



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 15205 OF 2023

1. Nath Resorts Pvt. Ltd., Paithan,  
Through its Managing Director  
Shri Chandrakant Sonajirao Ghodke,  
Age: 81 years, Occu.: Business,  
R/o. Ghodke Niwas, Saliwada, Paithan,  
Dist. Chhat. Sambhajinagar.
2. Shri. Anil Chandrakant Ghodke,  
Age: 51 years, Occu.: Business,  
R/o. Ghodke Niwas, Saliwada, Paithan,  
Dist. Chhat. Sambhajinagar.

... PETITIONERS

V/s.

1. The State of Maharashtra,  
Through Secretary,  
Department of Tourism,  
Maharashtra State, Mantralaya,  
Mumbai – 400 034.
2. The Chief Manager,  
Maharashtra Tourism Development  
Corporation, Mafatlal House, 1<sup>st</sup> Floor,  
H.T. Parekh Marge, 169,  
Bombay Reclamation, Churchgate,  
Mumbai – 400 020.
3. The Regional Manager,  
Maharashtra Tourism Development  
Corporation, Regional Office,  
Parytan Swagat Kendra, 1<sup>st</sup> Floor,  
Holiday Camp. Railway Station Road,  
Chhat. Sambhajinagar – 431 005.

... RESPONDENTS

...  
Mr. V.D. Salunke a/w. Mr. A.D. Patil, *Advocate for the Petitioners*  
Mr. A.B. Girase, GP for Respondent-State  
...

**CORAM : RAVINDRA V. GHUGE &  
Y.G. KHOBRADE, JJ.**  
**RESERVED ON : 13<sup>th</sup> December, 2023**  
**PRONOUNCED ON : 22<sup>nd</sup> December, 2023**

**ORDER (Per: Y.G. Khobragade, J.) :-**

1. Heard at length Mr. V. D. Salunke, the learned advocate appearing for the Petitioners and Mr. A. B. Girase, the Government Pleader appearing for the Respondent-State.

2. The Petitioners have put-forth prayer clauses (B) and (C) as under:

*"B. By issuing writ of Certiorari or any other appropriate writ or direction in the like nature, the impugned order dated 05.12.2023 issued by respondent no. 2 and further consequential order dated 07.12.2023 issued by respondent no. 3 may kindly be quashed and set aside.*

*C. By issuing writ of Mandamus or any other appropriate writ or direction in the like nature, the respondents may kindly be directed not to take possession of the property under impugned orders i.e. plot adm. 25,504 sq.mtr. out of Survey Nos. 302 and 303 of village Paithan allotted to the petitioner in the year 1994."*

3. It is apparent on the face of the record that on 24<sup>th</sup> July, 1993, the Petitioner-Firm had shown interest to accept the tender. Accordingly, on 24.05.1994, Respondent No.2 accepted the offer of the Petitioners, which was filed in the personal capacity of Shri Chandrakant Sonajirao Ghodke to

construct Tourist Shelter Project/ Resort/Hotel on 6 Acres and 12 Guntha land i.e. 25,504 Sq. Meters out of Survey No. 302 and 303. On 1<sup>st</sup> March, 1995, the Registered Lease of Agreement came to be executed between the Petitioners and Respondent No.2 initially for the period of 30 years on certain terms and conditions prescribed therein. It was further agreed that after expiry, aggregate period of sixty years as provided therein the lease granted was not been earlier terminated or cancelled, the lessee shall be entitled to have a fresh lease for such further period subject to such rent and compensation and so such terms and conditions as may be mutually negotiated a fresh and finalized between the parties. It was further agreed between both the parties that the Petitioner/Lessee should pay annual rent Rs. 38250/- per year.

4. The Clause no. 27 of the Registered Lease Agreement provides as under:

*27) All disputes and differences whatsoever which any whether during the currency of the agreement to after the determination thereof arise between the parties hereto touching, concerning or relating to any matter, question or issue under this Agreement or its construction effect or as to the rights, duties or liabilities of the parties hereto or by virtue of this Agreement or otherwise or as to any other matter in any way connected with or arising out of or relating to the subject matter of this Agreement shall be, subject to two clauses hereinabove referred to as a single arbitrator to be agreed upon by the parties hereto and in default of such agreement, two arbitrators one each to be appointed by the parties be the dispute. Such arbitration shall be held at Bombay and shall be governed by the provisions of the Indian Arbitration Act, 1940 or any*

*statutory modification or reenactment thereof for the time being in force.”*

5. It is needless to say that the subject matter of the lease land was leased out for 30 years to construct facility center for the tourist at the corner of Saint Dnyaneshwar Udyan, but the Respondents suppressed the fact of declaration of said area as Wild Life Bird Sanctuary in the year 1986 as per Notification dated 10.10.1986 and any kind of construction over the lease land is prohibited.

6. It is further submitted that the Respondent-Authorities sanctioned building plans and the Petitioners completed construction of RCC structure consisting 2 function halls, 2 conference halls, 16 office rooms, reception, lobbies etc. in 22,000 sq.ft., and invested huge funds in the year 1994-95, however, the Petitioners were not made aware about reservation/ prohibition of raising construction over the lease land, however, for the first time in the year 2023, Respondent Nos. 2 & 3 communicated to the Petitioners to stop construction as per letter dated 10.06.2023 issued by the Forest Department. Therefore, the Petitioners stopped from raising further construction but subsequently, as per Memorandum of Understanding between the Forest and Tourism Department the said ban has been lifted. Therefore, the Petitioners sought permission for renewal of permission plan on 28.09.1994 but no

permission was granted. On 27.07.2021 and 23.05.2022, the Petitioners again issued request letters stating that Respondent No.2 vide resolution no. 160/2018 has cancelled the permission for Petrol Pump at the lease land and restricted to mortgage of building for the purpose of availing loan, however, Respondent No. 2 arbitrarily failed to give sanction for construction of the “Petrol Pump”. On 20.01.2022, the Petitioners are served with show cause notice on the ground of non using of lease land for the purpose for which it was allotted. Again on, 05.12.2023, the Petitioners are served with notice on ground that the land in question is being used for goat farming and agriculture purpose instead of purpose for which it was allotted and for outstanding dues of Rs. 13,72,515/- towards lease rent and directed to deposit the said rent amount within a period of 7 days. Therefore, there is breach of condition Nos. ii, iii, 2(e), (f) (g) 7, 7(a) (b), 15, 21(a to k) of the Lease Agreement. The Petitioners alleged that since the Managing Director of Petitioner No. 1 is a Ex-MLA of NCP Party and after acceptance of the tender, the leader of Shiv Sena Party has been elected from Paithan Constituency, therefore, the Respondents made obstructions and stalled the development of the project because of political pressure, however, said MLA of Shiv Sena Political Party is not made Respondent to the present petition.

7. It is needless to say that by the impugned letters dated 05.12.2023 and 07.12.2023, Respondent No.2 alleged about breach of terms and conditions of the Lease Agreement due to non use of the allotted land for the purpose for which it was allotted and calling upon to make payment of arrears of Lease Rent Amount of Rs. 13,72,515/- within a period of 7 days. As per Clause 27 of the Lease Agreement both the parties agreed to opt for arbitration clause in case any issue arise out of the Agreement and as such the Petitioners contended about taking illegal possession of the lease property. Therefore, there are many disputed questions of facts about breach of terms, conditions of the Lease Agreement, whether there is any outstanding amount due in respect of Lease Rent, etc. which can be gone into by this Court under Article 226 of the Constitution of India. The Petitioners have an alternate remedy to approach a competent Civil Court having jurisdiction or the Arbitrator for redressal of their grievance.

8. Considering the impugned notice dated 07.12.2023 and the above disputed questions, it would be appropriate to enable the Petitioners to avail of a statutory remedy as may be permissible in law. Hence, we are directing status quo to be maintained by all the parties with regard to the Writ property for a period of three weeks from today, which shall be subject to the ad interim

orders to be passed, if the Petitioners approach the Civil Court. This order would lose its efficacy after 21 days from today.

9. With the above observations / directions, **this petition is disposed off.**

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]