

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6056 OF 2015

Baban Gihininath Keche .. Petitioner
V/s
State of Maharashtra & Ors. .. Respondents

Mr. P.B. Shah for the petitioner.
Mr. B.V. Samant, AGP for the State.

**CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE : 22nd FEBRUARY 2018

P.C.:

We have heard both sides and perused the writ petition and the annexures thereto.

2. Mr. Shah appearing for the petitioner submits that the petitioner was all throughout given to understand that he can enter into a contract with the respondent nos.1 and 3 to 5 so that he can obtain the rights to excavate sand and other minor minerals from the bed of Ujjani Dam.

3. In terms of the application made by the petitioner, he relied upon the letter dated 12th January 2004 and thereafter a deposit which had been made so as to commence and complete the work of excavation. The petitioner relies upon the agreement dated

12th June 2004 and would submit that the period stipulated therein was to expire on 31st December 2007. The petitioner relying upon all this was expecting that he would be able to excavate the above material in terms of the same. However, the area and the surroundings were not made conducive for such excavation. Thereafter the petitioner was informed that he should obtain a fresh permission which also was obtained by him on 16th February 2009. The petitioner made a deposit in terms of the demand raised on him. Even pursuant to this deposit and such compliances to be made by the petitioner, he was not allowed to excavate the sand. This was because of some order which was passed on 9th December 2009. That gave no opportunity to the petitioner to contest the claim. Thereafter a No Objection Certificate was issued by the 2nd respondent Corporation, but to the surprise of the petitioner on 3rd March 2012 the permission granted to him itself was cancelled. Once that permission was cancelled and without any hearing and principles of natural justice being followed that the petitioner made a representation on 30th March 2015 for recalling of the same and to permit excavation of sand.

4. It is in these circumstances that the petitioner seeks to quash and set aside the order dated 3rd March 2012 with a further direction that his representation be decided and he be permitted to excavate the sand, mud etc. from the river bed in terms of the initial order dated 28th October 2009.

5. The present petition has been filed in this Court on 5th April 2015.

6. From a reading of the petition and the annexures thereto, it is evident that the petitioner made a representation on 30th March 2015 seeking to recall the order of 3rd March 2012. Further, there are disputed questions of fact. Whether the petitioner was indeed excavating the material, for how long and whether the petitioner was affected adversely by intervention of the State and the cancellation of permission are the issues raised. These are purely contractual disputes. The remedy to resolve the contractual disputes ordinarily is by way of a suit or arbitration in the event there is an arbitration agreement. All contractual claims, where there is a clear dispute about the compliance with the terms of the contract or otherwise, are not always capable of being resolved in writ jurisdiction. The present case is of such nature. We find from the narration of the facts by the petitioner himself that several disputed questions arise for our determination. They cannot be resolved in writ jurisdiction. The petitioner is free to bring a suit in the competent civil court and claim all the reliefs as are permissible in law including compensation in terms of money. When such a suit is filed, we have no doubt in our mind that irrespective of disinclination of this Court to entertain this writ petition or the stand of the respondent, the suit will be decided by the competent civil court uninfluenced by

these actions or developments. While we dismiss the petition because it involves disputed questions of fact, we clarify that as far as the contractual disputes and claims of the petitioner are concerned, we have not expressed any opinion either way. All such contentions can be raised in the proceedings which the petitioner desires to institute or initiate including bringing a suit in the competent civil court.

7. The writ petition is disposed of with no order as to costs.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)