

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH
AT AURANGABAD**

APPEAL FROM ORDER NO. 81 OF 2015

M/s Rawassa Constructions Through
Its Managing Partner Nafees Eliyas
Khatri .. Appellant

Versus

Maharashtra Industrial Development
Corporation through its C.E.O. and others .. Respondents

Shri J. N. Singh, Advocate h/f Shri Arvind R. Kawade, Advocate. for
the Appellant.

Shri S. S. Dande, Advocate for Respondent Nos. 1 to 4.

CORAM : S. V. GANGAPURWALA, J.

DATE : 10TH SEPTEMBER, 2015.

PER COURT :

. The present appellant is the original plaintiff. The plaintiff has filed suit for declaration that the letter issued by the respondent No. 4 dated 04.06.2015, terminating the contract as illegal, null and void with a further declaration that, the plaintiff is entitled for the work awarded to it pursuant to the contract of the the respondents. So also, for perpetual injunction restraining the defendants from executing contract and from issuing work order to any other contractor, so also for recovery of Rs. 7,56,72,197.36. Along with suit the plaintiff filed an application for temporary injunction thereby seeking injunction restraining the respondents from holding and issuing the work order to any

other contractor so also to stay the effect and implementation of the letter dated 04.06.2015 terminating the contract. The application for temporary injunction is rejected aggrieved thereby the present appeal.

2. Mr. Singh, the learned counsel for the appellant strenuously contends that, the respondent No. 3 had invited tenders for the construction work of the road i. e. Waluj industrial area road providing 50 mm thick BM and 20 mm thick PSS with strengthening to main four lane road. The present appellant has quoted the tender below 23.5% of the estimated cost of Rs. 13,82,01,688.00. Thereafter the agreement is executed and the work order is issued for 12 calendar months i. e. from 02nd May, 2014 to 01st May, 2015. The learned counsel submits that, the respondents took eleven months to give the work order, because of which the infrastructure was required to be mobilized once again. The learned counsel submits that, the present appellant gave extension of six months for the validity of the tender. However, when the present appellant sought extension of three months, respondents did not give extension of three months. The learned counsel submits that, the delay in the work was not at the behest of the appellant. There were many circumstances beyond the control of the appellant such as unprecedented rain, etc. The work order was issued just prior to the monsoon season and thereafter the Collector passed an order restraining the quarrying of mines, because of which there was

difficulty in procuring the material. All these aspects needs to be considered, still, the appellant has completed more than 55% of the work. The learned counsel submits that, the Trial Court has come to the conclusion that, the plaintiff has prima facie case, still, only on the ground that, the balance of convenience is with respondents, has rejected the application. The plaintiff is ready to complete the work. It also needs to be considered that, the tender notice is published by respondents after terminating the contract of the appellant for a work order of more than Rs. 23 crores. The contract is terminated under clause 3 (C) of the agreement on as is where in basis. The work of more than Rs. 7 Crores is already completed by the present appellant, as such the remaining work was of only Rs. 6 Crores and odd amount. However, the publication is made inviting a tender for a work of more than Rs 23 Crores. The same is loss to the public exchequer and the said amount the respondents would try to claim from the present appellant.

3. Mr. Dande, the learned counsel for respondents supports the order and submits that, appellant for a period of one year had completed only 7% of the work. The measurements have been undertaken. It is because of the slow progress of work on the part of the appellant and inspite of issuing ample letters to speed up the work and complete the work, there was no progress and eventually the contract was terminated. According to the learned counsel on 13th August, 2015, work order is issued to

another contractor i. e. M/s B. P. Sangle Constructions Pvt. Ltd.

4. I have considered the submissions canvassed by the learned counsel for respective parties.

5. The contract was for a period of one year from the date of issuance of work order i. e. from 02nd May, 2014 to 01st May, 2015. The request for extension made by the appellant has been rejected by respondents and, thereafter, the contract has been terminated under Clause 3(C) of the agreement. It is not disputed that, the measurement of the work done by appellant is carried out. The parties are aware of the work done as the measurement is also completed. In such case, there would not be any impediment for either of the parties to claim their amount or to defend the claim made by other party. The work order is already issued to a new contractor almost a month back. The right and interest of the new contractor has also been created. The reliefs can be compensated in terms of moiety. The learned Judge while passing the impugned order has discussed the correspondence between the parties. Considering the fact that, the contract stands terminated. The period of the work order is also over and the new work order is already issued to the fresh contractor. The relief of injunction as prayed cannot be considered.

6. In light of the above, the appeal from order is dismissed however, with no orders as to costs.

[S. V. GANGAPURWALA, J.]

bsb/Sept. 15