

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.2096 of 2021

M/s. L.B.M. Security

vs.

Chandrapur Municipal Corporation & another

*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

Court's or Judge's Orders

Mr. H.V. Thakur, Advocate for the Petitioner.

Mr. M.I. Dhatrak, Advocate for Respondent No.2.

CORAM : A.S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE : 17th OCTOBER, 2022.

The petitioner-firm entered into an agreement with the Municipal Corporation in the matter of collection of market fee for the period from 01/07/2018 to 31/03/2021. As per the said agreement, it was the responsibility of the petitioner to collect market fee from the persons operating in the Municipal Corporation market and deposit the same with the Municipal Corporation. According to the petitioner, on account of onset of the pandemic, it was not possible to collect the market fee. In fact the petitioner was granted exemption from such collection for the period from 22/03/2020 to 31/05/2020. The grievance of the petitioner is that though the pandemic situation continued thereafter, the Municipal Corporation is seeking to recover market fee from the petitioner in an arbitrary manner and against the terms of the said agreement. The petitioner is principally aggrieved by the clauses 7, 14 and 16 of the said agreement. Since the Municipal Corporation issued notices dated 14/10/2020, 18/01/2021 and 06/04/2021 calling upon the petitioner to pay the amount of dues failing which he was threatened with

coercive action, this writ petition has been filed. The petitioner has challenged the aforesaid clauses as being arbitrary and thus liable to struck down.

02] We find that the initial contract was to operate till 31/03/2021 and the petitioner approached this Court thereafter only on 07/06/2021. We also find that there is a dispute with regard to the demand being raised by the Municipal Corporation. It is the case of the petitioner that the market fee collected has been duly deposited with the Municipal Corporation and the demand is being made for an excess amount.

03] In these facts, we are of the view that the petitioner could be permitted to invoke civil remedy for resolution of the dispute as arising. While issuing notice in the writ petition on 21/06/2021, this Court had directed that no criminal prosecution be launched against the petitioner pursuant to the impugned notices until further orders. We find that in the facts of the present case, interest of justice would be met by passing the following order :

- i. The petitioner is at liberty to challenge the action of the Municipal Corporation in seeking to recover market fee from the petitioner pursuant to the notices dated 14/10/2020, 18/01/2021 and 06/04/2021 by approaching the Civil Court.
- ii. In addition, the petitioner is free to challenge the alleged offending clauses of the agreement under which he was permitted to collect the market fee. If such

resort to civil remedy is undertaken by the petitioner within a period of eight weeks from today and till such period the Civil Court considers the petitioner's prayer for interim relief, no coercive steps shall be taken by the Municipal Corporation to recover the alleged amount of dues. Similarly, the direction not to initiate criminal prosecution shall also continue to operate for such aforesaid period.

iii. It is clarified that this Court has not examined the challenge as raised to the aforesaid agreement on merits and all the points in that regard are kept open.

iv. With aforesaid observations and direction, the writ petition is disposed of. No costs.

JUDGE

JUDGE

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