

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 4068 OF 2015

Marotrao s/o. Nagorao Shinde
Age major years, Occ. Agri.
r/o. Manatha, Tal. Hadgaon,
Dist. Nanded.

.. Petitioner

Versus

- 1] The State of Maharashtra
through its Secretary
Revenue and Forest Department,
Mantralaya, Mumbai.
- 2] The Collector,
Nanded.
- 3] District Mining Officer,
Nanded.
- 4] The Tahsildar,
Hadgaon, Dist. Nanded.

.. Respondents.

...

Advocate for Petitioner : Mr. U.R. Aute, Adv. h/f. Mr. Ajay T. Kanawade
AGP for Respondents: Mr. S.M. Ganachari.

**CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE : 11th AUGUST , 2016.**

ORAL JUDGMENT [PER S.V. GANGAPURWALA,J] :-

Rule. Rule made returnable forthwith. Heard finally by consent of parties.

- 2] Mr. Aute, learned counsel for the for petitioner states that tender was issued for allotment of site i.e. minor mineral site of stone. The

petitioner was successful bidder. The auction was conducted on 29.8.2006. The petitioner has deposited the 1/4th amount i.e. Rs. 1,50,000/- on 31.8.2006. The bid amount was Rs. 5,90,000/-. On 30.9.2006 and in October, 2006, the respondent No.2 Collector directed the petitioner to deposit the remaining amount i.e. Rs. 4,40,000/-. The petitioner was served with those notices and in December, 2006, the petitioner communicated the respondent about his inability to deposit the remaining amount. The Collector, forfeited the earnest amount of Rs. 1,50,000/-.

3] After a lapse of 7 years in the year 2013, the respondent No.4 - Tahsildar issued notices to the petitioner directing the petitioner to pay the remaining amount of auction conducted in the year 2006. The petitioner on 21.7.2014 approached the Collector and prayed for withdrawal of the said notices. The Collector rejected the said request of the petitioner.

4] Mr. Aute, learned counsel for the petitioner submits that petitioner's 1/4th amount is already forfeited and petitioner has not made any grievance about the same. Respondent could have re-auctioned the said spot after 15 days as per the clause of the tender. Respondent No.4 did not re-auction same the same. On the contrary, even after expiry of the date, stipulated for depositing the remaining amount, the respondent authorities asked the petitioner to deposit the remaining amount. Learned counsel submits that agreement was never entered into between the petitioner and the respondents in respect of the minor mineral site under the auction, nor any security deposit was paid. No further steps were taken pursuant to the allotment. According to learned counsel the respondents are not entitled for the remaining amount.

5] Mr. Ganachari, AGP submits that the petitioner is bound by the terms and conditions of the tender and the allotment. Clause 14 of the said tender conditions lays down that if the petitioner does not deposit the remaining amount within 15 days, or fails to execute the agreement, then, the respondent will have a right to re-auction. As per clause 18, if on re-

auction, less amount is received, the petitioner will make good the loss to the respondent. Same is also reflected in clause 36 of the said tender conditions. Learned counsel submits that in the year 2006 also notices were issued to the petitioner. However, notices could not be served. In September and October 2006 also, consistently notices were issued to the petitioner intimating him that petitioner will be responsible for the loss. As the petitioner did not deposit the amount within time, respondent also could not re-auction the said site in the same year. In the next year, auction was conducted. However, no bidder came forward and as such, the respondent State is entitled to recover the remaining amount of Rs. 4,40,000/- from the petitioner in view of clause Nos. 18 and 36 of the tender conditions. Even there was audit objection in this regard.

6] We have considered the submissions and have gone through the terms and conditions of the tender. The petitioner was the successful bidder in the auction of the minor mineral site, held on 29.8.2006. The petitioner had bid for Rs. 5,90,000/-. The petitioner deposited the 1/4th amount on 31.08.2006 i.e. Rs. 1,50,000/-. The remaining amount was supposed to be deposited within 15 days, so also, the petitioner was required to execute an agreement and furnish the security deposit within 15 days and if the petitioner failed to do so, the respondent No.1 had a right to re-auction the said site. Clause 14 of the said conditions is explicitly clear.

7] The petitioner within 15 days did not deposit the remaining amount nor executed any agreement with the respondent. On expiry of 15 days, there was no impediment for the respondent to re-auction the said site. There is also no document on record even to remotely suggest that petitioner had sought for extension of time to deposit the amount. No reason is forthcoming from the respondent as to why respondent did not re-auction the said spot or site, after the lapse of 15 days, more particularly, when the petitioner during the said period did not deposit the remaining amount nor executed any agreement nor gave any security deposit. The respondent had every right to re-auction said site. It is also nowhere brought

on record as to any steps being taken by the respondent to re-auction said site. In such circumstances, the theory of mitigating damages can be applied. The respondent was bound to take steps to re-auction the property and in re-auction if the respondent State did not receive any bidder or received the bidder for a less price, then they could have asked for short-fall in the amount of bid on re-auction from the petitioner. Said exercise was never conducted. It is stated that in the next year, the respondent had gone for the re-auction and no bid was received and now, after lapse of 7 years, is claiming remaining amount of Rs. 4,40,000/-. Same now would be impermissible. Of course, as far as the forfeiture of $\frac{1}{4}^{\text{th}}$ amount is concerned, respondents are within their right to forfeit the same and the same is rightly forfeited. However, as the respondents failed to take steps of re-auction of said site on lapse of 15 days, the respondents, after a lapse of 7 years, cannot turn around and claim the remaining amount on the ground that next year no bid was received. If the respondents would have gone for re-auction in the very same year on the default committed by the petitioner, in that case, if no bid was received, the respondents would have been justified in claiming the said amount from the petitioner.

7] In the light of above, writ petition is allowed. Rule is made absolute in terms of prayer clauses (A) (B) and (C). There shall be no orders as to costs.

[K.K. SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-