

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10614 OF 2015

Valmiki /Mehtar Mahar, Koli, Bhoi Samaj
(Backward Class) Co-operatige Society Ltd. ..Petitioner.

V/s.

Valmiki / Mehtar Magaswargiya Mahila
Kranti Seva Sahakari Sanstha Maryadit & Ors. ..Respondents.

Mr.S.S. Kanetkar with Tejas P.Hartalkar for the petitioner.

Mr.Swapnil V.Walve for respondent No.1.

Mr.C.M.Lokesh i/b. G.K.S. Hegde for respondent Nos.2 & 3.

CORAM : M.S.SONAK, J.

DATE : MARCH 26, 2019

ORAL JUDGMENT

Heard Mr.Kanetkar, learned counsel for the petitioner,
Mr.Walve, learned counsel for respondent No.1 and Mr.Lokesh, learned
counsel for respondent Nos.2 and 3.

2. Rule. Rule made returnable by consent and at the request
of learned counsel for the parties.

3. Challenge in the petition is to the order dated September
15, 2015 by which learned trial Judge has rejected the petitioner's

application for impleadment as defendants in Regular Civil Suit No. 736/2014 instituted by respondent No.1 (plaintiff).

4. The record indicates that the suit has been instituted by the plaintiff seeking enforcement of an agreement with respondent No.2 i.e. Maharashtra Rajya Marg Parivahan Mahamandal, which according to the plaintiff is to operate for 15 years.

5. Mr.Kanitkar, learned counsel for the petitioner points out that the petitioner had instituted the petition before this Court pointing out that respondent No.2 is duty bound to invite tenders and not to enter into private agreement that too for a period of 15 years. Mr.Kanetkar, points out in this petition a statement was made on behalf of respondent No.2 that they would follow the principle of tender.

6. The record indicates that the tenders were in fact invited by respondent No.2 and it is the case of the petitioner that the petitioner was adjudged as successful bidder. Mr.Kanetkar submits that even earnest money came to be deposited by the petitioner.

7. At this stage, respondent No.1 instituted the suit claiming that the tenders should have been invited only after the expiry of the agreement period of 15 years. Learned trial Judge in this order by order dated March 3, 2015 has directed respondent No.2 to maintain status quo. This means that respondent No.2 has been virtually restrained from awarding the contract to the petitioner, though, the

petitioner was found to be successful tenderer

8. In a suit of this nature, obviously the petitioner who is a successful tenderer is a necessary party. The reliefs in the suit will directly affect the petitioner. Learned trial Judge was obviously not justified in rejecting the petitioner's application seeking impleadment.

9. There is yet another reason as to why this petition is required to be allowed. Respondent No.2 which is a State under Article 12 of Constitution of India has made a solemn statement in this Court that it would invite tenders. Respondent No.2 in consistent with this statement invited tenders. However, when it came to award the work to the successful tenderer, respondent No.1 instituted a suit and obtained interim order dated March 3, 2015. Despite this, it appears that respondent No.2 has chosen not to challenge the said order and thereby continue with the agreement with the respondent No.1, which *prima facie* suggest that respondent No.2 is not interested in proceeding with the tender process, even though, a solemn statement was made before this Court that tenders will be issued and contract will be awarded to the successful bidder. In fact, in such a situation, it is necessary to implead the petitioner as a party to the suit so that the suit can be pursued with diligence which is required in the matter.

10. From the observations as aforesaid, it is very clear that the petitioner is a necessary party to the suit and for the aforesaid reasons,

the impugned order is set aside and the application Exhibit-84 in Regular Civil Suit No.736/2014 seeking impleadment as defendant No.3 is hereby allowed.

11. Respondent No.1-plaintiff to carry out the amendment within three weeks from the date this order is uploaded on the website.

12. The petitioner is granted liberty to file the written statement within a period of four weeks from the date on which the amendment is carried out. If for any reason, the plaintiff fails to carry out the amendment within the prescribed period, learned trial Judge can ensure that some Court officer carries out the necessary amendment in the plaint. In such circumstances, respondent No.1-plaintiff will have to pay costs of Rs.2,500/- to the petitioner.

13. The learned trial Judge is directed to dispose of the Regular Civil Suit No.736/2014 as expeditiously as possible and in any case within a period of one year from today.

14. Rule is made absolute in the above terms.

15. There shall be no order as to costs, except as indicated above.

16. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)