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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8312 OF 2018

Nature in Need BMWT

...Petitioner

V/s.

Commissioner, KMC

...Respondent

Mr.Yuvraj Narvankar for the Petitioner.

Mr.Abhijit Adagule for the Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 26TH SEPTEMBER, 2018.

P.C. :-

1. By this petition filed under under Article 227 of the Constitution of India, the petitioner has impugned the order dated 4th July, 2018 passed by the learned District Judge – 7, Kolhapur below Exhibit – 13 filed by the petitioner *inter-alia* praying for restoration of possession of the suit premises.

2. The petitioner was granted a lease of a plant for treatment of Bio-Medical Waste for the city of Kolhapur and around the area. The said lease agreement was subsequently terminated on various grounds by the respondent. The respondent had issued a show cause notice upon the petitioner under the provisions of the Maharashtra Municipal Corporation Act. The said show cause notice was thereafter decided against the petitioner. The petitioner filed an appeal before

the learned District Judge under section 81(f) of the Maharashtra Municipal Corporation Act. The said appeal is still pending. In the meanwhile, the respondent took possession of the suit premises from the petitioner. An application was filed by the petitioner for recovery of possession from the respondent. Learned District Judge rejected the said application for recovery of possession. The said order is impugned by the petitioner in this writ petition filed under Article 227 of the Constitution of India.

3. Learned counsel appearing for the petitioner invited my attention to the order passed by the National Green Tribunal, Western Zone Bench, Pune in M.A. No.30 of 2014 in the Application No.36 of 2013 dated 5th May, 2014 thereby disposing of the said application. He strongly placed reliance on clause 1 of the said order directing the respondent nos.6 and 7 herein to continue the agency of the petitioner by way of *ad-hoc* arrangement until appropriate and legal alternative arrangement is made by suitable tendering process.

4. It is submitted by the learned counsel that the respondent had invited fresh bid and has awarded the contract to the successful bidder, but the successful bidder has not been able to obtain the environmental clearance and the said application is still pending. He submits that the respondent could not have taken possession of the suit plant from the petitioner.

5. It is submitted by the learned counsel that the petitioner is ready and willing to deposit the arrears of rent, if any, with the respondent however, the respondent has refused to accept the said rent from the petitioner.

6. It is submitted that an appeal filed by the petitioner against the order passed by the Commissioner under section 81(b) is still pending and thus no prejudice would be caused to the respondent if the possession of the suit plant is restored back to the petitioner during the pendency of the said appeal on such conditions as this Court may deem fit against the petitioner.

7. Insofar the preliminary objection raised by the respondent that the writ petition is not maintainable is concerned, learned counsel for the petitioner placed reliance on the judgment of this Court in case of **Nusli Neville Wadia vs. New India Assurance Co. Ltd., Mumbai & Anr. 2010(2) Mh.L.J. 978** and the judgment of this Court in case of **Vita Municipality by its President Vithalrao Dadasaheb Patil vs. Gangaram Tatyaji Jadhav, AIR 1941 Bom. 184** and would submit that since the order passed by the learned District Judge in the application filed by the petitioner in an appeal preferred under section 81(f) was as persona designata, the civil revision application against the said order is not maintainable. He submits that the only remedy of the petitioner to impugn the said order passed by the learned District

Judge was by way of this writ petition under Article 227 of the Constitution of India.

8. Learned counsel for the respondent on the other hand submits that the petitioner had committed default in making payment of arrears of rent and had committed several breaches. He submits that even after the order passed by the National Green Tribunal on 5th May, 2014, the petitioner committed various breaches. Various complaints have been filed against the petitioner by other persons and thus show cause notice was issued by the respondent and after following procedure of law, an order of eviction was passed. He submits that after termination of the lease granted in favour of the petitioner, the respondent had already invited fresh bid and has already finalized the tender in favour of the successful bidder. The petitioner also had participated in the said bid and was unsuccessful.

9. Learned counsel invited my attention to a letter dated 7th July, 2018 issued by the Maharashtra Pollution Control Board, Regional Office, Kolhapur allowing the petitioner to operate the said plant and to ensure collection, transportation, treatment and disposal of Bio-Medical Waste strictly in accordance with Bio-Medical Waste Management Rules, 2016. He submits that the said plant is being operated by the respondent themselves and thus there is no question of handing over possession of the plant to the petitioner.

10. Learned counsel for the petitioner in rejoinder submits that the fact finding report is submitted to the Government pointing out various irregularities allegedly committed by the respondent and thus the respondent cannot be allowed to operate the suit plant inspite of the permission granted by the Maharashtra Pollution Control Board.

11. It is not in dispute that the lease granted in favour of the petitioner has been already terminated. The appeal preferred by the petitioner is still pending before the learned District Judge. The respondent has already taken possession of the suit plant from the petitioner admittedly.

12. A perusal of the letter dated 7th July, 2018 from the Maharashtra Pollution Control Board clearly indicates that the Maharashtra Pollution Control Board has taken cognizance of the fact that in view of the facility has been already taken over by the respondent from the petitioner. The said letter further indicates that it is mandatory on the part of the respondent to comply with all the conditions stipulated in Combined Consent & Authorization (CCA).

13. Learned counsel for the petitioner does not dispute that after termination of the lease granted to the petitioner, the respondent had invited fresh bid in which the petitioner had participated and was unsuccessful. The respondent has already accepted the bid of the successful bidder.

14. Be that as it may, the letter dated 7th July, 2018 issued by the Maharashtra Pollution Control Board clearly indicates that the respondent has been granted permitted to operate the said plant on various terms and conditions.

15. In my view, the impugned order passed by the learned District Judge does not warrant any interference. The appeal preferred by the petitioner is still pending.

16. Insofar as the issue of maintainability of this writ petition raised by the respondent is concerned, in my view, the judgments of this Court relied upon by the learned counsel for the petitioner would clearly assist his case. The writ petition is maintainable against the impugned order passed by the learned Trial Judge in view of the fact that the impugned order was passed by the learned District Judge as *persona designata* and not as a Court.

17. In my view, there is no merit in this writ petition. The writ petition is accordingly dismissed. It is however, made clear that insofar as the pendency of an appeal filed by the petitioner is concerned, learned Appellate Authority shall consider the said appeal on its own merit. There shall be no order as to costs.

(R.D. DHANUKA, J.)