

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

WRIT PETITION NO. 913 OF 2021

Akash Karnani ... **Petitioner**
vs.
Pune Municipal Corporation & Ors ... **Respondents**

Mr.Abhijit Desai i/b. Mr. Mahadji Vivek Phalke, for the Petitioner.
Smt.N.M.Mehra, AGP for the State.

**CORAM :- SUNIL P. DESHMUKH &
G. S. KULKARNI, JJ.**

DATE :- MARCH 25, 2021

PC :

1. Heard Mr.Desai, learned Counsel for the petitioner.
2. The present proceeding is the third round of litigation, of the petitioner on the same cause. In our opinion, these are trumpety proceedings initiated by the petitioner. The cause being, the petitioner as a bidder is interested in allotment of particular commercial premises from the municipal corporation, on reduced licence fees/rent, as per his desire. The prayers in the present petition are required to be noted, which read thus:-

a. Record in respect of assessment of rent and tender process of the Shop gala no.4 on ground floor of Tech Park Building constructed on Survey No.199, 204, 205, 206/1, Plot No.44/2 within territory of Pune Municipal Corporation (PMC), from the file of the Respondent may kindly be called for;

b. After considering the legality, validity and proprietary of the

same, writ of certiorari or any other writ, order, or direction in the like nature may kindly be passed thereby quashing and setting aside the tender dated 03/03/2021 issued by the respondent no.2 for the aforementioned shop.

c. Pending the hearing and final disposal of the present petition the tender dated 05/03/2021 issued by the Respondent no.2 may kindly be stayed.

d. Ad-interim relief in terms of prayer clause (c) above may kindly be granted.”

(emphasis supplied)

3. The petitioner, in the recent past had approached this Court in Writ Petition No.197 of 2021, filed on 20 January 2021 praying for similar reliefs in relation to the same premises being offered by the respondent-corporation, on the same terms and conditions. The following were the substantive prayers as made in the said petition:-

“a. Record in respect of Assessment of rent and Tender process of the Shop gala no.4 on ground floor of Tech Park Building constructed on Survey No.199, 204, 205, 206/1, Plot no.44/2 within territory of Pune Municipal Corporation (PMC), from the file of the Respondent may kindly be called for;

b. After considering the legality, validity and propriety of the same, writ of certiorari or any other writ, order, or direction in the like nature may kindly be passed thereby quashing and setting aside the Notices dated 30/01/2020, 02/12/2020 and 30/12/2020 and the actions taken thereupon.

c. After considering the legality, validity and propriety of the same, writ of certiorari or any other writ, order, or direction in the like nature may kindly be passed thereby directing the respondent no.1 to re assess the rent value of the said shop situated at Gala No.4, Tech Park Building Lohegaon, Viman Nagar, Pune-411014 for the period of extension of Leave and License agreement dated 05.02.2020.

d. After considering the legality, validity and propriety of the same, writ of Prohibition or any other writ, order, or direction in the like nature may kindly be passed against the Respondents restraining them, their servants, officers and agents from disturbing the peaceful possession of the Petitioner till the

Tender process is completed as per the reassessed rent amount.”
(emphasis supplied)

4. By an order dated 15 February 2021, a co-ordinate Bench of this Court (Coram: Dipankar Datta, CJ., and one of us G.S.Kulkarni, J.) permitted the petitioner to withdraw the said petition with liberty to file appropriate proceedings. The said order needs to be noted, which reads thus:-

“ After we have heard learned Counsel for the parties for some time, learned Counsel for the petitioner seeks leave to withdraw this petition with liberty to file appropriate proceedings.

2. Allowed to be withdrawn with liberty as prayed for. No costs.

3. All contentions of the parties are expressly kept open.”
(emphasis supplied)

5. The petitioner thereafter on 6 February 2021 filed Writ Petition no.661 of 2021 again praying for the same reliefs. The relevant prayers as made in the said petition are required to be noted which read thus:-

“a. Record in respect of assessment of rent and tender process of the Shop gala no.4 on ground floor of Tech Park Building constructed on Survey No.199, 204, 205, 206/1, Plot No.44/2 within territory of Pune Municipal Corporation (PMC), from the file of the Respondent may kindly be called for;

b. After considering the legality, validity and propriety of the same, writ of certiorari or any other writ, order, or direction in the like nature may kindly be passed thereby quashing and setting aside the tender dated 25/01/2021 issued by the respondent no.2 for the aforementioned shop.”

6. On 9 March 2021 a co-ordinate Bench of this Court (Coram: Dipankar Datta, CJ., and one of us G.S.Kulkarni, J.) passed an order permitting the petitioner to withdraw the said petition. No leave was granted to file a fresh petition. This more significantly when a fresh advertisement dated 5 March 2021 was already issued by the Corporation inviting bids on same terms and conditions as to the earlier tender. The order dated 9 March 2021 reads thus:-

- “1. Learned counsel for the petitioner seeks leave to withdraw this Writ Petition.
2. Allowed to be withdrawn.”

7. Having withdrawn the earlier petition without leave to file a fresh petition, in our opinion, the present (third) petition for the same reliefs is not maintainable. The law in this regard is well settled. In *“Sarguja Transport Service Vs. State Transport Appellate Tribunal, Gwalior & Ors.”*¹ the Supreme Court has held that once a litigant withdraws the writ petition, filed by him in the High Court under Article 226 of the Constitution of India, without permission to institute a fresh petition, the remedy under Article 226 should be deemed to have been abandoned by the petitioner in respect of the cause of action being pursued in the writ petition, when it is so withdrawn without such permission. It was observed that the High Court was right in holding, that for such reason, the petition was not maintainable before it, on the

1 AIR 1987 SC 88

same subject matter, when the earlier petition has been withdrawn without liberty to file a fresh petition. It was however clarified that such a rule would not be applicable in case of a writ petition, involving personal liberty of an individual, when relief of *habeas corpus* was prayed for. Adverting to the principles of law as laid down in this decision, in our clear opinion, the present petition deserves to be dismissed.

8. Be that as it may, for the sake of completeness, we may also observe that even otherwise there is no merit in this writ petition which would be clear from the following discussion.

9. The case of the petitioner is that he was earlier allotted the said premises by the corporation, for the period from 2015 to 2019. His licence had expired by efflux of time. Thereafter, the municipal corporation set into motion a fresh procedure by issuance of a tender to make allotment afresh. In doing so, as agreed by Mr.Desai, the Corporation has incorporated an identical condition with respect to the monthly rent namely “the reserved monthly rental price” which was fixed at Rs.1,14,875/- per month in the earlier tender is also the condition in the tender in question dated 5 March 2021. As noted above, the petitioner being aggrieved by such condition in the previous

tender had approached this Court in the earlier writ petition.

10. Although the petitioner having withdrawn the earlier writ petition, with open eyes, the petitioner has participated in the present tender. It is informed by Mr.Desai that even the price bids are opened. On a query made to Mr.Desai, as to what is the price quoted by the petitioner, Mr.Desai says that the petitioner's bid is at par with the reserved price i.e. at Rs.1,14,875/- per month as fixed by the municipal corporation. If this be the case, we also wonder as to how the petitioner, having participated in the tender and having agreed with all the terms and conditions of the tender for such participation, could approach this Court.

11. Mr.Desai, on this backdrop nonetheless contends that the grievance of the petitioner is to the effect that in fixing the monthly rent of Rs.1,14,875/- the municipal corporation has acted in breach of its own Rules, namely Rule 8 of the 2008 Rules framed by the municipal corporation. Such rule provides for the method by which the premium amount for letting out property is required to be fixed by the municipal corporation. From a perusal of Rule 8, we find that the rule is a complete formula which would take into consideration the cost of acquisition of land and added to it is the interest at the rate 12.5% per annum, in addition to which the development expenses etc. are to be

taken into consideration. Further, in case the premises are at a area more than 60 sq.ft., as to what would be the method which would be followed, has been set out in the Rule.

12. The contention of Mr.Desai that the reserved price per month as fixed by the municipal corporation, is not in consonance with the said Rule appears to be only on surmises and wishful thinking of the petitioner. When we made a query to Mr.Desai to point out the details and the bifurcation of all these specified values which would be required to be taken into consideration to arrive at such figure, he is unable to lay his hands on anything in that regard, on the record. The writ petition does not make out any case to show that the exercise as undertaken by the municipal corporation to fix the current reserved price is not in consonance with Rule 8. In the absence of any such material, we are unable to agree with the contention of Mr.Desai that the reserved price as fixed by the municipal corporation is contrary to the rules.

13. Be it so, the premises belong to the Corporation. The Corporation is the custodian of its financial interest and in its commercial wisdom, as also as per its policy and under the rules it has framed, has fixed the reserved price. We do not find that the municipal corporation in fixing such reserved price, has acted with any patent

illegality or irrationality in incorporating such tender condition. It is a well settled principle of law that the terms and conditions of the tender are in the nature of an invitation to offer, and cannot be subjected to judicial review unless the petitioner is in a position to satisfy the Court, that such a condition has been inserted malafide or to suit a particular bidder. There is no such material placed on record so as to enable us to exercise the powers of judicial review, in the municipal corporation fixing such tender condition.

14. It clearly appears to us, that as the petitioner was an earlier beneficiary of the very same premises allotted to him by the corporation, which was for a period of almost five years. We see that the only interest of the petitioner is to secure the said premises by all possible means and by indulging in such litigation. With such an endeavour and object, the petitioner has repeatedly mounted a challenge to the attempt of the municipal corporation to auction the said premises and that too without any basis as noted by us.

15. In these circumstances, some questions ponder us. As to what is the real intention of the petitioner in keeping the successive tenders issued by the municipal corporation qua these premises, embroiled in litigation? Could it possibly be to dissuade the other bidders from bidding

or to create an adverse impact in the minds of the other bidders? In our opinion considering the conduct of the petitioner, the reasons are not too far to be seen.

16. In the above circumstances, we are certain that the petition is not only thoroughly misconceived but a patent abuse of the process of law. We accordingly dismiss the petition, although such dismissal ought to be with costs, however, we refrain from doing so.

(G. S. KULKARNI, J.)

(SUNIL P. DESHMUKH, J.)