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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.1397 OF 2015

Buildwell Infrastructure Private Limited and Anr. ...Petitioners
v/s.
The Municipal Corporation for Greater Mumbai and Ors. ...Respondents.

**WITH
NOTICE OF MOTION (L) NO.324 OF 2015
IN
WRIT PETITION (L) NO.1397 OF 2015**

Buildwell Infrastructure Private Limited and Anr. ...Applicants

IN THE MATTER BETWEEN

Buildwell Infrastructure Private Limited and Anr. ...Petitioners
v/s.
The Municipal Corporation for Greater Mumbai and Ors. ...Respondents.

Mr.Shilpan Ganokar a/w Mr.Suraj Iyer, for the Petitioners/Applicants.
Mr.A.Y.Sakhare, Senior Counsel a/w Joel John Carlos, for the Respondent
– BMC.

**CORAM: A. S. OKA &
REVATI MOHITE DERE, JJ.**

DATED : 17th JUNE, 2015.

P.C.

1. Rule.

2. Advocate on record for the respondents waives service. To be heard along with Writ Petition No.2652 of 2015 and other connected petitions.

3. We have heard the learned counsel appearing for the petitioners on the prayer for interim relief. The basic contention of the learned counsel appearing for the petitioners is that M/s.Buildwell Construction, which was the proprietary concern of one Rajesh M. Jain has been converted into the first petitioner, which is a private limited company. Though the communication dated 13th January, 2015 (Exhibit - 'DD' to the petition), which is addressed to M/s.Buildwell Construction records that M/s.Buildwell Construction (a proprietary concern) has been de-registered for a period of six years with effect from 16th March, 2013, the petitioners themselves have proceeded on the footing that the said proprietary concern is the same as first petitioner, which is a Private Limited Company.

4. Learned Senior Counsel appearing for the Municipal Corporation pointed out that on 16th March, 2013, the first petitioner – a Private Limited Company was informed that the said Company was

debarred from participating in any of the tenders of the Mumbai Municipal Corporation, till the final outcome of the Enquiry. The said order was never challenged by the first petitioner.

5. We have perused the findings recorded in the Enquiry. One finding recorded is that though the tender for CWC for the year 2004 – 2006 was filled in by one Rajesh Jain, the proprietor of M/s.Buildwell Construction and the Agreement executed by the Municipal Corporation was with Mr.Rajesh Jain in his capacity as the proprietor of M/s.Buildwell Construction, the subsequent correspondence is carried out in the name of the first petitioner. A finding has been recorded that the second petitioner in his statement stated that the contract was awarded to M/s.Buildwell Construction, which was a proprietary concern has been converted into the first petitioner – a Private limited company. It is recorded in the impugned order that Mr.Rajesh Jain, the proprietor never appeared during the course of Enquiry. There are letters on record addressed by the first petitioner, demanding an amount for the work allegedly carried out on the basis of the contract given to M/s.Buildwell Construction, a proprietary concern.

6. Learned Counsel appearing for the petitioners tried to submit that there is other evidence on record to show that the work was carried out by the proprietary concern and that only the right to recover the amount payable was assigned to the first petitioner – a Private Limited Company. The letters dated 11th August, 2006 and 20th August, 2008, addressed by the first petitioner to the Officers of the Municipal Corporation do not record that the work was in fact carried out by the proprietary concern and not by the first petitioner. These aspects are relevant in the light of the finding recorded that Mr.Rajesh Jain never appeared during the course of the Enquiry.

7. Thus, prima-facie, it appears to us that though the contract was granted to a proprietary concern, without modification of the contract and without concurrence of the Municipal Corporation, the work has been carried out by the first petitioner which is a private limited company. Considering the findings recorded and considering the prima-facie material on record to show that the work allotted to a proprietary concern was unauthorisedly carried out by the first petitioner, this is not a fit case where any interim relief can be granted. As stated earlier, according to the case of the Municipal Corporation, the order issued debarring the first

petitioner from participating in the tender process of the Municipal Corporation was never challenged by the petitioners.

8. In the main petition, the prayer for interim relief is for stay of the communication dated 13th January, 2015. By this letter, the proprietary concern M/s.Buildwell Construction was informed that it was de-registered for a period of six years. The proprietor of the said proprietary concern has not filed this petition. Another prayer is to restrain the Municipal Corporation from acting upon the report of the Enquiry. Grant of such drastic prayers will amount to granting of final relief in the petition, at admission stage, which in the facts and circumstances of the case cannot be granted. In the Notice of Motion, apart from the said prayers, there is a prayer incorporated for restraining the respondents from proceeding with the tender invitation notice dated 5th May, 2015. Another prayer is to allow the first petitioner to participate in the tender process. The first petitioner was debarred from participating in tender process on 13th March, 2013.

9. Considering the discussion made above, interim reliefs cannot be granted. Accordingly, we reject the prayer for grant of interim reliefs in

the main petition. Notice of Motion (L) No.324 of 2015 also stands dismissed.

10. At this stage, learned counsel appearing for the petitioners on instructions, states that the communication dated 16th March, 2013 relied upon by the learned Senior Counsel representing the Municipal Corporation was not served on the first petitioner. He submits that the challenge in Writ Petition No.2652 of 2015 and other connected matters is to the report and that the present petition should not be tagged along with the said two petitions. We accept the said request and therefore, earlier direction issued directing that this petition should be heard along with along with Writ Petition No.2652 of 2015 and other connected petitions is recalled. However, we make it clear that the present petition will be heard only in regular course.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)