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

WRIT PETITION NO. 10662 OF 2017

Mitrashi Projects Pvt. Ltd. ... Petitioners
Versus
State of Maharashtra & Ors. ... Respondents

Mr. P.S. Dani, Senior Advocate i/b Mr. Ajay S. Patil, for the
Petitioners.
Mr. Sandeep V. Marne, for Respondent Nos. 2 and 3.

**CORAM: SMT. VASANTI A NAIK AND
MR. RIYAZ I. CHAGLA, JJ.**
DATED: 6TH DECEMBER 2017

PC:-

By this writ petition the petitioner challenges the order of the Navi Mumbai Municipal Corporation, dated 1st September 2016 cancelling the contract awarded in favour of the petitioner.

The corporation had floated tender no. 4 of 2014- 2015 inviting bids from manufacturers / distributors / developers / contractors having experience in grid connected solar plants and hydro power plants for the purpose of designing, supply, erection, installation and commissioning of the grid connected solar power plants of hydro power plant at Morbe dam on Turnkey basis. The petitioner submitted the bid in pursuance of the said tender and the bid of the petitioner was accepted. The petitioner deposited the security amount. It is the case of the petitioner that the petitioner could not commence the work in pursuance of the work

order as the respondent corporation did not grant the necessary permissions for carrying out the work at different stages and levels. According to the petitioner, there were some problems between the respondent corporation and the Maharashtra State Electricity Distribution Company Ltd. on the issue of purchase of electricity and the respondent corporation therefore asked the petitioner not to commence with the work. The petitioner received the impugned order dated 1st September 2016 cancelling the contract awarded in favour of the petitioner on the ground that the period for the commencement and completion of the contract was between 11th September 2014 to 10th May 2015 and since the petitioner had not completed the work within the said period, the contract was cancelled. It is stated on behalf of the petitioner that before cancellation of the contract by the impugned order it was necessary for the corporation to have served a show cause notice on the petitioner in view of condition no.107 of the tender notice. It is submitted that as per the said condition, the contract could be cancelled only after serving a notice of 14 days on the petitioner. It is submitted by referring to certain documents that are annexed to the affidavit in reply filed on behalf of the corporation that the delay in the performance of the contract was not due to the fault on the part of the petitioner and the corporation had not permitted the petitioner to proceed with the work by granting the necessary permissions and sanctions as per the terms of the tender. It is submitted that in the circumstances of the case, the impugned order is liable to be set aside.

Shri Marne, the learned counsel for the corporation submitted that after the contract was awarded to the petitioner and

the work order was issued to it on 11th September 2014, the petitioner failed to commence the work as per the work order and did not commence the work till the contract period expired on 29th April 2015. It is stated that after the stipulated time some communications were issued by the petitioner to the corporation seeking the extension of time to perform its part of the contract. It is submitted that in the meanwhile the government of Maharashtra declared an open access policy under which energy generated from solar plants could be sold in the open market. It is stated that the dispute between the municipal corporation and the MSEDCL if any had nothing to do with the inaction on the part of the petitioner to commence the installation work in pursuance of the work order. It is submitted that in view of the arbitration clause, it would be necessary for the petitioner to invoke the same and this Court may not entertain the writ petition in this background, specially when several disputed questions of facts are involved in the same.

On hearing the learned counsel for the parties and on a perusal of the documents annexed to the petition and the affidavit in reply filed on behalf of the respondent nos. 2 and 3 it appears that several disputed questions of facts are involved in this writ petition. It is the case of the petitioner that the corporation was at fault for the delay on the part of the petitioner to commence the work whereas it is the case of the corporation that the petitioner has to blame itself for the delay. The petitioner had not even commenced the work in pursuance of the work order and had after completion of the expiry of the term within which the contract was liable to be completed, sought for the extension of time for

completion of the contract. The parties have relied on certain documents to substantiate their rival claim and for blaming each other for the inaction on the part of the petitioner to commence the work in terms of the work order. It appears from the affidavit in reply filed on behalf of the corporation that the corporation has abandoned the project for which the tender was floated and the corporation would not float a fresh tender in respect of the project. Since the respondent corporation has abandoned the project it would not be necessary to consider the effect of condition 107 of the tender notice. In any case, since the tender conditions bear an arbitration clause, the said aspect could also be decided if the matter is referred to the arbitrator. Since several disputed questions of facts are involved in this writ petition pertaining to a challenge against the order of cancellation of the contract, we are not inclined to exercise the writ jurisdiction to decide whether the contract executed between the parties was rightly cancelled or not.

Since we are not inclined to exercise the writ jurisdiction, the parties would be free to pursue remedies that are available to them in law, if so advised. Since the relief sought by the petitioner cannot be granted, we dispose of the writ petition with no order as to costs.

(RIYAZ I. CHAGLA J.)

(SMT. VASANTI A. NAIK, J.)