

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

WRIT PETITION NO.9153 OF 2020

**MAHARSHI WALMIKI SEVABHAVI SANSTHA PARBHANI
THR PRESIDENT DALBIRSING VISHALSING ATHWAL
VERSUS
THE PARBHANI CITY MUNICIPAL CORPORATION THR
THE COMMISSIONER AND OTHERS**

AND

WRIT PETITION NO.7123 OF 2020

**MAHARASHI WALMIKI LOKVIKAS SEVABHAVI
SANSTHA, PARBHANI. THROUGH IT'S PRESIDENT
JAYPAL SATVIRSING KAGDA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioner in WP/9153/20 and for respondent 5
in WP/7123/20 : Shri Mahesh V. Ghatge

Advocate for the petitioner in WP/7123/20 and for respondent 3
in WP/9153/20 : Shri Sudhir K. Chavan

Advocate for Respondents 1 and 2 in WP/9153/20 and for
Respondents 2 to 4 in WP/7123/20 : Shri P.P.Kothari h/f Shri S.S.
Bora

AGP for the Respondents/ State : Shri P.S. Patil

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**CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.**

DATE :- 04th October, 2021

Per Court :-

1. The petitioners in both these petitions have engaged into litigation with each other concerning the possession of

public toilets and the right to operate them.

2. In Writ Petition No.9153/2020, the petitioner has put forth prayer clauses A, B, C and D as under :-

- “A) The Hon’ble Court may hold and declare that Respondent No.1 Corporation and Respondent No.2 Standing Committee are illegally holding back the information in regard to allotment of site of Public Toilets at Gandhi Park, Parbhani and Juna Mondha, near Bhaji Market, Parbhani to cause hindrance and obstruction in judicial process and right of the petitioner to challenge the same.*
- B) The Hon’ble Court may kindly direct that Respondent No.1 Corporation and Respondent No.2 Standing Committee should provide information on in regard to allotment of site of Public Toilets at Gandhi Park, Parbhani and Juna Mondha, near Bhaji Market, Parbhani.*
- C) The Hon’ble Court may kindly hold and declare that the act of respondent No.1 Corporation and 2 Standing Committee in allotting the possession of public toilets at site location of Gandhi Park, Parbhani and Juna Mondha, near Bhaji Market, Parbhani to respondent No.2 is illegal and hence it may kindly be quashed and set aside.*
- D) The Hon’ble Court may kindly direct respondent No.1 Corporation and 2 Standing Committee to allot the possession of public toilets at site location of Gandhi Park, Parbhani and Juna Mondha, near Bhaji Market, Parbhani to respondent No.2 to petitioner forthwith.”*

3. In Writ Petition No.7123/2020, the petitioner has put forth prayer clauses B and C as under :-

- “B) *To issue writ of certiorari or any other appropriate writ, order or directions in the like nature, thereby the impugned resolution of Respondent No.4- Standing Committee vide Subject No.190 of Meeting dated 19.03.2020 to the extent of decision of execution of new agreement with the respondent No.5 regards public toilets located at Civil Hospital, Parbhani and Rajgopalchari Garden, Parbhani, which are part of Advertised Tender Process dated 30.07.2019 (Exhibit-B), may kindly be quashed and set aside.*
- C) *To issue writ of mandamus or any other appropriate writ, order or directions in the like nature, the respondents may kindly be directed to issue Work Order in favour of the petitioner regards the work of daily cleaning, maintenance and miscellaneous repairs of public toilets tendered by tender process dated 30.07.2019 (Exhibit B) located for the spot at Civil Hospital Parbhani and Rajgopalchari Garden Parbhani.”*

4. We have briefly heard the learned advocates for the respective sides. Several disputed issues as regards the legality and validity of the action of the Municipal Corporation in accepting the tender bids, in modifying the contracts, in purportedly wrongly allotting the tenders to another entity, etc. are raised in these petitions and the petitioners expect this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India by issuing a writ of mandamus.

5. It is settled law that when all legal/ statutory

remedies are exhausted by the aggrieved person and he is left with no option but to approach this Court for invoking a writ of mandamus under Article 226, that this Court would consider the grievance. In the instant case, the nucleus of the litigation in both these petitions is with regard to the violation of the contractual obligations. Civil remedies are available to the petitioners. They can also claim damages or such orders in civil litigation, which would decide as to who amongst the petitioners would be entitled to secure the contract.

6. Considering the above, both these Writ Petitions are disposed off with liberty to the petitioners to avail of the civil remedies as are prescribed in law. Time spent by the petitioners in this Court from the date of filing of the petitions till the passing of the order today, would be a good ground for condonation of delay, if any.

7. Needless to state, whichever remedy the petitioners may opt for, if so permissible in law, they are at liberty to seek orders or reliefs even of interim nature, if permissible under the statute.