

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4033/2015

(MACHHIMAR VYAVSAY SAHAKARI SANSTHA MARYADIT, GAVLI HETH **VERSUS** THE STATE
OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.A. Vyawahare, counsel for the petitioner.
Shri A.S. Fulzele, Addl. G.P. for the R-1 to 3.
Shri V.D. Darne, counsel for the R-4.

CORAM : SMT.VASANTI A. NAIK AND
A.S. CHANDURKAR, JJ.

DATE : FEBRUARY 25, 2016.

Heard.

The challenge in the present writ petition is to the award of fishing rights to the respondent no.4-Society by an order dated 05.05.2011.

It is the case of the petitioner that on 06.11.2010, the petitioner-Society was granted registration under the provisions of Section 2(1) of the Maharashtra Co-operative Societies Act, 1960. Pursuant to such grant of registration, the petitioner-Society became entitled to exercise the fishing rights over the tank situated at Post-Gavli Heth, District Yavatmal. Thereafter, on 01.04.2011, the petitioner applied for grant of fishing rights of Jamwadi lake. However, on 05.05.2011, the contract with regard to said fishing rights was allotted to the respondent no.4-Society for the period from 2011-12 till 2015-16. According to the petitioner, the respondent no.4 initiated the proceedings for challenging the registration that was granted to the petitioner-Society by filing Writ Petition No.3332 of 2011. However, on account of an alternate remedy being available, the challenge was not entertained. The respondent no.4-Society thereafter filed an appeal under Section 152 of the said Act. The delay in filing the said appeal was not

initially condoned but, ultimately by order dated 20.09.2013 passed in LPA No.430 of 2012 after condoning the delay, the Appellate Authority was directed to decide the appeal. The appeal was heard and dismissed on 28.02.2014. The petitioner-Society thereafter approached the Commissioner of Fisheries for cancellation of the contract but, said Authority did not entertain the proceedings. Thereafter, the present writ petition challenging the said contract was filed on 25.06.2015.

Shri N.A. Vyawahare, the learned counsel for the petitioner, submitted that as the registration of the petitioner-Society was under challenge by the respondent no.4 and ultimately, said order attained finality, the contract that was awarded to the respondent no.4-Society on 05.05.2011 was liable to be cancelled. It is submitted that on 18.02.2014, the area of operation of the respondent no.4-Society was altered and the lake in question stood deleted from the area of operation of the respondent no.4-Society. He submitted that as various proceedings were pending either before this Court or before the authorities under the said Act, the petitioner-Society could not have approached earlier for challenging the award of contract to the respondent no.4-Society. It is, therefore, submitted that the contract in question as awarded to the respondent no.4 deserves to be cancelled.

Shri A.S. Fulzele, the learned Additional Government Pleader for the respondent nos.1 to 3, submitted that the contract in question was awarded to the respondent no.4-Society, on 05.05.2011 and the same was for the period till May-2016. The writ petition challenging the award of the said contract to the respondent no.4-Society has been filed when the contract period of less than one year has remained. It is submitted that the respondent no.4-Society has been undertaking fishing operations as per the allotment of the contract dated 05.05.2011. It is, therefore, submitted that there is no case made out to interfere in favour of the petitioner.

Shri V.D. Darne, the learned counsel for the respondent no.4, has adopted the arguments made on behalf of the respondent nos.1 to 3.

The undisputed facts on record indicate that on 05.05.2011, the fishing contract was awarded to the respondent no.4-Society. Though the petitioner-Society had also applied for the allotment of the fishing contract on 01.04.2011, after the contract was awarded to the respondent no.4-Society, the petitioner-Society did not take any immediate steps to challenge the entitlement of the respondent no.4-Society. Though proceedings were initiated by the respondent no.4-Society challenging the registration of the petitioner-Society, the same did not preclude the petitioner-Society from taking legal redress against the award of the said contract to the respondent no.4-Society. Even if it is assumed that for a short period, certain interim orders were operating in the appeal filed by the respondent no.4-Society, that cannot be a justification for failing to challenge the award of contract to the respondent no.4-Society. As noted above, the period of contract is till May-2016, whereas the writ petition has been filed on 25.06.2015. A period of less than one year of the contract was remaining when the petitioner-Society approached this Court by filing the present writ petition.

As the petition suffers from unexplained delay and laches, the same disentitles the petitioner from seeking any relief in writ jurisdiction. The writ petition is, therefore, dismissed with no order as to costs.

JUDGE

JUDGE