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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2283 OF 2018 IN
WRIT PETITION NO.11608 OF 2015

The Executive Engineer,
Public Works Divisin,
Miraj,Dist.Sangli
vs.

...Applicant

Sangli Bar association,
Sangli and others

...Respondents

Mr.A.B.Vagyani, G.P a/w Mr.Y.S.S.Khochare, AGP for
the Applicant and for respondent Nos.1 and 2 in Writ
Petition

Mr.Umesh Mankapure for the petitioner

Mr.Amit B. Borkar for the respondent Nos.3 and 4.

CORAM : A.S.OKA AND M.S.SONAK, JJ.

DATE ON WHICH ORDER IS RESERVED: NOVEMBER 1, 2018

DATE ON WHICH ORDER IS PRONOUNCED:DECEMBER 12,2018

P.C.: (PER A.S.OKA,J.)

1 Writ Petition No.11608 of 2015 filed by the first respondent-Sangli Bar Association was disposed of by the Judgment and Order dated 23rd August 2016. A proposal was moved by the High Court Administration for construction of a new building for the District and Sessions Court at Sangli consisting of A and B wings. The State Government approved the proposal partly only in respect of A wing. However, by the communication dated 30th July 2015, the State Government refused to approve the proposal in respect of B wing. The aforesaid Writ Petition was filed for challenging the said

communication. The first prayer in the petition was for issuing a writ of mandamus against the State Government to release the funds for construction of A wing. The second prayer was for setting aside the communication dated 30th July 2015 and for directing the State Government to grant approval to B wing. Further direction was sought to commence the construction. After the Writ Petition was filed, the communication dated 30th July 2015 was withdrawn with a request to the High Court Administration to submit a fresh proposal.

2 The Writ Petition was disposed of by the Judgment and Order dated 23rd August 2016. Paragraphs 6 to 8 of the said Judgment read thus:

"6 There is an Affidavit dated 2nd August 2016 by Shri Nijamoddin J. Jamadar, the Principal Secretary and Remembrancer of Legal Affairs, Law and Judiciary Department on behalf of the State Government. Reliance is placed on the Government Resolution dated 17th May 2016 in respect of "A" Wing. It records that the administrative approval has been granted for spending an amount of Rs.34,19,84,000/- for the work of "A" Wing. The Government Resolution records that the amount cannot be spent unless there is a budgetary allocation made. A separate Government Resolution was issued on 17th May 2016 granting approval for allied/additional

work in "A" Wing for the amount of Rs.24,06,23,000/-. The Resolution records that there is no budgetary allocation even for the said amount. As late as on 1st August 2016, a Government Resolution was issued granting administrative approval for the construction of "B" Wing. The approval was granted to the estimate of Rs.15,60,26,000/-. However, it is stated that there is no budgetary allocation made for the said amount.

7. Thus, there is a gross delay on the part of the State Government in fact for seeking budgetary allocation. The proposals of both "A" and "B" wings ought to have been placed before the budget session of Legislature held in February/March 2016.

8. Today, an Affidavit has been filed by Shri Devendra Shantaram Jadhav, Executive Engineer, Public Works Department, Miraj, Sangli. As far as "B" Wing is concerned, it is stated that out of the proposed amount of Rs.15.60 crores, grant of Rs.1.79 crores was released from the contingency fund which has been received by the Public Works Department on 11th August 2016. There is a further assurance in the Affidavit that by the end of December 2016, tender process will be completed and the work order will be issued

to the concerned contractor. On page 109 of his Affidavit, Shri Jadhav has stated thus:

* A detailed estimate for technical sanction at the level of Public Works Department is going on and thereafter tender process will be commenced. The said process requires minimum 04 months. By end of December 2016, the tender process in all respect will be completed and work order will be issued to bidder. The balance amount of approved administrative proposal will be placed before the House of legislature in Winter Session – December, 2016 for getting the amount budgeted.

* I respectfully submit that civil works and the allied works of "B" Wing, including furniture, electrification, water supply, rain water harvesting, fire fighting, land development, water storage and pump storage, A.C., lift cabins, transfer and power supply, solar system etc will be completed by December 2018."

3 In paragraph 10, this Court observed thus:

"10 As regards "A" Wing, the learned counsel appearing for the High Court Administration has placed on record the status report. The status report records

that administrative approval for the construction of "A" Wing was granted on 24th September 2010. It records that RCC work and brick work has been completed and even the work of internal and external plastering of ground to third floors is already completed. It is pointed out that RCC work has been completed about two years back. As a result of the delay in grant of approval, now there is bound to be escalation in the cost of construction. Considering this gross delay, though in the Affidavit of Shri Devendra Jadhav, it is stated that the work of "A" wing will be completed by the end of March 2018, such a long time cannot be granted. The learned Government Pleader pointed out that there may be difficulty in the way of immediately completing the work of construction of compound wall and the construction of road as there is some on-going dispute with the Institution claiming to be the owner of the adjacent property. Nevertheless, we do not see any impediment in completing the remaining construction work of "A" wing excluding the work of construction of compound wall, construction of road thereon and the landscaping work. We propose to grant time to the State

Government to complete the rest of the work in relation to "A" wing till 31st August 2017."

4 This Court considered the status report as regards the construction of A wing. This Court also considered the merits of the communication dated 30th July 2015 and recorded that the reasons recorded by the State Government for declining to grant approval to B wing were contrary to the legal obligation of the State Government to provide adequate infrastructure to the Court. The directions issued in the final Judgment are material which read thus:

"(i) We accept the statement made by Shri Devendra Shantaram Jadhav to complete the construction of "B" Wing in all respects by the end of the year 2018 as the undertaking of the State Government. **We direct the State Government to ensure that "B" Wing shall be kept ready in all respects on or before 31st December 2018 so that actual functioning of the Court can commence in "B" Wing with effect from 1st January 2019;**

(ii) We direct the State Government to complete the construction of "A" Wing in all respects as expeditiously as possible and in any event on or before 31st August 2017. This time limit shall not apply only to the work of construction of compound wall,

construction of road and the landscaping which shall be completed by the end of March 2018. The State shall ensure that the functioning of the Court can commence in "A" Wing with effect from 1st September 2017;

(iii) Though we are disposing of the petition with these directions, the Petition shall be listed for reporting compliance after every three months. Compliance affidavit shall be filed by the Officers of the Public Works Department after expiry of a period of every three months till construction of the "A" and "B" Wings is completed in all respects. Similarly, the learned Principal District Judge, Sangli shall submit a report as regards the stage of construction after every three months;

(iv) In the event the learned Principal District Judge finds that the work is getting delayed or there is a delay in releasing the funds, he shall forthwith submit a report to the Registrar (Judicial-II). On the basis of the Report submitted by the learned Principal District Judge, it will be open for the High Court Administration to move this Court for further directions;

(v) We direct that this Petition shall be listed on 22nd November 2016 under the caption of directions. Compliance Affidavit shall be filed on or before the said date."

(emphasis added)

5 The prayer in this Civil Application is for grant of extension of time by four months to complete the work of B wing in all respects.

6 We have heard the learned Government Pleader in support of the Civil Application who pointed out the reasons for delay incorporated in the Civil Application. When we made a query to the learned Government Pleader in what manner the Government will compensate the institution of judiciary for the delay, the learned Government Pleader sought time of one month to take instructions and stated that the passing of order on this application be deferred. The learned counsel for the writ petitioner vehemently opposed the prayer for grant of extension by pointing out in detail how the final Judgment was not complied with even as regards A wing. He urged that there is a delay on the part of the Government.

7 We have considered the submissions. Under the final Judgment in the Writ Petition, time was granted to complete the construction of A wing in all respects till 31st August 2017. For the work of compound wall, internal road and landscaping, time was granted till 31st March 2018. In case of A wing, the State Government could not comply with its undertaking. By order dated 18th August 2017, by accepting the undertaking of the State Government of fully completing the work and of obtaining Occupation Certificate on or before 31st October

2017, time was extended till 31st October 2017. Paragraphs 2 and 3 of the said order dated 18th August 2017 in Civil Application No.1901 of 2017 read thus:

“2 Though no case is made out for grant of extension of time as prayed, only in the light of the undertakings of the State of Maharashtra that we are inclined to extend the time as prayed for. We, however, make it clear that the State of Maharashtra shall ensure that the work of “A” Wing of District Court Building is fully completed as stated in the undertaking and occupation certificate is obtained on or before 31st October, 2017. It is the obligation of the Applicant – State of Maharashtra to ensure that “A” wing becomes fully functional on or before 1st November, 2017.

3 Hence, we dispose of the application by passing the following order :-

ORDER

- (i) We accept the undertakings of Shri Devendra Shantaram Jadhav and Shri Abasaheb Bapurao Chaugule dated 16th August, 2017 (taken on record and marked 'X' for identification) as undertakings of the Applicant – State of Maharashtra;
- (ii) In view of the undertakings, time granted to the State Government to complete the work of “A” Wing in terms of final judgment in the Writ Petition is extended till 31st October, 2017. We make it clear that no further

extension will be granted;

- (iii) Place the main Writ Petition for reporting compliance under the caption of “Directions” on 2nd November, 2017.”

(emphasis added)

8 We may note that in breach of the undertaking, the Occupation Certificate was obtained only in December 2017. Further orders passed from time to time will show that not only that the time schedule was not abided, but several directions were required to be issued by this Court for making available sweepers, lift operators and gardeners for functioning of A wing. It can be safely said after the perusal of the orders passed from time to time that neither the orders of this Court were complied within stipulated time nor the undertakings given to the Court were abided by.

9 This Court was monitoring the progress of the construction made from time to time as can be seen from the orders passed from time to time. Paragraph 3 of the order dated 18th September 2018 reads thus:

“3. We find from the affidavits that it will be difficult for the State Government to abide by the deadline of 31st December 2018 as far as B wing is concerned. We must record here that the State Government did not abide by the dead line in respect of A wing and this Court was required to extend

the deadline. We are putting the State Government to notice that a serious view will be taken if the B wing is not made functional on or before 31st December 2018. The Officers of the Public Works Department will have to take review of the work so far carried out. If they find that the work is not likely to be completed within time line fixed, the Public Works Department shall ensure that additional hands are employed for completing the work. The report on this aspect shall be submitted by the Officers of the Public Works Department."

(emphasis added)

10 Thus, as long back as on 18th September 2018 the State Government was put to notice based on the material placed before the Court that it may not be able to abide by its undertaking.

11 The orders passed by this Court will show that at no stage, the State Government has abided by the time frame fixed by this Court. Though on 18th September 2018 the Officers of the State Government were put to notice at aforesaid, the present application was filed one month thereafter i.e on 15th October 2018. In paragraph 5 of this application, reasons have been assigned for the delay which read thus:

"(1) Depth of foundation increased as per the

actual site conditions.

(2) At the time of excavation work, huge dewatering was done and therefore time for excavation work was increased.

(3) As per the actual site conditions, there was change in foundation design and major deviation was done and therefore additional time was required.

(4) Due to shortage of natural sand, the time schedule for civil work could not be achieved.

(5) The user Department has not finalized the furniture layout and therefore further initial process for electrical work, LAN/Computer wiring work could not be completed."

12 We must note here that no material in support of the said reasons has been placed on record. As far as the reasons 1 to 3 are concerned, if the same are genuine, the State Government was aware of the said reasons at the time of making foundation. But, the same were not pointed out to this Court earlier, though on several occasions, the petition was before this Court for reporting compliance. As far as the ground of non availability of sand is concerned, the State Government has not given particulars of other Government works which were delayed on that ground. Thus, it is impossible to accept the grounds stated for extension of time as genuine.

13 We had suggested the learned Government Pleader

that considering the consistent defaults made, the State Government should on its own offer to carry out additional work in the Court for the welfare of the litigants or to provide additional facilities such as air-conditioning for the benefit of the litigants and/or for members of Bar. The learned Government Pleader sought time to take instructions. That is the reason why we did not decide this application immediately and reserved the order. However, the State Government has not come out with any concrete suggestion.

14 Though no case is made out to do so, it is only by way of indulgence and as a last chance, we propose to extend the time subject to payment of exemplary costs. In fact this Court would have been justified in issuing a notice of Contempt to the State for committing the breaches of the undertakings given to the Court. We propose to quantify the costs at Rs.1,00,000/- (Rupees one lakh only) which will be payable to the petitioner for utilising the same for the benefit of poor litigants. The petitioner may consider of using the costs amount for setting up a permanent fund for providing legal aid to poor and needy litigants or for holding legal literacy camps in villages.

15 Accordingly, we pass the following order:

(I) Civil Application is allowed in terms of prayer clause (a) subject to the applicant paying costs of

Rs.1,00,000/- to the first respondent (writ petitioner) within a period of one month from today;

(II)The payment of costs will be a condition precedent;

(III)No further extension will be granted under any circumstances;

(IV) The writ petitioner will utilise the said amount of costs for the benefit of poor litigants as suggested earlier. An affidavit setting out utilization of the said amount shall be filed on record by the petitioner within a period of three months from today.

(M.S.SONAK,J.)

(A.S.OKA,J.)