

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

901 WRIT PETITION NO. 10616 OF 2019

Aref S/o Manjur Tamboli .. Petitioner

Versus

The State of Maharashtra and Others .. Respondents

Mr. R. S. Shinde, Advocate for Petitioner.
Mrs. A. V. Gondhalekar, Addl. G. P for Respondents-State.

902 WRIT PETITION NO. 10617 OF 2019

Pravin S/o Ramesh Gade .. Petitioner

Versus

The State of Maharashtra and Others .. Respondents

Mr. R. S. Shinde, Advocate for Petitioner.
Mr. P. S. Patil, Addl. G. P for Respondents-State.

903 WRIT PETITION NO. 10619 OF 2019

Ratan w/o Uday Kamble .. Petitioner

Versus

The State of Maharashtra and Others .. Respondents

Mr. R. S. Shinde, Advocate for Petitioner.
Mr. S. G. Karlekar, AGP for Respondents-State.

24 WRIT PETITION NO. 10576 OF 2019

Anju w/o Gahininath Raut .. Petitioner

Versus

The State of Maharashtra and Others .. Respondents

Mr. V. S. Undre, Advocate for Petitioner.
Mr. S. P. Tiwari, AGP for Respondents-State.

29 WRIT PETITION NO. 10581 OF 2019

Vandana w/o Rajendra Bawale

.. Petitioner

Versus

The State of Maharashtra and Others

.. Respondents

Mr. V. S. Undre, Advocate for Petitioner.

Mrs. A. V. Gondhalekar, Addl. G. P. for Respondents-State.

**CORAM : S. V. GANGAPURWALA &
A. S. KILOR, JJ.****DATED : 27th AUGUST, 2019.****PER COURT:-**

1. The Municipal Council had floated tender for giving the shops on lease with premium. The tender was issued for about 54 shops. The petitioners have participated in the tender process. However, in respect of the shops for which the petitioners had participated in the tender process, the respondent / Municipal Council has cancelled the same and proceeded for re-auction on the ground that expected price is not received. Aggrieved thereby present petitions.

2. Mr. Shinde and Mr. Undre, the learned Counsel for the respective petitioners strenuously contend that the petitioners were the highest bidders. They have quoted the price above the upset price. In view of that, it is not open for the Municipal Council to suggest that expected price is not received. The price quoted by them was 2 to 3 times more than the upset price. According to the learned Counsel, once the petitioners are the highest bidders right is created in them to get the contract executed from the Municipal

Council. The learned Counsel Submit that it is only in respect of 8 shops re-tender has been issued and in respect of other shops the tender process has been finalized. The petitioners are discriminated. The respondents cannot pick and choose the shops for re-tender. The learned Counsel submit that in Writ Petition No. 10619 of 2019, the petitioner has also deposited the amount, he had quoted in the bid. The learned Counsel further submit that the shops are to be given on lease on the basis of Clause 24 of the standing order. Clause 24 of the standing order requires that the open bid has to be conducted and the one who bids maximum is entitled for the allotment of the shop. The respondents are bound by the standing order. The action of the respondents is malafide and discriminatory. The respondents be directed to accept the money from the petitioners and allot the shops to the petitioners.

3. We have heard the learned Addl. G. P. and A. G. P. for the State in respective Writ Petitions.

4. It is a matter of record that the Municipal Council has published auction Notice for giving lease of 54 shops with premium. The terms and conditions were detailed in the tender notice. It also appears that the petitioners had given their offer above the upset price. There is no dispute in respect of the same. The communication issued by the Municipal Council to the petitioners suggests that the respondents have gone for re-tender of the shops in question, on the ground that they did not receive the expected price. What should be the appropriate price of a particular shop would be the

subjective satisfaction of the Municipal Council. Pursuant to the tender no concluded contract came into existence. The offer given by the petitioners was not accepted by the Municipal Council, so as to create reciprocal rights and obligations.

5. As the rights were not created in favour of the petitioners, the petitioners did not possess a legally enforceable right.

6. We also cannot presume malafides on the part of respondents only because the respondents have gone for re-auction in respect of the 8 shops and not in respect of the others. The contention of the petitioners of malafides would be worth considering, if these writ shops are auctioned by the respondents at the price lower than the price quoted by the petitioners. In that case the petitioners would have right to raise the grievance.

7. Even otherwise, the petitioners would be entitled to participate in the fresh tender process. They are not precluded from participating in the same.

8. As far as the contention of the learned Counsel that in Writ Petition No. 10619 of 2019, the petitioner has deposited the amount and that consideration has been paid, cannot be accepted. The consideration has to move at the desire of the promisee as require under Section 2 (d) of Contract Act. The respondents had never issued letter to the petitioner for depositing the amount. The Petitioner certainly would be entitled for refund of the amount claimed.

9. The petitioners may apply pursuant to re-tender process. The Chief Officer, Municipal Council may consider their application as may be permissible, on its own merits. The Municipal Council shall also consider that, the petitioners were highest bidder in earlier auction process.

10. In view of the aforesaid, the Writ Petitions stands disposed of. No costs.

11. Parties to act on authenticated copy.

(A. S. KILOR)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.