

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.9286 OF 2013**Prakash S/o Kisanrao Nirphal Vs. The State of Maharashtra
and others.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.S.Y.Patil, advocate holding for Mr.B.N.Patil, advocate for the petitioner.
 Mrs.V.N.Patil, A.G.P. for the State.
 Mr.R.N.Dhorde, Senior advocate for Respondent Nos.3 and 4.

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

Date : 17.11.2016.

PER COURT :

1. Heard.

2. The learned counsel for the petitioner submits that the Respondent No.2 floated a tender inviting applications for cultivation of land S.No.59 (Gat No.80) to the extent of 7 hectares 21 Ares of village Amalner. According to the learned counsel for the petitioner, the petitioner was the highest bidder. On 24.9.2013, letter was issued to the petitioner for depositing the amount within five (5) days. In fact, on 7.9.2013, the Civil Court in R.C.S.Nos.360/2013 and 361/2013 filed by the Respondent No.3

passed an order directing the parties to maintain statusquo in respect of possession of the writ land. The Respondent No.2 was not in a position to perform its part i.e. it was not in a position to place the petitioner in possession of the writ land. As such the said letter issued did not carry any meaning. The order of statusquo was up to 9.10.2013. The learned counsel states that petitioner had drawn the Demand Draft on 29.10.2013 for an amount of Rs.4,54,000/- (Rupees four lacs fifty four thousand), however, the same is not accepted and now the contract is allotted to Respondent No.4. The same is illegal. The Respondent No.2 can not take advantage of its own wrong. When Respondent No.2 itself was not in a position to perform its part of the contract, it could not have insisted the petitioner to perform its part. The petitioner can not be said to be at fault. As such the order is illegal.

3. Mr.Dhorde, learned Senior advocate for Respondent Nos.3 and 4 submits that initially the contract was with Respondent No.3. The Respondent No.4 was third highest bidder and the petitioner was the second highest bidder. The highest bidder did not show any interest. As such the petitioner being the highest bidder was called to deposit an amount of Rs.9,98,000/- (Rupees nine lacs ninety eight thousand) and odd which he failed to deposit and the Respondent being the third highest bidder thereafter was called to deposit the amount. The same is deposited by the Respondent and

the contract is allotted to the Respondent. No illegality is committed in this regard.

4. Mr.Barde, learned counsel for Respondent No.2 submits that Respondent No.3 even earlier was in joint possession. The tender is always issued for joint cultivation along with Respondent No.2. The petitioner was given opportunity to deposit the amount. Even extension of 15 days was given to him to deposit the amount but the petitioner failed to deposit the amount and even the Demand Draft which was sent by Fax was not for total amount.

5. We have considered the submissions canvassed by learned counsel for respective parties.

6. As per documents filed on record the order of statusquo was in force up to 9.10.2013. The petitioner had not deposited the amount as claimed by the Respondent No.2. Even the offer to tender the amount was only of a part amount and not the total amount. It appears that the petitioner was shaky in performance of his part of the contract. We could have considered the case of the petitioner, had the petitioner shown his willingness to deposit the entire amount as directed in the letter dated 24.9.2013. However, even the tender was of a part of the amount and not the entire amount.

7. The petitioner having committed default in performing his part of the contract, now can not turn around and assail the contract

awarded to the Respondent. The party should be first ready and willing to perform his part of the contract then can claim right to insist for performance of the part of the contract of other party.

8. In light of the above, the Writ Petition is dismissed. No costs.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.17.11.2016.
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