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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11584 OF 2016

M/s. Madhoor Buildwell Pvt. Ltd. ... Petitioner
Versus
Yeola Municipal Council & Ors. ... Respondents

Mr. Ramesh Soni, with Ashwin Shete & Vishwabhusan Kamble,
i/b RAM & Co. and Jayakar Partners for the Petitioner.
Mr. Shriram S. Kulkarni, for Respondent Nos. 1 and 2.
Mr. A.I. Patel, AGP for Respondent Nos. 3 to 5.
Mr. N.R. Bubna, with Mr. D.P. Singh for Respondent Nos. 6 & 7.

**CORAM: SMT. VASANTI A NAIK AND
MR. RIYAZ I. CHAGLA, JJ.**
DATED: 16TH NOVEMBER 2017

PC:-

By this writ petition, the petitioner seeks a direction against respondent no.6 – Government of India and the respondent no.5 – Government of Maharashtra to disburse the promised funds under the UIDSSMT scheme to the respondent no.1 Municipal council towards underground sewerage project for Yeola city as per the work order dated 28th February 2014. In the alternative, the petitioner seeks a direction to the state government to include the sewerage system of Yeola city in AMRUT scheme and / or Nagarothhan Yojana and / or in any other scheme and to provide the promised funds to respondent no.1 – municipal council for implementation of the project.

The Ministry of Urban Development of the Government of India had framed and floated UIDSSMT scheme in the year 2005

for development of urban infrastructure for small and medium towns. As per the said scheme, for the projects that were required to be undertaken under the scheme, 80% of the funding would come from the central government, 10% of it from the state government and the remaining 10 % from the concerned municipal council. It is the case of the petitioner that in pursuance of the said scheme, Yeola municipal corporation proposed to undertake the work for constructing underground sewerage system for Yeola city. The estimated cost of the said project was Rs. 47.30 crores. The proposal for the said scheme was forwarded to the State and the central government. Yeola municipal corporation published a tender inviting bids for the said project by e-tendering process on 21st January 2014. The bid of the petitioner was accepted and a work order in respect of the said project was granted in favour of the petitioner on 25th February 2014. After the council issued the work order, according to the petitioner the petitioner made the necessary preparation for undertaking the work. The UIDSSMT scheme was discontinued on 31st March 2015 and the respondent no.1 municipal council proposed to the state government to take over the project for which the work order was awarded to the petitioner. The state government did not recommend the project undertaken by the petitioner for funding through AMRUT mission, which was another scheme floated by the central government after the discontinuation of the UIDSSMT scheme in the year 2014. Since neither the central government nor the state government decided to continue the project undertaken by the petitioner and the project of the petitioner was not included either in the AMRUT scheme or any other scheme undertaken by the state government, the

petitioner has filed the instant petition seeking the aforesaid relief.

Shri Bubna, the learned counsel for the respondent nos. 6 and 7 has strongly opposed the prayers in the writ petition. It is submitted that the UIDSSMT scheme was to last only for a period of 7 years from 2005 – 2006 viz. upto 2012 – 2013. It is stated that the petitioner was well aware of the UIDSSMT scheme and that the duration of the same was 7 years only. It is submitted that there is no privity of contract between the Union of India and the petitioner. It is stated that the state government has not recommended the project of the petitioner for funding through the AMRUT mission. An objection is raised about the tenability of the writ petition and it is stated that instead of availing the remedy of filing a suit, the petitioner has filed the instant petition with the prayers that may not be granted in exercise of the writ jurisdiction.

Shri Patel, the learned Asst. Government Pleader for the state government has strongly opposed the prayers made in the writ petition. It is submitted that after the Yeola sewerage project under the UIDSSMT scheme was forwarded to the central government, the Ministry of Urban Development, Government of India accorded its approval to the said scheme in principle and had requested the Ministry of Finance, Government of India to release the funds of the first instalment. It is stated that the said office memorandum is an internal communication between the two Ministries of the Government of India and neither the state government nor a local authority could expect to act upon it unless the funds are actually released by the Government of India. It is stated that the Government of India had discontinued the scheme from 2014 – 2015 and had launched the Atal Mission for

Rejuvenation and Urban Transformation (AMRUT) from 2015-2016 for cities with population above 1 lakh. It is submitted that in the guidelines issued by the office memorandum dated 14th August 2015 it is clearly mentioned that all projects that were approved by the Central Government but for which the funds could not be released on or before 31st March 2014 stand dropped from the scheme and would not be considered for funding. It is submitted that no relief could be sought against the State Government or the Central Government as Yeola Municipal Council had floated the tender pertaining to Yeola sewerage scheme without the final confirmation of the approval from the Government of India. It is stated that Yeola Municipal Council did not take any prior permission or consent either from the Government of India or from the Government of Maharashtra before floating the tender. It is stated that in view of paragraph 6 (b) of the office memorandum, dated 14th August 2015, the projects undertaken by the petitioner would not be eligible for funding either from the state government or from the Union of India. It is submitted that in the aforesaid set of facts, the Government of India has dropped the said scheme and has denied the funding of the central governments share. It is stated that in the circumstances of the case, there is no possibility of releasing matching state grants for the project undertaken by the petitioner. The learned Asst. Government Pleader sought for the dismissal of the writ petition.

The learned counsel for the municipal council submitted that the tender was floated after seeking the necessary permission from the State and the Central Government and if the State and Central Government refuse to release the funds for the project,

the project would not be completed.

On hearing the learned counsel for the parties, we find that it would not be possible in exercise of the writ jurisdiction to direct the Government of India or the State Government to disburse the funds under the UIDSSMT scheme to the respondent no.1 council towards the project undertaken by the petitioner for Yeola city in pursuance of the work order dated 28th February 2014. It appears from a reading of the UIDSSMT scheme that was floated by the Central Government in the year 2005 that the scheme could have lasted only for a period of 7 years. It is the case of the Union of India that the petitioner was well aware that the scheme could have lasted only for seven years from 2005 – 2006 and the petitioner could not have made the claim as is sought in the writ petition by relying on the work order dated 28th February 2014. Though it is the case of the petitioner and it is not disputed by the municipal council that the necessary permission was secured from the Union of India and State Government before floating the tender for the concerned project, the said fact is seriously disputed by the Central and State Government. It is stated that permissions / consent of the Central or State Government was not secured by the municipal council before floating the tender and awarding the work order to the petitioner. Be that as it may, it would not be proper to decide this issue in exercise of the writ jurisdiction and direct the Union of India or the State Government to release the funds for the said project, to the municipal council, specially when the UIDSSMT scheme could have lasted only for seven years from the time when it was floated. The scheme would have expired in 2012. The work order is said to have been allotted to the petitioner on 28th February 2014. In the year 2015, the Union

of India, Urban Development Department had issued the office memorandum dated 14th August 2015 clearly providing that the projects that were approved but to which the funds could not be released, as on 31st March 2014 stand dropped and would not be considered for funding. The learned counsel for the State Government and Union of India have heavily relied on clause 6(b) of the office memorandum dated 14th August 2015, as admittedly, no funds, whatsoever were released by the Central Government in respect of the project undertaken by the petitioner, on or before 31st March 2014. It appears that as per the office memorandum the project undertaken by the petitioner was liable to be considered as dropped as the same could not have been considered for funding. If the petitioner had continued to work on the project and had undertaken a part of the work for which the work order was issued in its favour, the petitioner has other remedies. The petitioner could file appropriate proceedings for recovery of the amount for the work done or could seek the damages in a civil court. It is rightly submitted on behalf of the Union of India and the State Government that since disputed questions of facts are involved in the writ petition, it would not be proper for this Court to adjudicate upon the same in exercise of the writ jurisdiction. We do not find any right in the petition to seek a direction against the State Government to include the underground sewerage scheme of Yeola city in AMRUT scheme and or Nagarothhan Yojana. Nothing is pointed out on behalf of the petitioner to show that the petitioner would have a right to include the project undertaken by the petitioner in AMRUT scheme or Nagarothhan Yojana. In the circumstances of the case, it would not be proper to direct the Central Government or the State

Government to release the funds for the project undertaken by the petitioner though the State Government does not wish to continue with the said scheme and there is no right in the petitioner to seek the continuation thereof. A direction cannot be issued against the State Government to take over the project and release the funds for the part of the work that is completed by the petitioner and continue to release the funds for the remaining work by adopting the project that was purportedly granted to the petitioner under the UIDSSMT scheme.

Since the relief sought by the petitioner cannot be granted in exercise of the writ jurisdiction, we dismiss the writ petition with no order as to costs.

At this stage, the learned counsel for the petitioner states that if at all the State Government wishes to continue the project in circumstances that may occasion in future, it should not be precluded from adopting the said project and completing the same in view of the reasons recorded in this order.

Since we have not restrained the State Government in any manner by this order and since it is not observed by us that it would not be within the domain of the State Government to continue with the project undertaken by the petitioner, we do not feel that this order would preclude the State Government, from adopting the project.

Order accordingly.

(RIYAZ I. CHAGLA J.)

(SMT. VASANTI A. NAIK, J.)