



AMENDED WRIT PETITION
(Amended portion has been typed in Italics)

IN THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

W.P. No. 2618 OF 2001

PETITIONER : M/s. Shakti Construction, a Partnership Firm, duly registered under the Partnership Act, 1932 having office at Santrabadi, Station Road, Durg (C.G.)

Versus

RESPONDENTS : 1) Municipal Corporation, Bhilai, constituted under Section 9 of M.P. Municipal Corporation Act, 1956, having office at Supela, Bhilai, District Durg (C.G.)

:2) Superintendent of Police, Special Establishment (Lokayukt) Durg, District Durg (C.G.)

:3) Deputy Superintendent of Police, Lokayukta, Raipur (C.G.)

:4) Assistant Engineer, C.S.P.D.C.L., Supela, Bhilai District Durg (C.G.) (490 023).

PETITION UNDER ARTICLES 226/227 OF THE
CONSTITUTION OF INDIA, 1950



ns
14/12/16

288

-1-

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 2618 of 2001

M/s. Shakti Construction

---- Petitioner

Versus

Municipal Corporation, Bhilai

---- Respondents

For Petitioner	:	Shri H.B. Agrawal, Senior, Advocate with Ms. Itu Rani Mukherjee, Advocate.
For Municipal Corporation	:	Shri Manoj Paranjpe and Shri Vikram Dixit, Advocates
For State	:	Shri D.R. Minj, Dy. Govt. Advocate

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

07/12/2016

1. This petition has been filed by the petitioner seeking issuance of a writ of mandamus to command respondents No. 2 & 3 to provide records and documents seized by them to respondent No.1. The petitioner has further prayed for issuance of direction to respondent No.1 to execute and register lease deed in favour of nominated allottees as proposed by the petitioner. A further relief of refund of Rs.9,25,000/- has been raised by the petitioner. Apprehending disconnection, the petitioner by way of amendment, has also made an additional prayer for direction to respondent No.1 to issue "No Objection Certificate" (NOC) to get permanent electricity connection and to direct respondent No.4 not to discontinue electricity supply during pendency



289

-2-

of petition.

2. The factual jargon in which this petition is couched begins with the process of inviting tenders by the then Special Area Development Authority, Bhilai (now dissolved) (hereinafter referred to as "SADA"), from intending builders to construct a shopping complex on the land of the Corporation on a scheme which is popularly known as Builder Promoter Scheme. It contained certain terms and conditions, prominent one of which was that the builder will have to construct the shopping mall and the shops so constructed shall be allotted by way of lease to the persons nominated by the builder with the understanding that the premium of shops will be collected by the builder though the shops will be that of the Corporation granted to intending allottees by way of lease. For consideration of grant of right, to construct shops on the land of the Corporation and collect the cost by way of premium from individual allottee, the petitioner was required to pay a premium of Rs.65 lakhs to the Corporation.
3. As the records speak, a building permission was granted in favour of the builder. Thereafter, he commenced construction and it is alleged that the builder raised construction up to fifth floor. Thereafter, the builder submitted a list of proposed allottees before the Corporation so that the process of execution of lease could be initiated. As the facts of the case show, the builder recovered money from the intending allottees though not from all.
4. While the matter stood thus, a dispute surfaced with regard to the affairs and working of SADA office and its officials. On the allegation of corrupt practices, a criminal case was registered against the then Chairman of SADA Laxman Chandrakar, the Chief Executive Officer and the other officers of SADA, including the partner of the builder that even though the petitioner had not fulfilled terms and conditions of agreement executed between it and SADA, the then officers of SADA obliged the petitioner through corrupt means by issuing building permission to facilitate construction of building. A criminal case alleging corruption was registered under Section 13 (1) (D), 13 (2) of the Prevention of Corruption act, 1988 read with Section 120-B IPC. The records of the SADA were also seized.

290

-3-

An allegation was also leveled by the Corporation Authority against the petitioner that the petitioner raised construction in violation of the building permission granted in his favour and it is said that though the petitioner was granted building permission to construct only three floors, the petitioner raised construction up to fifth floor. It was also alleged that in other aspect also, the constructions was in excess of building permission, proper parking area was not provided etc. Because of all these disputes having surfaced, the process of execution of lease deed in favour of nominated allottees was stopped and no further steps were taken. The petitioner had already invested in raising construction and finding that on account of non-execution of lease, it would be difficult for the petitioner to finalize the lease matters with the intending allottees and recover the cost of construction by way of premium from individual allottee, the petitioner approached this Court, seeking reliefs mentioned herein above.

5. Learned senior counsel appearing for the petitioner argues that the petitioner had carried out construction as per terms and conditions and with the tacit approval of the Corporation because while he was raising construction, though construction was being supervised, no objection was raised with regard to additional or excess construction. He submits that till date, no complicity of the petitioner-builder or any of its partner has been proved in the criminal case nor they have been convicted, therefore, only on the ground of pendency of a criminal case, the Corporation could not absolve itself of its contractual obligation to execute lease deed in favour of allottees nominated by the petitioner, as per terms and conditions of agreement executed between the petitioner and the Corporation. It is next submitted that in the name of pendency of a criminal case or excess construction, the Corporation cannot defer the matter indefinitely and some decision was required to be taken in the matter so that the money due to the petitioner is paid to him in due time. Therefore, in these circumstances, the Corporation has acted arbitrarily in refusing to perform its own obligation under the agreement between the parties. Therefore, appropriate mandamus be issued to respondent Corporation (successor body of dissolved SADA) to execute lease deed in favour of allottees nominated by the petitioner.



Additionally, learned senior counsel also contended that as per the agreement, the amount of premium payable by the petitioner to respondent Corporation was only Rs.65,00,000/- but the petitioner has paid more than Rs.74,25,000/-. Therefore, the excess payment made by the petitioner i.e. Rs. 9,25,000/- be directed to be refunded with interest. Lastly, it is submitted that because of alleged situation, as the allottees are not being granted lease, the Electricity Board is also not giving permanent electricity connection. Therefore, in these circumstance, appropriate direction be also issued to the Corporation to provide "NOC" so that the allottees may get permanent electricity connection to avoid any disruption of electricity and avoid high charges of electricity which is being supplied under temporary connection.

6. Per contra, learned counsel for the Corporation submits that the petitioner has raised disputed questions of facts. According to him, there exists an arbitration clause in the agreement between the parties. The petitioner's claim that the Corporation should enter into a lease agreement with the parties is essentially a contractual dispute because the Corporation, in the circumstances that a criminal case was registered against the officers of the SADA and also partner of the builder firm and that construction is not in accordance with building permission, cannot be compelled to perform contractual obligation as claimed by the petitioner. The next submission of the Corporation is that the amount of Rs.9,25,000/- claimed towards refund is also not acceptable because the petitioner was required to deposit the amount within the stipulated time which was not deposited within that time. Therefore, as per the terms and conditions of the agreement, the petitioner was liable to pay surcharge. Therefore, nothing is due and payable by the Corporation to the petitioner. Lastly, as far as electricity connection issue is concerned, no direction can be issued by this Court because unless the lease is executed in favour of the allottees, permanent electricity connection cannot be granted. He submits that otherwise this would only be a grievance of the allottee and not of the builder.

7. Learned counsel for the State also joins the issue by submitting that there are

criminal cases pending against the officers of the SADA as also against the parter of the petitioner on the allegation of corruption involved in the matter of grant of building permission by certain officers of the Corporation and the records have been seized by the Lokayukt. Therefore, unless there is order given by the competent criminal Court, the petitioner is not entitled to seek such a direction through this writ petition.

8. After hearing learned counsel for the parties and going through the records available, it is quite clear that there is a serious dispute between the Corporation and the petitioner with regard to performance of their respective contractual obligation under the agreement. While the claim of the petitioner is to direct the Corporation to perform its contractual obligation and execution of lease in favour of allottees, as proposed by the petitioner, the case of the Corporation is that the building permission itself was an outcome of a criminal act and without petitioner having complied with terms and conditions. Though he was wrongly issued building permission, he is not entitled to seek such a direction. Moreover, the case of the Corporation seems to be also based on illegal construction raised by the petitioner over and above the construction which was permissible under the building permission issued in favour of the petitioner. The issue with regard to refund has also been seriously disputed on the ground that as the premium was not paid within the time stipulated prescribed under the agreement, surcharge was liable to be paid by the petitioner.
9. Therefore, the dispute as between the petitioner and the Corporation with respect to execution of lease and refund involves seriously disputed question of fact which cannot be resolved in the writ petition. There exists an arbitration clause and the parties are at liberty to take recourse to arbitration clause, seek appointment of Arbitrator to get the matter decided through adjudication in an arbitration proceedings. It has also been brought to notice of this Court that in fact earlier, the petitioner had filed an application before this Court seeking appointment of the Arbitrator but the petitioner also simultaneously took recourse to remedy of filing writ petition and thereafter withdrew the application for appointment of Arbitrator on the statement that

-6-

he has already filed a writ petition. Therefore, in these circumstances, it will be open for the petitioner to seek alternative remedy of adjudication through arbitration proceedings in terms of the arbitration clause of the agreement.

10. In this case, the order passed by this Court earlier on 10.7.2015 shows that this Court had directed the Commissioner of Municipal Corporation to explain why the Corporation has not taken steps in accordance with law for demolition of the offending construction and has preferred to sit in the shadow of the writ petition even while there is no interim order. In response, the Commissioner of the Corporation has filed an affidavit before this Court in which amongst other things, it has been stated in para-7 of the affidavit that since the matter was subjudice before this Court, therefore, no proceedings for demolition of construction raised contrary to terms and conditions of tender were initiated. It is stated that the Corporation was awaiting the final result of the petition and since the matter has been seized up by this Court, therefore, no action of demolition has been taken in all fairness.
11. With the said liberty given to the petitioner to work out his remedy against the respondent- Municipal Corporation through arbitration proceedings, this petition is finally disposed off. It will be open for the Corporation to take such steps as may be necessary in public domain as against the illegal construction alleged to have been raised by the petitioner though in accordance with law. As far as the apprehension with regard to disconnection of electricity is concerned, it is stated that on the strength of temporary connection, various shops, restaurants are running in the building. In case of any disconnection notice issued to the petitioner on the ground of "NOC", it will be open for the occupant of the shop or restaurants to take recourse to remedy by filing a separate petition which shall be examined on its own merits.

Sd/-
Manindra Mohan Shrivastava
Judge