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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 6173 OF 2016
WITH WP/6182/2016**

**YOGESH DATTATRAYA JAGTAP
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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**Advocate for Petitioner : Deshmukh Bhausaheb S.
AGP for Respondents: Mr. A.R. Kale for respondent Nos. 1 to 3.**

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**CORAM : S.C.DHARMADHIKARI &
MANGESH S. PATIL,JJ.**

DATE : 06/07/2017

PER COURT :-

- 1] The two writ petitions were argued on the earlier occasion and even today.
- 2] In Writ Petition no. 6173 of 2016 the petitioner is seeking a direction to the respondents to extend the period of sand excavation which has already lapsed or alternatively to refund Rs,9,18,000/- with further interest which sum is deposited by the petitioner as earnest money deposit.
- 3] In the State of Maharashtra and also in the region of Marathwada the sand excavation spots are identified. Thereafter they are auctioned. The petitioner was one of the bidder for such a excavation site at Nagzari Tq. and Dist. Jalgaon. The auction was held by respondent Nos. 2 and 3.

4] It is contended that there was already an E-Tender and E-Auction. The petitioner was declared as a highest bidder for the year 2015-16. The petitioner then states that for this spot at Nagzari a tender notice was issued on 01/12/2015 in fact it was for 44 sites/spots. The petitioner applied and once again submitted his tender. The petitioner's tender was accompanied by a earnest money deposit. The petitioner submits that as had transpired in the case of the earlier E-Tender for Kuwarkheda even at the site of Nagzari there was undue and uncalled for interference. The Minister intervened in the process resulting in legal proceeding and further delay.

5] Pertinently, the petitioner says that one Sunil R. Mantri had approached the Minister and an order came to be passed. There was also a public interest litigation.

6] Be that as it may. The petitioner says that he was never at fault, and therefore should have been allowed to excavate the sand and transport it. That was not possible because of undue and uncalled for interference by the State. It is in these circumstances that when the process was abandoned or canceled, he applied for refund of the earnest money. The petitioner was informed that there was some complaint and which complaint had to be investigated into. Thereafter a clear report was forwarded. However, the petitioner's counsel submits that for all this petitioner has not been responsible. The order dated 28/03/2016 forfeiting the earnest money deposit is illegal, arbitrary, unfair, unreasonable and violative of Article 14 of the Constitution of India.

7] There is an affidavit in reply which is filed on behalf of the

second respondent Additional Collector, District Jalgaon by the Tahsildar. Though he admits that there was an E-auction process but it is stated that there was a direction issued by the State and at the highest level, directing cancellation of the E-auction process in respect of Kuwarkheda and Nagzari and to commence a fresh process. It is in these circumstances that the work order could not issued.

8] The petitioner is faulted for being responsible for such a cancellation. It is stated that the petitioner had deliberately and rather acting in collusion and connivance brought about this situation. How that situation was brought about has been set out in paras 7,8 and 9. In para 10 it is alleged that the petitioner is taking advantage of his own wrong. For the two auction spots, one bidder V.K. Enterprises offered a bid and the petitioner's bid was slightly higher, however, in the auction process held for the subject spots viz. Nagzari, a bid of V.K. Enterprises was worth in rupees 46,00,000/-. There was a loss caused to the Government. Therefore, deposit amount of V.K. Enterprises came to be forfeited equally the petitioners earnest money deposit was forfeited. The money cannot be returned as there was a loss of revenue. It is stated that it is not the undue interference but deliberate attempts and to create a price mismatch that has resulted in the forfeiture. Hence the Writ Petition be dismissed.

9] In the rejoinder affidavit the petitioner says that the reserved price was determined at rupees 1,38,30,350/-. The petitioner commenced his bid from this figure and enhanced it to rupees 1,61,50,350/-. Hence there is no revenue loss. It is then stated that the petitioner is no way responsible for any legal proceeding being initiated. The petitioner submits that the petitioner's bid of

Kuwarkheda was highest.

10] It is on this material that we have heard learned Advocate appearing for the petitioner. We find that Sunil Mantri's complaint is at page no. 41 of the paper book addressed to the Minister of Revenue and Forests, Government of Maharashtra. He has stated that the on-line bidding process had commenced at a particular time. The on-line process was concluded abruptly, then, this complaint was directed to be investigated. The complaint was in relation to both spots Nagzari and Kuwarkheda. What transpired thereafter is that Sunil Mantri filed a Writ Petition in this Court and moved the Vacation Judge. The Vacation Judge passed an order on 28/12/2015. In the order passed by the learned Judge it is observed that there is an allegation that for both sand excavation spots initial price was quoted. It was around Rs.Ten Crores and Nine Crores. Subsequently that is found to have been reduced drastically to the tune of Rs. One Crore. That change occurred after the period of bid was over. It is in these circumstances that he could not place his bid, this Court observed that there is prima facie substance in the allegation made by Shri Sunil Mantri, therefore the auction process was subjected to further orders in the Petition.

11] There is also PIL No. 121 of 2015 filed by Subhash Patil and others in this Court. Based on this legal proceeding, it was directed that investigation be carried out. The investigation was carried out and may be there was a report of the Collector, Jalgaon but what is material for us in this report is the Collector expressed his opinion that in order to ensure complete transparency both tender process / auction notice deserved to be cancelled. That is how the report was forwarded. Another report was also called for from the Collector District Jalgaon. Then the petitioner's complaint to the third

respondent dated 08/2/2016 demonstrates that his was, according to him the highest bid, but that would not be accepted on account of the above intervention. It is in these circumstances all four bidders were informed by the Collector/Additional Collector, District Jalgaon on 05/03/2016 that a fresh tender process will commence and all of them can participate. The petitioner was also addressed a personal communication by which his request for issuance of the work order was duly considered. The petitioner addressed letter dated 29/03/2016 and specifically said in his complaint that he has no objection to the earlier tender process being cancelled and a fresh one commenced.

12] It is in the above circumstances that we are unable to agree with the learned Advocate appearing for the petitioner that there are no disputed questions of fact. The petitioner may not admit the version of the State but definitely in writ jurisdiction we cannot resolve this issue. The issue whether the forfeiture was erroneous and illegal can be decided only after both versions are tested and in accordance with law. It may be that oral evidence will have to be recorded, the documentary evidence will have to be scrutinized. In such circumstances, the matter of appraisal and appreciation of factual materials is not possible in writ jurisdiction.

13] For the above reasons we do not think that we can issue a writ as prayed.

14] The Writ Petition is therefore disposed of as the petitioner has alternate equal efficacious remedy to recover the amount allegedly forfeited or withheld illegally.

15] Barring the difference in the sand site and some factual

matters such as figures, the controversy in the second petition also remains the same. In paras 13 and 14 of the affidavit filed in Writ Petition no. 6182/2016 there is a specific allegation that as far as Nagzari sand excavation spot is concerned, the bid is forwarded by one V.K.Enterprises. The V.K. Enterprises revoked its bid at the fag end of the bidding process. This was an attempt engineered by the said V.K.Enterprises and the petitioner so as to dissuade other bidders offering higher bids. Hence the allegation of the petitioner sabotaging a bid is specifically made.

16] There may not be any substance in the same but it is not possible for us to record any opinion, by accepting either version placed on affidavits. It is for the petitioner to establish and prove his allegation and particularly of a wrongful forfeiture. In these circumstances the Writ Petitions stand disposed of on the same terms. There will be no order as to costs.

(MANGESH S. PATIL,J.)

(S.C.DHARMADHIKARI,J.)

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