

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

WRIT PETITION NO.6689 OF 2017

Jay Hanuman Traders Chilling
Plant and Sand Suppliers through
its Proprietor Suryakant s/o
Chandrakant Kamble, Age 49 years
Occu.Business, r/o Warud, Tq. Bhoom,
District Osmanabad

.. Petitioner

Versus

1. The State of Maharashtra,
through Secretary to the
Revenue and Forest Department,
Mantralaya, Mumbai 32
2. The Collector, Osmanabad,
District Osmanabad
3. The Divisional Commissioner,
Aurangabad Division,
Aurangabad, Dist. Aurangabad

.. Respondents

Mr A.R. Devakate, Advocate for petitioner
Mr S.G. Karlekar, A.G.P. for respondents

**CORAM : S.V. GANGAPURWALA &
A.M. DHAVAL, JJ**

DATE : 3rd April 2018

PER COURT

1. Pursuant to the advertisement, petitioner had bid for allotment of sand spot at Domgaon, Taluka Paranda, District Osmanabad. The petitioner was declared successful bidder on 4.10.2016. The petitioner, on the said date deposited earnest amount of Rs.16,58,164/-. It was communicated that this Court, in Writ Petition no.10163/2016 under order dated 3.10.2016 had directed not to pass final order of allotting the sand spot. The petitioner thereafter, on 24.10.2016 communicated that he does not want to continue with the bidding. The prohibitory order of this Court was in operation till

20.12.2016. On or about 20.12.2016, the prohibitory order came to be vacated in Writ Petition No.10163/2016. On or about 16.3.2017, the respondents directed the petitioner to take over the possession of the sand spot. The petitioner did not take the possession of the sand spot on 16.3.2017. It was stated that if the possession is not taken, the respondents are required to re-auction the sand spot, then the petitioner would be liable to pay the difference amount, if the sand spot is auctioned at a lesser amount.

2. The petitioner was also issued with the show-cause notice on 5.5.2017. It is further submitted by the learned Counsel for the petitioner that on 6.1.2018, during pendency of this petition, the petitioner is directed to deposit penalty and the original amount. The learned Counsel for the petitioner submits that the petitioner, during the period of stay had already communicated that he is not continuing with the bidding process.

3. Learned A.G.P. submits that this Court had only directed not to issue final allotment order and the process of tender was allowed to be continued. The petitioner was found to be successful bidder and the petitioner also performed his part of the promise thereby deposited the earnest amount. Thereafter, the petitioner was not entitled to back out from the contract. The sand spot was auctioned twice, but no bidder came forward. In view of that, the petitioner is responsible to pay the amount as claimed.

4. We have considered the submissions. It is the matter of record that on 3.10.2016, in Writ Petition no.10163/2016, this Court restrained the respondents from issuing any final allotment order. The stay was in

operation till 20.12.2016. On the said date, Writ Petition No.10163/2016 was withdrawn. Prior to 20.12.2016, the petitioner had already communicated on 24.10.2016 that he is not ready to continue with the bidding. The duration of the sand spot was up to September 2017. It also needs to be taken into consideration that the respondents did not communicate the petitioner that the stay was vacated on 20.12.2016.

5. The allotment order was never issued to the petitioner. The concluded contract never came into existence between the parties. The respondents were restrained from issuing order of allotment, the petitioner had already withdrawn his consent on 24.10.2016 before issuance of allotment order. No contract was subsisting thereafter between the parties. We would have accepted the case of the respondents, had the petitioner withdrawn his consent after the allotment order was issued. As no reciprocal rights and obligations arose between the parties, the petitioner cannot be held liable. Prior to the allotment order, the petitioner had withdrawn his consent.

6. Considering the aforesaid conspectus, the respondents are not justified in imposing penalty upon the petitioner.

7. Even, if it is assumed for the sake of argument that the contract had taken place, still the contract stood frustrated in view of the fact that this Court had stayed the allotment of the sand spot prior to auction being held.

8. Considering the aforesaid, the respondents would not be justified in withholding the earnest amount deposited by the petitioner and directing the petitioner to deposit the remaining amount.

9. Writ Petition as such is allowed. The impugned order dated 16.3.2017 directing the petitioner to deposit the remaining amount is quashed and set aside. The respondents shall refund the amount of Rs.16,58,164/- to the petitioner within a period of three months. No costs.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)

vvr