

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CONTEMPT PETITION NO.677 OF 2022
IN
WRIT PETITION NO.5116 OF 2019

Khillari Infrastructure Private Limited
(JV) 101 Prabhat Centre
Sector 1-A, CBD,
Belapur, Mumbai-400 614
Through its Authorized person
Deepak Jairam Nangre
Age: 36 years, Occu.: Service
as Project Incharge
R/o. Nakshatrawadi, Aurangabad
Tq. and Dist. Aurangabad.

.. Petitioner

Versus

Abhijeet Vijay Chaudhari
Age: 36 years, Occu.: Service as
Commissioner,
Municipal Corporation,
Taluka and District Aurangabad.

.. Respondent

...
Mr. P. S. Dighe h/f Mr. Vikram R. Dhorde, Advocate for applicant.
...

CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

DATE : DECEMBER 02, 2022.

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. The petitioner has prayed for holding the respondent guilty of committing contempt of the judgment and order passed by this Court on 27.08.2021 in Writ Petition No.5116 of 2019 under the Contempt

of Courts Act, 1971.

2. Heard learned Advocate Mr. P. S. Dighe holding for learned Advocate Mr. V. R. Dhorde for the petitioner.

3. The copy of Writ Petition No.5116 of 2019 would show that it was filed for the reliefs claimed as per the prayer clauses 'B' and 'C', which reads thus :-

"B) Issue Writ of Mandamus or any other appropriate Writ, order or direction in the nature of Writ of Mandamus thereby directing the Respondent No.2 Municipal Corporation, Aurangabad to foreclose the contract executed between the petitioner and respondent in pursuant to the work order dated 01.07.2014 by releasing the bank guarantee and security deposit and for that purpose issue necessary orders.

C) In the alternate direct the respondent Nos.2 to 4 to consider the representation dated 18.02.2019 made by the petitioner which is at Exh."T" by taking immediate decision thereon for closing of the contract and for that purpose issue necessary orders."

4. It is to be noted that the Writ Petition No.5116 of 2019 was on board on 27.08.2021 and the following order was passed :-

" We have heard Mr. Dhorde, learned senior counsel for the petitioner.

2. Mr. Tope, learned counsel appears for respondent Nos.2 to 4 and submits that the

grievance of the petitioner is redressed. The security deposit of Rs.1.62 Crore is already paid. Remaining amount of Rs.9.57 Crore is decided to be paid to the petitioner and the Accounts Department is directed to take further steps in the matter. the sale deed is also directed to be executed in respect of 3276.60 square meters land in exchange at Kanchanwadi and the directions are also given for execution of the registered sale deed. The necessary steps are undertaken.

3. In the light of the above, the grievance of the petitioner stands redressed. The parties may proceed further as per the letter dated 26.08.2021 placed on record expeditiously. The same is marked as 'X' for identification.

4. Writ petition is disposed of. No. costs."

5. From the memo of this petition as well as other documents produced, it can be gathered that the Municipal Corporation, Aurangabad had published E-Tender Notice on 20.01.2014 calling public tenders for carrying out the work of Development of Underground Sewerage Collection System within the limits of Aurangabad Municipal Corporation. The tender of the petitioner was accepted and accordingly, the work order was given on 01.07.2014. Necessary agreement was entered into and according to the petitioner, the petitioner had completed the contract which includes Sewerage Treatment Plant and Sewerage Pumping Station. The Corporation has commissioned it and it is in operation. The work

completion certificate was also issued by the concerned department of the Municipal Corporation. According to the petitioner, as per the terms of the contract, Security Deposit of Rs.11.19 Crores were required to be refunded by the Corporation. So also, the petitioner was supposed to purchase the land at Padegaon for installation of STP and at Golwadi as well as Valadgaon for SPS. The Municipal Corporation was required to pay the said amount/purchase price or to give alternate land to the petitioner/contractor. According to the petitioner, Corporation offered land from Gut No.7/1 at Kanchanwadi admeasuring 3276.60 square meters and it is required to be transferred in the name of petitioner - Company by executing registered sale deed. The petitioner showed its readiness and willingness for the said transfer, however, the Corporation had not done anything and, therefore, the petitioner had approached this Court by filing said Writ Petition No.5116 of 2019.

6. Learned Advocate appearing for the petitioner has vehemently submitted that in spite of the settlement made and accordingly, the writ petition was disposed of by taking the communication dated 26.08.2021 on record, no further steps have been taken. The letter dated 26.08.2021, which was filed before this Court and marked as Exhibit-'X', has also been produced before this Court for perusal. The learned Advocate for the petitioner submits that now the amount has been received as agreed in the said communication, however, the

Corporation has not proceeded with the transfer of the land from Gut No.7/1 situated at Kanchanwadi to the extent of 3276.60 square meters and, therefore, there is contempt.

7. Notice is also not required to be issued in this case for the simple reason that it is to be noted that though the Writ Petition No.5116 of 2019 was filed before this Court for the aforesaid reliefs, when the matter was on board on 27.08.2021, learned Advocate for respondent Nos.2 to 4 submitted that the grievance of the petitioner is redressed. That means, the said settlement was out of Court settlement and it was stated that the land at Kanchanwadi would be given in exchange. Therefore, in paragraph No.3 of the said order, this Court (at the cost of repetition) observed that the grievance of the petitioner stands redressed and the parties may proceed further as per the letter dated 26.08.2021, which was marked as Exhibit-'X' for identification. To our understanding, only the said settlement was taken note of and the parties were left to proceed further. The learned Advocate for the petitioner submits that the letter was, in fact, an understanding to the Court and when it has been marked for identification and it is forming part of the order, the Corporation was bound to obey the said order. We do not agree with the said submission. The settlement was arrived at out of the Court and only by taking note when the parties were left to proceed with the terms of settlement, at the most, it can be said that it is an agreement entered

into and in case of non fulfillment of the terms of agreement, the suit for specific performance may lie. The said letter or the terms of settlement which might have been separately arrived at would be the compromise that was made by the Corporation and acceptance thereof may amount to a contract. This Court has not stated that the said terms including the term of transfer of the land should be made within a particular period and, therefore, it cannot be said that there is willful disobedience of the order of this Court necessitating action of Contempt of Court. Hence, the contempt petition stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm