

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

WRIT PETITION NO. 95 OF 2014

Team ONE Architects (I) Private Limited }		
and Anr. }		Petitioners
versus		
State of Maharashtra and Ors. }		Respondents

Mr. Sunil Sen with Mr. Narayan Sahu, Mr. D.J. Jadhav and Ms. Anuja Desai i/b. M/s. Legasis Partners for the Petitioners.

Mr.J.S.Saluja-AGP for Respondent Nos. 1 to 3.

**CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.**

DATED :- AUGUST 12, 2015

P.C. :-

By this Writ Petition under Article 226 of the Constitution of India, the Petitioners seek essentially a writ of mandamus or any other appropriate writ, order of direction to direct the Respondents to do all acts necessary for implementation of the approved/ selected/ winning design of the Petitioners including in respect of formalising the agreed terms and conditions.

2) This essential relief is based on the request of the Petitioners to call for the records and proceedings in connection with and in relation to Government Resolution No. 3112 dated 21st May, 2013 and which is at Annexure “GG-1” to this Writ Petition.

3) The request is that the Petitioners' design for the monument of *Chattrapati Shivaji Maharaj* to be constructed in the Arabian Sea off Mumbai Sea Coast having been selected, the Respondents must act only in furtherance thereof.

4) It is not disputed that the State is desirous of erecting such a monument of *Chattrapati Shivaji Maharaj* and therefore issued a Government Resolution. That Government Resolution, according to the Petitioners, was dated 4th July, 2005. The Government Resolution set up a technical committee so as to advise it on the technical aspects in relation to the project which would contain several amenities so as to make it a tourist attraction.

5) The site was also identified for construction of such a monument. The State thereafter involved several departments and agencies including its maritime board as the monument was to be set up in the Arabian Sea. The then Chief Minister convened a meeting on 2nd June, 2008 and the site was thereafter identified. The concept, structure and other details were discussed in the meeting. The matter was then considered at Government level in August, 2008 and thereafter the ministerial level decision was taken to involve the Public Works Department of the State of Maharashtra and authorise it to invite tenders. On 15th November, 2008, an advertisement was placed and

which announced an international competition for the selection of the conceptual design for the construction of the monument. The design and which was termed as the winning entry would be used for the construction. The copyright of the design would remain in the Architect.

6) The Petitioner is a private limited company and carries on the business of architecture, planning and interior designing. Petitioner Nos. 1 and 2 claim to be technically competent and specialised agencies and which could design certain projects and of this magnitude. It therefore placed its entry and before the last date, the design competition came to be held and 11 designs were short listed. One of them was the design of Petitioner No. 1. The Petitioner was therefore directed by the Chief Engineer of the Public Works Department to furnish more details about their design and also to attend the further meetings. There was short listing of the designs and applicants. The five short listed applicants were called for presentation of their designs and which they did on 16th April, 2009. Three out of these five designs were selected for final presentation before a committee to be chaired by the Chief Minister of the State. Thereafter, several preparations were made by the Petitioners and they attended the presentation on 6th July, 2009. On that date and at the meeting, their design was selected and termed as the winning design by the Committee. It is therefore

submitted that this design having been selected and the State agreed and recorded that the Petitioner would be designing the project, the formalities and ministerial acts ought to have been performed. Having gone this far and finally inaugurating the Petitioners' design, all that remained was execution of a final document styled as an agreement. The draft of the agreement also came to be forwarded by the Respondents to the Petitioners on which, the Petitioner conveyed its acceptance. The correspondence to that effect is relied upon including a letter dated 15th December, 2009 from the Chief Architect.

7) The Petitioner attended several meetings thereafter and anticipated and expected that the ministerial acts would be performed duly. The Petitioners were proceeding on the basis that having been selected to design the project and their design having been approved, the Respondents will not take a contrary decision without in any manner taking them into confidence or giving them prior opportunity. The Petitioners point out that they were ready and willing to sign and execute every document or agreement and it is not as if the design or concept presented by the Petitioners came to be disapproved or rejected. It is in these circumstances that the Petitioners were shocked to learn and through newspapers that once again interested parties/persons were invited to design the concept of the monument

and make a presentation. The Petitioners therefore promptly corresponded and brought to the notice of the Respondents above developments. They pointed out that it was not expected and from the State to go back on the solemn assurances and which were given to the Petitioners by high powered competent officials. The Petitioners pointed out that they were working on the project since 2009. The project is very prestigious and they have deployed man power and financial resources since 2009. That is why the Petitioners objected to such advertisement being inserted. They also invited the attention of the Respondents to the norms devised by the Council of Architecture. They submitted that if their competency and expertise has never been questioned nor their concept or design presented and approved by the Respondents having been rejected, such a step violates the mandate of Article 14 of the Constitution of India. The welfare State therefore could not have been acting in this manner and with reputed architects and professionals.

8) The Petitioners are also objecting to the contents of a letter dated 6th March, 2013, copy of which is at page 180 of the paper book.

9) It is in this backdrop that the above reliefs have been claimed and Mr. Sen appearing for the Petitioners submits that if the State continuously engages parties like the Petitioners who are

renowned professionals in the work of designing and acting as Architects of important projects, the Petitioners are invited at regular meetings, there is correspondence exchanged with them, then, the principles of promissory estoppel enshrined in section 115 of the Evidence Act, 1872 and the doctrine of legitimate expectation comes into play. It is not the intention of the Petitioners to claim moneys or any monetary reward for the services but this is a matter of their prestige and reputation.

10) It is further urged by Mr. Sen that there is no reason to act in this manner with the Petitioners because there is nothing that has changed about the project. The project is the same. The monument is of the great leader and which is to be constructed in the Arabian Sea. Few changes in the site does not mean that altogether new project or concept is designed by the State as is being stated in the affidavit in reply. It is the same Government decision and contained in the same Notification. Therefore, it is not as if the Petitioners' offer and work carried in pursuance thereto has been rejected or disapproved. This is not a question of any prize money and the State could not underplay the matter in this manner.

11) Mr. Sen has placed heavy reliance on the Judgment of the Hon'ble Supreme Court of India in the case of *The Gujarat State*

Financial Corporation vs. M/s. Lotus Hotels Pvt. Ltd. reported in **AIR 1983 SC 848**.

12) After a careful perusal of the Writ Petition and all the Annexures thereto so also the affidavits placed on record, we are unable to agree with Mr. Sen. We have very anxiously considered the contentions, as Mr. Sen contends that they involve reputation and prestige of professionals. That the project of the nature and which was to be designed with the assistance of parties like the Petitioners all the more requires this Court giving its due consideration to these contentions.

13) However, we find that there is no confirmation and concluded agreement and that is conceded. The mandate of Article 299 of the Constitution of India requires the State to execute a contract and in the manner provided thereunder. Such a contract has not come into existence.

14) The principle of promissory estoppel and legitimate expectation is pressed into service but being fully aware that the Petitioners were to only forward a design or a concept for the project. They were one amongst those who had applied pursuant to the Government decision. The Petitioners were aware of the fact that their design would have to be selected and mere selection will not mean the

process is final and conclusive. Thereafter, they were fully aware that the departmental officials do not take any final decision but communicate their views and opinions by making file notings and minutes of the meetings which have been convened and duly attended. That the Petitioners were short listed and the short listed parties were invited for further meetings is also apparent. That all this took more than three years is also an admitted position. At the end of all this, the Petitioners were fully aware that a agreement and its execution alone would bind the State. Such an agreement has not come into existence. Mr. Sen would contend that the steps taken before execution of this agreement have definite bearing and create a contractual relationship. However, for that to be binding, it is not necessary that the State proceeds and executes the final agreement. There was a promise and definite assurance. Hence, according to Mr. Sen, above principles come into play. However, the Petitioners were fully aware that they participated in a exercise under which the designs of reputed parties were being considered and the concept therein would be utilised for the construction of monument.

15) The preliminary or preparatory steps were taken. Parties like Petitioners were invited and requested to place their designs for consideration. The project was at a planning stage. After acceptance of

any design which was successful at a competition of Architects and Designors, the State was required to take further steps. There was no warrant for the assumption on the part of the Petitioners that any final decision would be taken and to select or approve only their design or concept. There was never a firm commitment at a stage at which the project stood. The project itself was at the stage of planning and nothing was finalised. The State never went beyond holding a competition and short selection of designs and/or selection of one of them. It was known to the Petitioners that such a step on the part of the state does not mean that the project itself has got a final nod and approval from the authorities. No decision was taken of selection of a planner, designer and architect of the project. Moreover, for that also, the State is required to execute a contract and which we do not have on record.

16) It is in the above circumstances that we are of the view that one who claims a writ of mandamus must establish a legal right and then alone the Court would be justified in assisting him. In the case of *The Gujarat State Financial Corporation* (supra), the factual position itself denotes that the Respondent company proposed to set up a 4-Star Hotel. It acquired land and the land cost was paid. Thereafter, the company approached the Corporation for a loan of Rs.30,00,000/-. That loan was duly sanctioned by the Corporation by its letter dated

24th July, 1978. The company wrote a letter accepting the terms and conditions on which the Corporation agreed to advance the loan. As a part of the deal, the company had to create an equitable mortgage in favour of the Corporation for securing the loan. Thereafter, the matters of interest and on the loan amount were also discussed and agreed. Suddenly, there were two letters addressed by the Corporation by which, the Corporation resolved not to disburse the loan and that is how the argument that the Corporation went back on its promise came to be accepted. The Appeal of the Gujarat State Financial Corporation was rejected after perusing all the documents. There was thus a contract which has been culled out from the relevant materials by the High Court and also the Hon'ble Supreme Court of India. In paras 6 and 7 of this Judgment of the Hon'ble Supreme Court of India, the contractual stipulations are extensively referred. That is why when the attention of the learned Senior Counsel appearing for the Gujarat State Financial Corporation in the Hon'ble Supreme Court of India was invited to clauses 2 and 5, he had absolutely no answer. It was agreed before the Hon'ble Supreme Court of India that the Corporation indeed promised and duly sanctioned the loan. It was also agreed that acting on its representation the private limited company took several steps. It is in these circumstances that the Hon'ble Supreme Court held that the private limited company cannot be relegated to the remedy of a Suit.

There were thus no dispute on the basic and fundamental factual aspects.

17) Before us, such is not the position and the correspondence exchanged between the parties would only denote the Government in principle conveying its approval of the Petitioners' design and concept. Thereafter, the Government itself was rethinking about the project and when it required several clearances and approvals at several levels, some of the facets thereof had to undergo a change. It is in these circumstances and after more than five years of the original conception that the State decided to notify fresh proposals and invite interested parties for designing the project.

18) In the above circumstances, we do not find that the Petitioners have made out a case for issuance of writ of mandamus and in the terms claimed. We are therefore not in agreement with Mr.Sen that this is a case falling within the parameters of the Judgment of the Hon'ble Supreme Court of India.

19) As a result of the above discussion, the Writ Petition fails and it is dismissed. No costs.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)