possession of the said shop was not given to the said respondent. We, therefore, need not look into the challenge against the resolution dated 10-2-1988.

The Standing Committee of the Municipal Council vide its resolution dated 4-10-1986 allotted four shops to the respondent No. 7 New Jaibharat Shikshan Prasarak Mandal for the purpose of its D.Ed. college on a monthly rent of Rs. 151/- and deposit of Rs. 2,000/- per shop. The lease period was for three years. As per the reply filed by the respondent No. 7, the said resolution has not been

acted upon and it has not received the possession of the said four shops. This has not been disputed by the Municipal Council and therefore, we are not required to examine the challenge to the said allotment as well. The respondent No. 11 represents respondents Nos. 6 and 7 as Editor and President respectively.

On 6-1-1988, the Standing Committee passed a resolution for allotment of one shop from its open air theatre building on monthly rent of Rs. 500/- and deposit amount of Rs. 8,000/- to the respondent No. 13. There is no dispute that the respondent No. 13 has been put in possession of the said premises and he is using it as his office.

10. It appears that, on handing over possession of the allotted plot to the respondent No. 3, the respondent No. 12, who claimed to be the original lessee on plots Nos. 42, 43 to 84, located in Asadullabad under the Nanded Municipal Council approached the Civil Judge S.D. Nanded in Regular Civil Suit No. 238 of 1988 along with an application of temporary injunction. The respondent No. 3 was impleaded as defendant No.1 and the Municipal Council was impleaded as defendant No. 2. Though ex pane injunction was granted in his favour, subsequently by an order dated 2-4-1998, the injunction order came to be vacated. There is no dispute that the subject matter of the said suit is sub judice in Second Appeal pending before this Court and in the meanwhile, the respondent No. 12 died on 22-12-1999. As his legal heirs have not been brought on record, the petition hereby stands dismissed against the said respondent.

11. So far as respondents Nos. 9 and 10 are concerned, the resolutions passed by the Municipal Council for granting of loans to the staff members for acquiring automobiles, have been challenged. The respondent No. 18 is said to be the partner of respondent No. 9 and the respondent No. 2 is the partner of the respondent No. 10. It is alleged that 20 employees were granted loan for purchasing Yezdi motor cycle from respondents Nos. 10 and 33 employees were granted loan for purchasing Ind Suzuki motor cycle from respondent No. 9. The respondent No. 9 has filed affidavit and has stated that not a single motor bike was purchased by any of the employees pursuant to the said resolution from its agency and this statement has not been denied by the Municipal Council. Though the respondent No. 10 was served, none appears for the said agency. We deem it appropriate not to examine the allegations made in regard to these resolutions, especially when these resolution have not been acted upon.

12. The petitioner has also challenged the resolution dated 27-1-1988 passed by the Standing Committee of the Municipal Council for spending an amount of Rs. 25,500/- for purchasing of suitcases for the councillors. We do not desire to examine the challenge to the said resolution as well.

13. We have made it very clear at the threshold that the scope of this petition is limited for enquiring into;

(a) the legality of the allotment of plots to the respondents Nos. 3 and 4;

(b) the legality of the Government decision dated 20-12-1993 approving the minor modifications in the development plan as well as the decision dated 4-4-2000 granting sanction for allotment of plot to the respondent No. 4;

(c) whether the land allotted has been used for the purposes for which it was allotted by the Municipal Council, and

(d) the legality of allotment of shops to the respondents Nos. 4, 5 and 13.

14. The learned senior counsel appearing for the respondents Nos. 3 and 4 questioned the maintainability of this petition after the petitioner died. It was submitted that the petition was required to be dismissed as abated and it could not be continued by appointing amicus curiae. To elaborate his arguments, learned Sr. Counsel pointed out that in case, the petition was allowed against any of the respondents, there may not be a scope to file appeal against the petitioner and in case the petition was dismissed, it may not preclude any other person from filing another petition on the same cause of action. It was also submitted that the petitioner was a busy body and he had approached this Court to settle the political scores, especially when he failed in the election petition against the respondent No. 18. The petition was actuated by malice and revenge to drag the Chavan family in the Court.

By an elaborate order dated 16-1-2001, this Court opined that the petition would survive and it was necessary to find out whether there was any substance and the issues raised were required to be decided. It was for these reasons, Shri Bora was appointed as amicus curiae in the petition. Pursuant to this order, the Court had taken cognizance of the allegations made in the petition for enquiring into the veracity and therefore, it became a *Us* between the respondents and the Court as if it was a *suo motu* writ petition in the public interest. We are not impressed with these preliminary objections and in aid of this view, we refer to the following decisions of the Supreme Court:

(i) *Sheela Barse Vs. Union of India (UOI) and Others*, and

(ii) *Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others*, .

In the case of *Sheela Barse* the Supreme Court, *inter alia*, observed :

"In order that these public causes are brought before the Courts, the procedural techniques judicially innovated specially for the public interest action recognises the concomitant need to lower the *locus standi* thresholds so as to enable public-minded citizens or social action-groups to act as conduits between these classes of persons of inherence (*Sic*) and the forum for the assertion and enforcement of their rights. The dispute is not comparable to one between private parties with the result there is no recognition of the status of a *Dominus-Litis* for any individual or group of individuals to determine the course of destination of the proceedings, except to the extent recognised and permitted by the Court. The "rights" of those who bring the action on behalf of the others must necessarily be subordinate to the "interests" of those for whose benefit the action is brought.

The grievance in a public interest action, generally speaking, is about the content and conduct of governmental action in relation to the constitutional or statutory rights of segments of society and in certain circumstances the conduct of governmental - policies. Necessarily, both the party structure and the matters in controversy are sprawling and amorphous, to be defined and adjusted or readjusted as the case may be, ad hoc, according as the exigencies of the merging situations. The proceedings do not partake of predetermined private law litigation models but are exogenously determined by variations of the theme."

In Shivajirao Nilangekar Patil's case (supra), the observations made by the Supreme Court in para No. 36 are relevant and they are reproduced as under :--

"The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the Court, it was the duty of the Court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of Public Interest Litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice."

Referring to its earlier judgment in the case of C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, , the Supreme Court in Shivajirao Nilangekar Patil's case, went on to state,

".....It is true that allegation of mala fides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. This Court made these observations as early as 1964. It is more true today than ever before. But it has to be borne in mind that things are happening in public life which were never even anticipated before and there are several glaring instances of misuse of power by men in authority and position. This is a phenomenon of which the Courts are bound to take judicial notice. In the said decision the Court noted that it is possible to decide a matter of probabilities and of the inference to be drawn from all circumstances on which no direct evidence could be adduced. The Court further noted that it was somewhat unfortunate that allegations of mala fide which could have no foundation in fact were made and several cases which had come up before this Court and other Courts and it had been found that these were made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not some of which might at least stick. It is therefore the duty of the Courts, warned this Court in the said decision, to scrutinize these allegations with care so as to avoid being in any manner influenced by them in cases where they have no foundation in fact. In this task which is cast on the courts, it will be conducive to have disposal and consideration of them if those against whom allegations are made come forward

to place before the Court either the denials or their version of the matter so that the Courts might be in a position to judge whether the onus that lay upon those who make allegations of mala fides on the part of the authorities had been discharged in proving it."

15. Section 92 of the Municipalities Act, empowers the Municipal Council to transfer its immovable property and the said section reads as under :--

"92. (1) No Council shall transfer any of its immovable property without sanction of the State Government.

(2) A proposal of such transfer shall be accompanied by resolution of the Council passed at a meeting by a majority of not less than two-thirds of the total number of Councillors and shall in no way be inconsistent with the rules made in this behalf by the State Government.

(3) Notwithstanding anything contained in Sub-section (1), a Council may lease its immovable property for a period not exceeding three years, and the lessee shall not be allowed to make any permanent constructions on such immovable property. Such lease may be renewed by the Council beyond the period of three years so, however, that the total period of any lease shall not exceed nine years."

Sub-section (2) of the said section has contemplated framing of Rules by the State Government in that regard. In addition u/s 321 of the Municipalities Act, the State Government is empowered to frame Rules. The State Government has framed initially Maharashtra Municipalities (Transfer of Immovable Property) Rules, 1967 and they were repealed in 1983, when the State Government framed Maharashtra Municipalities (Transfer of Immovable Property) Rules, 1983 (for short, hereinafter "the Rules of 1983"). For the present adjudication, the Rules of 1983 are relevant.

Sub-section (1) of Section 92 specifically states that no council shall transfer any of its immovable properties without the sanction of the State Government. The word used is "its immovable property". For transferring such property of the Municipal Council, the procedure has been set out in Sub-section (2), whereas Sub-section (3) pertains to the lease to be granted by the Municipal Council for the period of three years or a maximum period of nine years on renewal. There is no dispute that Sub-section (3) of Section 92 is not applicable in the instant case. The allotment of plots, in favour of the respondents Nos. 3 and 4, is governed by the provisions of Section 92(1) of the Municipalities Act, whereas, the allotment of shops on lease would fall under the provisions of Sub-section (3) of Section 92 of the said Act. A Division Bench of this Court in case of Matsya Yojana Sahakari Sanstha Ltd. Umrer v. Municipal Council, Umrer, 1983 Mh.LJ. 562 had an occasion to interpret the provisions of Section 92 and para No. 6 of the said judgment reads as under :

"Sub-section (2) empowers the State Government to make Rules governing transfer of its immovable property by the Municipal Council. Sub-section (2) also

contemplates that the proposal which the Municipal Council is expected to make to the State Government for sanction shall in no way be inconsistent with the rules made in that behalf by the State Government. The opening clause of Sub-section (2) of Section 92, however, makes it clear that the proposal which is expected to be consistent with the Rules made u/s 92(2) is the proposal contemplated by Sub-section (1) of Section 92 for which sanction of the State Government is necessary. As mentioned above, in view of the non-obstante clause with which Section 92(3) begins, the lease governed by the said sub-section is neither subject to the requirements laid down in Sub-section (2) nor it is expected to comply with the rules made by the State Government. The rules which are expected to be made by the State Government under Sub-section (2) of Section 92 govern only those transfers under Sub-section (1) which do not come within the purview of Sub-section (3) of Section 92."

This Court also held that Rule 10 of the Rules of 1967 was applicable to the leases contemplated within the meaning of Section 92(3) only and the provisions of Rules 5 and 10 of the 1967 Rules were ultra vires the provisions of the Municipalities Act. The State Government therefore, deemed it appropriate to amend the 1967 Rules and the relevant Rules i.e. Rules 5 and 10 have been replaced in the amended Rules of 1983.

16. We reproduce some of the relevant Rules for ready reference.

"4, Transfer of Immovable Property not required by the Council. --Subject to the provisions of Section 92 and other provisions, of the Act a Council may transfer land only by way of lease, only such immovable property vested in it or acquired by it if such property has been acquired for the purpose of disposal or development or is not likely to be required in the foreseen future by it for the purpose of the Act or is of such nature where it is in the interest of the Council to transfer such property.

7. General. -- (1) All lands vested in and acquired by the Council shall be disposed of by the Council by -

(i) holding public auction; or

(ii) inviting tenders by public advertisement; or

(iii) 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) 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 news paper 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 may 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.

10. The terms of lease. -- The Council may dispose of land/building on lease in consideration of premium or ground rent both premium and ground rent. Where full premium is recovered, a nominal ground rent shall be levied.

13. User of land. -- Every lease shall specify user of the demised land which shall be applied only to the specified user and to no other user. 19. Determination of lease on the incapacity of lessee to use the land in the prescribed manner. -- If the Chief Officer is satisfied that it is beyond the capacity of the lessee to use the demised land in the prescribed manner he may determine the lease and the premium paid by him shall be refunded after deduction of such service charges as may be fixed by the Chief Officer but not exceeding 10 per cent of the premium.

21. Grant of land for educational, charitable and public purposes. --The Council may with the previous approval of the Government, grant the lease of land for promotion of educational, medical, religious, social and charitable purposes, to Charitable Trusts or Government Department of Semi-Government bodies on payment of such concessional premium as the Council may, at its discretion, determine, from time to time, and such lease shall be subject to such conditions as may be approved by the Government.

22. Grant of land for play-ground or gymnasium.-- The Council may grant lease of land at a nominal annual ground rent of Rs. 100 to be used as playground or other recreational purposes to educational institutions or charitable institutions or gymnasiums which are recognised by Government.

24. Additional conditions to be annexed to concessional grant of land. -- There shall be annexed to every concessional grant of land made under this part, the following conditions, namely :--

(a) that the land, any part thereof or any interest therein shall not be transferred except with the previous sanction of the Chief Officer.

(b) that the land with all fixtures and structures thereon shall be liable to be

resumed by the Council if not used for the specific purpose or purposes for which it is granted by such date as the Council may fix in this behalf or if used for any purpose other than the specific purpose or purposes for which it is granted or is required by Government for its own purpose or any public purpose and that a declaration by the Chief Officer that the land is so required shall as between the granter and the Government be conclusive.

(c) that if the land is at any time resumed under condition (b) above, the compensation payable therefore shall not exceed the amount if any, paid to the Council for the grant together with the market cost or market value at the date of resumption (whichever is less) for any building or other works authorisedly constructed or erected on the land by the lessee. If the question arises as to the inadequacy of the amount of such compensation to be paid under this condition, such question shall be referred to Government for decision.

(d) that if the land is at any time used for holding a circus, carnival, fate, exhibition, performance or other show, to which public or a section of public are admitted on payment of fees or charges, the lessee shall pay to the Council a sum equivalent 1/10th of the fees or charges collected by him.

25. Conflict between the rules and provisions of the lease deed. -- In the event of there being any conflict between the provisions of these rules and the provisions of the lease-deed entered into by the Council, the provisions of the rules shall prevail.

26. Relaxation of rules. -- The Government may, for reasons to be recorded in writing relax any of these rules in respect of a case which, in its opinion, is of a special nature."

17. As per Rule 4 of the Rules of 1983, the Municipal Council may transfer the land only by way of lease and such immovable property vested in it or acquired by it if such property has been acquired for the purpose of disposal or development or is not likely to be required in the foreseen future by it for the purpose of the Act or is of such nature where it is in the interest of the Council to transfer such property, subject to the provisions of Section 92 and other provisions of the Municipalities Act. Rule 7 deals with the manner of disposal of land. Rule 10 states that the Municipal Council may dispose of land/building on lease in consideration of premium or ground rent both premium and ground rent and where full premium is recovered, a nominal ground rent shall be levied. Rule 13 provides that every lease shall specify user of the demised land which shall be applied only to the specified user and to no other user. Rule 19 deals with the power of the Chief Officer to determine the lease for the reasons stated therein. Rule 21 deals with the provisions of grant of land for educational, charitable and public purposes and states that the Council may with the previous approval of the Government grant lease of land for the promotion of educational, medical, religious, social and charitable purposes, to Charitable trusts or Government Department or Semi-Government bodies on payment of such concessional

premium as the Council may, at its discretion, determine from time to time and such lease shall be subject to such conditions as may be approved by -the Government. Rule 22 states that the Council may grant lease of land at a nominal annual ground rent of Rs. 100/- to be used as playground or other recreational purposes to educational institutions or charitable institutions or gymnasiums which are recognised by Government. The amount of nominal ground rent has been fixed under this rule for lease in respect of the playground or other recreational purposes to educational institutions or charitable institutions or gymnasium. The respondents Nos. 3 and 4 have relied upon the provisions of Rule 21 and stated that these are the special provisions which do not attract the procedure set out in Rule 7 i.e. of holding public auction or inviting tenders by public advertisement or making offers to or accepting offers from any Government Local Authority etc. This submission is based on the interpretation of Sub-rule (2) of Rule 7. It is contended that said Sub-rule (2) has carved out exceptions in respect of the allotments covered under Rule 21 or Rule 22 as the case may be. Rule 24 makes it obligatory to annex certain conditions to every concessional grant of land and these conditions are :

(a) that the land, any part thereof or any interest therein shall not be transferred except with the previous sanction of the Chief Officer.

(b) that the land with all fixtures and structures thereon shall be liable to be resumed by the Council if not used for the specific purpose or purposes for which it is granted by such date as the Council may fix in this behalf or if used for any purpose other than the specific purpose or purposes for which it is granted or is required by Government for its own purpose or any public purpose and that a declaration by the Chief Officer that the land is so required shall as between the grantor and the Government be conclusive.

Rule 25 states that in case there is any conflict between the provisions of the Rules and the provisions of the lease deed, entered into by the Council, the provisions of the Rules shall prevail.

18. While considering the issues, as framed for decision it would be appropriate for us to remind ourselves regarding three basic principles laid down by the Apex Court. Firstly, it is well established that when a statute specifically provides that a body corporate has to act in a particular manner and in no other manner and that the provision of law being mandatory and not directory has to be strictly followed. Secondly; the Municipal Council being one of the local self Government bodies is a trustee of its property and the doctrine of public trust will be applicable when the council decides to transfer its property to a third party invoking the provisions of Section 92 of the Municipalities Act. In this regard, we may usefully refer to the judgment of the Supreme Court in case of M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, . Thirdly, in the cases of public interest petitions, circumstantial evidence is relevant.

19. ALLOTMENT OF PLOT TO RESPONDENT NO. 3.

(a) As noted down earlier, the Secretary of the respondent No. 3 submitted an application to the Municipal Council on 14-10-1983, requesting for allotment of plot. The Administrator of Municipal Council, in turn, passed a resolution on 22-10-1984 allotting the plot admeasuring 75" x 350" sq. ft. from Survey No. 42 of village Asadullabad (Maganpura) locality under the Municipal limits of Nanded for the period of 60 years on lease and stated that the possession of the plot would be handed over after obtaining approval from the State Government as required u/s 92 of the Municipalities Act. The said resolution acknowledged that the subject plot was reserved for primary school, but it did not state for which purpose, it was allotted to the respondent No. 3. The possession of this plot was handed over to the respondent No. 3 on 25-10-1984 without sanction from the State Government and contrary to the resolution passed by the Administrator of the Municipal Council on 22-10-1984. This is the first illegality committed by the Municipal Council. Section 92(1) of the Municipalities Act states that no council shall transfer its immovable property without sanction of the State Government and such a sanction was not granted as on 22-10-1984.

(b) The rent was to be determined by the Assistant Town Planner as per the resolution dated 22-10-1984 and the said amount was determined at Rs. 6816/- per annum, vide letter dated 5-6-1986. The respondent No. 3 submitted a representation to the Municipal Council as well the Chief Minister. The Personal Assistant to the Chief Minister addressed a letter dated 28-7-1986 to the Assistant Town Planner Nanded with a copy to the Municipal Council and immediately thereafter on 9-9-1986 the Standing Committee of the Municipal Council passed a resolution fixing the nominal rent of Rs. 11/- per annum for the plot allotted to and handed over to the respondent No. 3. The lease deed was executed between the parties on 16-12-1986 and conditions in Clause (g) therein read thus :

"The lessee shall use the demised land only for the purpose of object of the society and shall resume the use of the land for the purpose within two years."

The Municipal Council on affidavit has stated that the development plan of Nanded town was sanctioned by the State Government in 1978 under the provisions of the MRTP Act and the subject plot was reserved for "public and semi-public purpose". However no such purpose was mentioned in the said resolution. Even in the order passed by the Commissioner on 12-11-1986 sanctioning the said allotment, no purpose is mentioned-leave alone - public or semi public. In the additional affidavit filed by the Commissioner of Nanded-Waghala Municipal Corporation, it is stated that the respondent No. 3 has constructed hostel for working women and girls, taking higher education and there is one auditorium, which is being used for running a family counselling centre. We are afraid, running of a girls hostel does not fall in the category of the public or semi public purpose for which the plot was reserved in the development plan of 1978 as approved by the State Government. It is nobody's case that the hostel is being run free of charge and is being given to the needy and poor or

destitute women or orphan girls. Even if the respondent No. 3 wants to rely upon the provisions of Rule 21 of the Rules of 1983, it is necessary that the plot allotted was used for the purpose it was reserved in the development plan or for the purpose for which it was sought to be allotted by the respondent No. 3. In the original application, it was stated that there was no school for the girls except Zilla Parishad School and therefore, it was required for educational purposes. This itself suggested that the respondent No. 3 was intending to construct the building for educational activities for girls and more so a school for girls. Rules of 1983, as quoted above, provide for the determination of lease or allotment, if user is otherwise than provided under the Act. This is the second illegality which we have noted in respect of the plot allotted to the respondent No. 3.

(c) We now come to the main question of the Council's authority to allot this plot to the respondent No. 3. Section 92 of the Municipalities Act provides for the power to transfer the immovable property of the Municipality. The words used are "its immovable property," in Section 92(1) of the Municipalities Act.

The respondent No. 12 had filed Regular Civil Suit No. 238 of 1988 in which, he claimed that one Kazi Gulam Nabi s/o Kazi Bahauddin, who was the original owner, had executed a registered lease deed in his favour on 31-7-1962 in respect of several plots of village Asadullabad, including plot No. 42, and he came in possession of the said plot by the said lease deed. The Municipal Council - defendant No. 2 in the said civil suit, appeared and filed written statement at Exhibit 14. In para No. 4 of the said written statement, it is stated :

".....It is false and hence, denied that the Municipal Council has presumed itself as owner, In fact the Municipal Council is owner and possessor of the suit land....."

However, in the additional affidavit filed before us by the Municipal Commissioner of the Nanded Waghala Municipal Corporation, which is the successor of Nanded Municipal Council, it is stated in para No. 14 as under :--

"14. In case of the respondent No. 3, I say and submit that, the plot was part of land Survey No. 42, situated at Asadullabad owned by Smt. Ramkunwar w/o Dwarkadas Shukla who applied for sanction of layout plan on 1-10-1971. It is pertinent to note that, the development plan of Nanded city was not in existence at that time hence the then planning authority while sanctioning the lay out plan made a provision for Primary School in the said plot near open space in the layout. The office record shows that, the layout in question was sanctioned by letter No. 12894 dated 4-3-1972. Thereafter on 31-1-1978 the first Development Plan of Nanded city was sanctioned by the Government in which the said plot was shown and included in the Development Plan as public and semi public purpose land and was not shown or included as land reserved for Primary School. However, in the year 1983 the respondent No. 3 applied to the then Municipal Council for allotment of suit plot for starting educational activity for girls and the then Municipal Council resolved to allot the suit plot on lease basis for a period of

sixty years to the respondent No. 3 being an institute doing various educational activities for women."

The Municipal Council thus admits that the subject plot located in Survey No. 42 was belonging to Smt. Ramkunwar w/o Dwarkadas Shukla. She had applied for a lay out plan on 1-10-1971 which was sanctioned on 4-3-1972 and the planning authority while sanctioning the lay out plan made a provision for primary school in the subject plot. There is a clear admission that the Municipal Council was not the owner of the said plot when the resolution was passed and the plot was handed over to the respondent No. 3. If the subject plot was shown and included in the development plan dated 3-1-1978 for public and semi public purposes, it could not become a property of the Municipal Council automatically. The provisions of Chapter VII of the MRTP Act are required to be referred to in this regard.

Section 125 of the said Act states that, any land required, reserved or designated in a Regional plan, Development plan or town planning scheme for a public purpose or purposes including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894. As per Section 126, whenever such a land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time, the Planning Authority or Development Authority has to acquire said land by following the procedure set out therein and the procedure is as set out under the Land Acquisition Act 1894. In the case at hand, the land in Survey No. 42 did not belong to the Municipal Council and it was shown as reserved for public or semi public purposes in the development plan sanctioned in 1978. When the Municipal Council desired or resolved to hand over this plot to any charitable institution or the Government Department, it was mandatory that the procedure for acquisition of the said land was followed and possession was handed over to the said charitable institution or Government Department by following the procedure as set out in the Land Acquisition Act. We may also alternatively presume that the title of the subject plot is subjudice in the Second Appeal pending before this Court and, therefore, the fact remains that as on the date when the resolution was passed or the possession was handed over or the lease deed was signed between the Municipal Council and the respondent No. 3, the subject plot was not the property of the Municipal Council and therefore, the provisions of Section 92 of the Municipalities Act were not applicable to the said allotment made in favour of the respondent No. 3. Shri Talekar, learned counsel has invited our attention to the judgment of this Court in case of Dinkar Ramchandra Honale and Others Vs. Municipal Corporation of Greater Bombay and Another, . This decision does not come to the rescue of the Municipal Council or the respondent No. 3 so as to hold that the subject plot was the property of the Municipal Council at the relevant time, just because it was shown as reserved for public or semi-public purpose.

(d) It is shocking that the Divisional Commissioner, while exercising the delegated powers u/s 92 of the Municipalities Act, did not apply his mind to the title of the subject plot, as also the purpose for which the plot was being allotted. The order has been passed in most mechanical manner and without application of mind. Resultantly, the resolution of the Municipal Council dated 22-10-1984 and the sanction granted by the Divisional Commissioner by his order dated 12-11-1986 is void ab-initio.

20. PLOT ALLOTTED TO RESPONDENT No. 4.

(a) The respondent No. 18 was the President of the respondent No. 4 society and the trustees included the respondent No. 2 as Vice President. Respondent No. 18 submitted an application to the Municipal Council on 24-12-1987 in which, he has stated that the trust was willing to purchase the subject plot or take on lease for 99 years, for the purpose of a grand library, hospital and other public purposes. On the very next day i.e. on 25-12-1987, the Standing Committee of the Municipal Council had passed a resolution, and this resolution was confirmed by the general body of the Municipal Council on 16-1-1988. It appears that no notice was required for convening the Standing Committee meeting and it could be convened at any time. It was resolved by the general body to hand over the plot located between the swimming pool and ginning and pressing mill, (without mentioning the area) to the respondent No. 4. The purpose specified for the proposed allotment was "hospital and library" only. This resolution was communicated to the Assistant Town Planner on 6-2-1988 and he was called upon to work out the valuation as well as nominal rent and in the said communication dated 6-2-1988, for the first time, the area of the plot was shown as 2381 sq. meters. This figure was written in ink in the typed letter addressed to the Assistant Town Planner, who by his letter dated 26-2-1988, informed the Municipal Council that the resolution could not be acted upon as the subject plot was reserved for cultural centre, garden and swimming pool as per the sanctioned development plan for Nanded town. He further suggested that unless minor modifications were made by following the procedure u/s 37 of the MRTP Act, the proposed allotment could not be acted upon. As noted in the foregoing paragraphs, the Municipal Council then followed the requisite procedure for minor modifications and by order dated 20-12-1993, these minor modifications were sanctioned by the State Government under the MRTP Act for changing the purpose of reservation of the subject plot to cultural activities of Sai Sevabhavi Trust Nanded. While approving the minor modification in the development plan, the State Government not only changed the purpose but it changed the purpose in favour of the particular trust i.e. the respondent No. 4. We are dismayed by this act of the State Government, to say the least. By Government notification dated 20-12-1993, the Government almost allotted the land to the respondent No. 4 unwittingly and by committing a patent illegality. The issue did not stop here alone.

(b) On 1-2-1996, the Nanded Municipal Council passed a resolution and stated

that the subject plot would be allotted to the respondent No. 4 for 99 years on lease and on payment of Rs. 100/- per annum as nominal rental charge. It was further stated that out of 99 years, initially nine years period of lease was being granted within its powers u/s 92(3) of the Municipalities Act, which does not empower the Municipal Council to grant lease of nine years at the first instance. It states that initial lease could be for a period of three years and may be renewed subsequently beyond the period of three years, so however that the total period of any lease shall not exceed nine years. The said provision also states that lessee shall not be allowed to make any permanent construction on such immovable property. It is no manifest on the record that the respondent No. 4 intended to set up a grand library and hospital and we fail to understand how, without construction of building, such amenities could be set up by the respondent No. 4. This clearly shows that the Municipal Council was predetermined to allot the plot to the respondent No. 4 by hook or crook. There is no application of mind while passing the resolution dated 1-2-1996. The power to be exercised under Sub-section (3) is distinct from the power to be exercised under Sub-section (1) of Section 92 of the Municipalities Act. The Municipal Council was Obviously determined to hand over possession of the subject plot to "the respondent No. 4 without waiting for the Government's sanction and therefore, it found it convenient to invoke the provisions of Section 92(3) of the Municipalities Act so as to handover the possession. The provisions of Section 92(1) of the Act did not permit the Municipal Council to hand over possession of the plot unless the proposal was sanctioned by the State Government. Undoubtedly, the possession of the subject plot was handed over to the respondent No. 4 on 1-11-1996.

(c) We now refer to the minor modifications approved by the Government of Maharashtra in the development plan by following the procedure u/s 37 of the MRTP Act and this decision suffers from the following two illegalities, which go to the root of the matter.

(i) There is no dispute that the plot was reserved for cultural centre, garden and swimming pool in the original development plan of 1978 and the modification sought was to convert the purpose of reservation to library and hospital. The open spaces which have been reserved for garden in the approved development plan cannot be converted into sites for civic amenities like hospital, public library etc. This position in law has been well established in the case of Bangalore Medical Trust Vs. B.S. Muddappa and others, . The Supreme Court observed that, one of the main objects of the public parks or playgrounds is the promotion of health of the community by means of ventilation and recreation and it is the preservation of quality of the life of the community that is sought to be protected by means of the regulations governing such reservations. If the respondent No. 4 is allowed to put up a grand library or a hospital, the purpose of public interest which was to be achieved by swimming pool, garden or cultural centre cannot be achieved. It is obvious that neither the Municipal Council nor the State Government has applied its mind to this aspect and more so, the legal position

laid down by the Apex Court. The additional affidavit filed by the Municipal Corporation states that the plot has been handed over for educational and cultural purposes.

(ii) Whenever the Municipal Council proposes a modification in the development plan, it must keep in mind the basic philosophy of public good. The Council must be satisfied that the modification sought for was intended to achieve public good and such a satisfaction must reflect in the resolution that is passed. The Municipal Council without giving any reasons or justification for the proposed modification has only considered the aims and objects of the respondent No. 4 trust. There is nothing in the resolution passed by the Municipal Council on 13-7-1993 and 11-11-1993 proposing the modification that it applied its mind to the public good. The State Government in turn, while approving the minor modification in December, 1993 has failed to consider this issue, which is not only relevant but of great importance in the public interest. In this view, we are supported by the Division Bench Judgment of this Court in the case of *Vijay Kumbhar v. State of Maharashtra*, 2000 (2) BCR 293. It is manifest on the record that the Council/Corporation was acting solely for the private good.

Ironically, neither the Municipal Council nor the Collector ever thought it appropriate to bring on record the subsequent developments regarding the minor modifications to the development plan as approved by the State Government in December, 1993, so as to have the petitioner a chance of amending the petition to challenge the modified plan. It was for the first time that when additional affidavit was directed to be filed by us, the Municipal Corporation came with a statement regarding its resolution dated 1-2-1996, handing over the plot on 1-11-1996 and the Government decision dated 4-4-2000 granting sanction for allotment in favour of respondent No. 4 trust. We have, therefore, considered the legality of the said action suo motu so as to decide the issues originally raised in the petition in their totality. We must also state that the events leading to sanction of the minor modification of the plan have not been stated in the additional affidavit and we had to gather them from the record made available before us. We record our displeasure over this aspect and note that the Commissioner of the Corporation ought to have placed before us all the relevant facts.

(d) As per the decision of this Court in case of *Matsya Yojna Sahakari Sanstha* (supra), when the lease is granted u/s 92(3) of the Municipalities Act, the provisions of Rule 10 of the Rules of 1983 will be applicable and the said Rule states that the Council may dispose of the land/building on lease in consideration of premium or ground rent or both the premium and ground rent. It is also obvious that the amount of ground rent will be nominal when full premium is recovered. On determination of such lease period for reasons stated in Rule of 1983, premium amount is refunded as is clear from the provisions of Rule 19. The decision of the Municipal Council to charge a nominal rent of Rs. 100/- per month to the subject plot vide its resolution dated 1-2-1996 was thus contrary to

the Rules. Assuming the applicability of Rule 21 at this stage to the subject allotment, the said Rule provides for payment of concessional premium and not a nominal rental amount and therefore, viewed in any way, the resolution of the Municipal Council as passed on 1-2-1996 is unsustainable.

(e) It is contended that the allotment of the plot to the respondent No. 4 has its origin in the resolution dated 16-1-1988 passed by the Municipal Council and the subsequent resolution dated 1-2-1996 was only to be read for the purpose of fixing the nominal yearly rental compensation. The Assistant Town Planner by his letter dated 26-2-1988 had communicated to the Municipal Council that the resolution cannot be acted upon unless the minor modifications were carried out in the development plan by following the procedure set out u/s 37 of the MRTP Act, On the face of this communication, the resolution dated 16-1-1988 must fall to the ground. It was necessary for the Municipal Council to pass a fresh resolution in favour of the respondent No. 4 after the Government of Maharashtra issued approval to the minor modifications by order dated 20-12-1993. There is no such resolution on record, except the resolution dated 1-2-1996, after 20-12-1993. The learned counsel for the respondent No. 4 invited our attention to the resolution dated 11-11-1996 which had its origin to the earlier resolution dated 13-7-1993, which resolution was for granting approval to the minor modifications proposed by the Municipal Council. These two resolutions dated 13-7-1993 and 11-11-1993 cannot be read to be the resolutions passed by the Municipal Council afresh for allotment of subject plot in favour of the respondent No. 4.

(f) The Assistant Town Planner, Nanded by his letter dated 19-8-1995 invited the attention of the Municipal Council to the provisions of Rule 10 and Rule 21 of the Rules of 1983 for compliance, while fixing the nominal refit, so as to allot subject plot to the respondent No. 4. The Collector, Nanded vide his letter dated 15-6-1996 had forwarded the proposal for allotment of the subject plot to the Divisional Commissioner for his sanction and the Divisional Commissioner, vide his letter dated 14-10-1996 addressed to the Municipal Council, pointed out that the Assistant Town Planner had worked out the price of the land as per the prevailing market rate and therefore, the authority to fix the rental compensation was the Municipal Council. The Commissioner, therefore, had enquired with the Municipal Council, whether, the subject plot could be given on free hold basis or on concessional rate. He also wanted to know as to how the nominal rent was fixed and whether possession of the subject land was handed over after obtaining permission from the Collector or the Government. In reply dated 10-12-1996, the Municipal Council informed the Divisional Commissioner that the possession of the land was given to the respondent No. 4 in terms of the resolution dated 1-2-1996 as the Municipal Council had granted lease of nine years in favour of the said trust. In short, the reply stated that the Municipal Council was not required to obtain permission, either from the Collector or the Government, before possession of the subject plot was handed over to the respondent No. 4. There cannot be a composite lease stipulating that for nine

years, the Municipal Council has invoked its powers u/s 92(3) and for the remaining period of 90 years, it has invoked the powers u/s 92(1) of the Municipalities Act. These are two independent powers and the Municipal Council was obviously aware of this. To wriggle out of the legal impediments to hand over possession of the subject plot to the respondent No. 4 before obtaining the sanction from the State Government, the Municipal Council passed such a resolution on 1-2-1996. The possession was given on 1-11-1996 and as per the scheme of Section 92(3) of the Municipalities Act, lease period could be only three years at the first instance and could be continued upto nine years, provided the lease is renewed. There is no such resolution for renewal and the resolution dated 1-2-1996 states that the resolution was passed for lease of nine years in one go. On any count, this resolution dated 1-2-1996 and the possession handed over pursuant to the said resolution on 1-11-1996 cannot stand the test of law. Even if it is presumed that it was a resolution for three years within the meaning of Section 92(3) of the Municipalities Act, the lease period would expire on 1-11-1999 i.e. on expiry of three years and in the absence of any fresh resolution for renewal of the lease, the respondent No. 4 therefore, continued to be in possession of the subject plot after 1-11-1996 without authority of law. The amount of rental compensation for 99 years was, for the first time, remitted by the respondent No. 4 by cheque dated 26-9-2000 and it was specifically stated that the rental compensation was for the period from 1-11-1996. It is thus clear that the respondent No. 4 continued to be in possession of the subject plot without payment of any rental compensation almost for four years. No lease deed was executed between the Municipal Council and the respondent No. 4 when the possession of the plot was handed over on 1-11-1996 and such lease deed came to be executed for the first time on 11-9-2000.

(g) The learned Assistant Government Pleader has submitted a file from the Urban Development Department of the State Government. The Principal Secretary in his note dated 14-3-2000 submitted to the Chief Minister, has referred to the resolution passed by the Municipal Council on 16-1-1988. It was pointed out in the said note that after the Municipal Council was converted into Municipal Corporation in 1997, the provisions of the BMC Act would be applicable and as per the said provisions, the Corporation land could not be allotted at the rate lower than the market rate to any institution/anybody except the co-operative housing society of weaker sections. The note finally recommended that the respondent No. 4 being the public trust, deserves to be allotted the plot admeasuring 2381 sq. meters on 99 years lease. The Chief Minister approved this proposal on 2-4-2000. However, in the submissions, which were placed before the Principal Secretary, it was pointed out that the provisions for disposal of the Corporation property were provided u/s 79 of the BMC Act but in view of the Scheme of Section 493 of the Municipalities Act, the resolutions passed by the Municipal Council would be treated as resolutions passed by the Corporation and therefore, on the basis of Resolution dated 16-1-1988 passed by the Municipal Council the plot was required to be allotted to

the respondent No. 4. As we have observed earlier, the resolution passed on 16-1-1988 by the Municipal Council was itself illegal, in view of the reservation of subject plot for the purpose of cultural centre, swimming pool and garden in the development plan of 1978 for Nanded town. It is, therefore, evident that the decision of the State Government dated 4-4-2000 is itself based on illegal foundation and therefore, it cannot be sustained.

21. ALLOTMENT OF SHOPS TO RESPONDENTS 4, 5 AND 13.

It is admitted that the respondent No. 18 was the President of the respondent No. 5 for sometime, though he claims to have resigned subsequently. The respondent No. 13 has filed affidavit in reply and stated that he came to Nanded in 1983 and he had applied for allotment of shop No. 24 in the open air market on monthly rent of Rs. 500/- per month and a deposit of Rs. 5,000/-. He started the business in the name of "Niranjan Agencies", in which he had taken another partner by name Shri Nagorao Jadhav, who was occupying the adjoining shop No. 23. The said partner left the business and therefore, the respondent No. 13 applied to the Municipal Council for allotment of Shop No. 23 as well. This request was granted and the shop came to be allotted on monthly rent of Rs. 500/- with a deposit of Rs. 8,000/-.

The respondent No. 4 has been allotted two shops and the respondent No. 5 has been allotted four shops. The respondent No. 5 has not filed any return and the respondent No. 4 has stated that two shops were allotted pursuant to the resolution dated 9-9-1986 passed by the Standing Committee on the monthly rent of Rs. 217/- for a period of three years. It is further submitted that such shops have been allotted to many other parties like Kai, Taralkar Raktadan Patpedhi, office of the District Sports Officer, Nanded Zilla Kustigir Sangh, Priyadarshini Mahila Mandal and Ors. and therefore, was no illegality committed by the Municipal Council or the allottees in respect of the said shops.

When it comes to the lease of the Municipal property undoubtedly the provisions of Section 92(3) shall apply. The municipal council states that it had taken adequate steps to allot these shops on rental basis to the members of the public and there was no response. Repeated advertisements were futile and therefore, when the request from these respondents came, Municipal Council was too eager to allot these shops rather than keeping them locked "and without earning revenue. It is also stated that such few allotments would result in more people getting attracted for allotment of the remaining shops constructed by the Municipal Council. The Municipal Council seems to have revised the rental rates in respect of the respondent No. 5 to Rs. 1517/- per month with deposit of Rs. 2,000/-. The fact remains that the rent charged to respondent No. 4 is Rs. 21/- per month, to respondent No. 5 it is Rs. 151/- per month and to respondent No. 13 it is Rs. 500/- per month. The affidavit filed by the Chief Officer and also that of the Municipal Corporation does not indicate as to how the amount of rental compensation was decided in respect of these shops. The allotment of these shops will also be governed by Rules of 1983 and these rules are applicable for

allotment of lands as well as building of Municipal Council as is clear on the reading of Rule 2. Rule 8 deals with the disposal of the land for commercial, residential and industrial purposes and the provisions of Rule 7 would be applicable to such disposal. The Council contends that it has gone through these requirements before the subject allotments of the shops were made. We wish to refer to the provisions of Rule 9 regarding the mode of fixing of premium. Sub-rule (2) thereunder states that the premium shall be fixed by a committee, consisting of (a) Collector of the District or any of his representative nominated by him, (b) Chief Officer of the Municipal Council, (c) Assistant Director, Town Planning/Town Planning Officer or the Town Planner and Valuation Department. Sub-rule (3) states that for determining the premium, the committee shall take into account the sale of similar or similarly situated lands in the vicinity during the year immediately preceding the fixation of premium. If no transaction has taken place during that year, sale of other similar locations may be taken into consideration and the rate of premium shall not be less than the cost incurred on account of acquisition and development of land. This would clearly mean that while fixing the premium not only the cost of the land but cost of the building as well would have to be taken into consideration. The return filed on behalf of the Municipal Council/Corporation is silent on this issue i.e. mode of fixation of premium while allotting the subject shops. As per the provisions of Section 92(3), the shops could be given on lease for a period not exceeding three years and such lease could be renewed by the council beyond the said period so however that the total period of any lease shall not exceed nine years. There is nothing on record to show that the lease period was renewed or extended after the period of three years and the Municipal Council/Corporation had undertaken fresh exercise of reallotment of these shops after the period of nine years from the date of initial allotment, by following the procedure as laid down under Rules 7, 8 and 9 of the Rules, 1983. The lease of these commercial premises cannot be in any case, contrary to the provisions of Section 92(3) of the Municipalities Act. While the lease is renewed beyond three years, obviously there will be scope for the Municipal Council to enhance the lease premium, and the amount of lease cannot be static. Even if the initial allotments granted in favour of these three respondents were by following the provisions of Section 92(3) and the Rules of 1983, we hasten to add that we do not have the benefit of any of these lease documents either submitted by the Municipal Council or the allottees of these shops. When the Municipal Council is dealing with its property, undoubtedly, it ought to take maximum care and caution to ensure that such transactions meet the requirements of the Act and the Rules thereunder.

We, therefore, deem it appropriate that the Municipal Council issues a fresh proclamation for allotment of shops on lease in all cases where the lease period of nine years has expired and the Municipal Council undertakes the exercise of fresh allotment of these commercial premises after receiving such applications and by following the procedure as laid down under the Rules of 1983. At the same time, the Municipal Council will be required to examine enhancement of

lease premium in respect of all these shops after the initial period of three years from the date of possession granted initially by keeping in mind the requirements of Rule 9(2) and (3) of the Rules of 1983. In case the Municipal Council comes to the conclusion that the lease premium was required to be enhanced for the past years, at the block of every three years, the Municipal Council shall have to take appropriate steps to recover these enhanced premium amounts from the concerned allottees for the period they have been in occupation. Undoubtedly, while undertaking fresh exercise for allotment of these shops the Municipal Council is required to follow the methods set out under Rule 7(1) of the Rules of 1983 and by keeping mind the observations of the Supreme Court in the case of *Common Cause, a Registered Society v. Union of India*, (1996) 6 SCC 530, and to quote :

"While Article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the power to pick and choose arbitrarily out of several persons falling in the same category. A transparent and objective criteria/procedure has to be evolved so that the choice among the members belonging to the same class or category is based on reason, fair play and non-arbitrariness. It is essential to lay down as a matter of policy as to how preferences would be assigned between two persons falling in the same category. If there are two eminent sportsmen in distress and only one petrol pump is available, there should be clear, transparent and objective criteria/procedure to indicate who out of the two is to be preferred. Lack of transparency in the system promotes nepotism and arbitrariness. It is absolutely essential that the entire system should be transparent right from the stage of calling for the applications upto the stage of passing the orders of allotment. The names of the allottees, the orders and the reasons for allotment should be available for public knowledge and scrutiny....."

22. GRANT OF DONATION TO RESPONDENT NO. 4 It is clear from the return filed by the Municipal Council that such donations have been given in the past to other charitable trusts/ institutions/non-Government organisations and other bodies and such donations are given from the funds which are allotted by the Municipal Council. If the Municipal Council found it appropriate to donate an amount of Rs. 1,00,000/- to the respondent No. 4 trust with an intention that said amount could be utilised for larger public interest and this proposal has been duly approved by the State Government, we do not find any case to hold it against the Municipal Council and therefore, we do not wish to comment on the said issue raised in this petition.

23. In the result, we allow the petition and make rule absolute in terms of the following order :--

(A) The resolution dated 22-10-1984 passed by the Administrator of Nanded Municipal Council and the order dated 12-11-1986 passed by the Divisional Commissioner, Aurangabad for allotment of plot admeasuring 75" x 350" from survey No. 42 of village Asadullabad (Maganpura) in favour of the respondent

No. 3, are hereby quashed and set aside as being illegal and void ab-initio. The Municipal Corporation is directed to take possession of the said plot with building appurtenant thereto, if any, as early as possible and within the period of eight weeks from today.

(B) The resolutions dated 16-1-1988 and 1-2-1996 passed by the Municipal Council, Nanded and the Government decision dated 20-12-1993 and 4-4-2000 in respect of plot No. 34 admeasuring 2381 sq. meters allotted to the respondent No. 4 are hereby quashed and set aside. We direct the Municipal Corporation to resume itself the possession of the said open plot, as early as possible and within the period of eight weeks from today.

(C) We further direct the Commissioner of Municipal Corporation to take appropriate steps for issuing fresh proclamation for allotment of shops and more particularly, the shops allotted to respondents No. 4, 5 and 13 so as to give them on lease afresh and to take steps for recovery of enhanced lease premium, if any, in respect of the said shops for the earlier period beyond the initial period of three years and till 31-8-2001. The revision of premium shall be applicable to all similarly situated shops.

(D) The amount invested by the respondent No. 3 in constructing the building of Girls Hostel shall stand set off against the revenue it has already earned and the said respondent No. 3 shall have no claim in that regard against the Municipal Corporation.

(E) The Municipal Corporation may take appropriate steps for acquisition of plot which was allotted to the respondent No. 3, as per law and if so desired.

Rule is accordingly made absolute in above terms. No order as to costs. Issuance of certified copy is expedited.

In view of the judgment in Writ Petition, Civil Application No. 3608 of 2001 does not survive and it is accordingly disposed of.