

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6692 OF 2018

Shri. Kishor Khushalchand Shaha ...Petitioner

vs.

The Executive Engineer
(Building & Transport) and Ors. ...Respondents

Mr. Umesh R. Mankapure for the petitioner.
Mr. Mahindra B. Deshmukh for respondent Nos. 1 and 3.
Mr. A.P. Vanarse, AGP for the State.

**CORAM : B. P. DHARMADHIKARI &
SANDEEP KASHINATH SHINDE, JJ.**

DATE : 04/09/2019.

P.C.:

CAW seeking leave to amend has been filed on 29/08/2019 after matter was listed before this Court initially on 14/08/2019 and thereafter on 20/08/2019.

2. The Court then felt that effort of petitioner was to execute a 2008 notice inviting tender.

3. The notice inviting tender was published on

29/02/2008 by respondent No.3 Zilla Parishad and its admitted position that petitioner submitted highest offer for development of commercial complex on said land.

4. Its development is permissible if the plot of land vested in Zilla Parishad as per G.R.dated 01/09/2008. The G.R., therefore, is of a later date.

5. Total amount offered by petitioner is Rs.22 lakhs. As yet, no work order has been issued to petitioner.

6. It appears that on 31/08/2009, the State Government has permitted development on subject land after accepting tender of petitioner in terms of abovementioned G.R. dated 01/09/2008.

7. The work of re-development/construction has still not commenced and when efforts were being made to obtain necessary no objection from office of Collector, Sangli, Collector Sangli refused it, but demanded a security amount Rs.1,13,00,000/- before handing over of land. Petitioner also

agreed to deposit that amount. However, one member of Construction Committee of Zilla Parishad namely Shri. Sanjeevkumar Sawant raised an objection and inquired whether administrative sanction accorded in 2009 remains valid even after 7 years.

8. In this backdrop, Chief Executive Officer, Zilla Parishad on 16/01/2016 wrote to Principle Secretary of Rural Development Department and pointed out the inconsistency. He has stated that Zilla Parishad was getting only Rs.22 lakhs while State Government was getting amount of Rs.138.62 lakhs.

9. It appears that it is in this backdrop that the petitioner has approached this Court with a prayer for setting aside communication dated 14/03/2017, issued by Zilla Parishad and decision in its meeting dated 19/12/2017. In notice dated 14/03/2017, Zilla Parishad has pointed out that subsequent hike in market rate of said land has made the project inviable.

10. The petitioner does not have decision of respondent No.3 dated 19/12/2017.

11. During arguments, Counsel for petitioner states that in order to deposit amount of Rs.138.62 lakhs, petitioner has in 2014 borrowed a loan.

12. The Learned Counsel for Zilla Parishad and Learned AGP are strongly opposing the petition. They relied upon the reply affidavits. According to them, 2008 proposal needed to be implemented within reasonable time and for last more than 12 years, the proposal has not been looked into. They also submitted that petitioner did not take timely steps because he only stands to gain by delay.

13. We already noted supra that subject proposal was moved and approved in the year 2007, as per the report of consultants, M/s. Parekh and Associates, Sangli. The report, therefore, considered the situation then prevailing. We also take a note that 01/09/2008 decision of Government has been applied retrospectively in the matter. If the land vested in

Zilla Parishad, there was no reason for obtaining NOC from Collector and Collector handing over land to either Zilla Parishad or the petitioner.

14. Petitioner admittedly, did not receive any work order as preliminaries itself were not complied. Even in 2014, those preliminaries were going on. No agreement as envisaged by G.R. dated 01/09/2008 has been entered into between petitioner and Zilla Parishad or petitioner and State Government.

15. In this situation, we are not in position to hold that mere act of borrowing the loan that too in the year 2014 make the things irreversible for petitioner. Petitioner could not show to us that his legal right, if any, has been vitiated.

16. It is a matter arising out of contract and property either belongs to State Government or to Zilla Parishad. With steep rise in land rate, it is apparent that 2007 report submitted by M/s. Parekh and Associates has become irrelevant, and if any steps to encumber that property are to be taken, fresh exercise in accordance with law is warranted.

17. Not only this, we find that rival contentions raised, are disputed questions of facts which cannot be gone into in this jurisdiction.

18. We, therefore, find no case made out warranting intervention in the existing jurisdiction.

19. Petition, therefore, is rejected. Consequentially, Civil Application is also disposed of.

(SANDEEP KASHINATH SHINDE, J.) (B.P. DHARMADHIKARI, J.)