

Jvs.

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

**INTERIM APPLICATION NO. 15128 OF 2023
IN
WRIT PETITION NO. 8427 OF 2023**

M/s. Terracon Ecotech Pvt. Ltd.	}	Applicant
In the matter between		
M/s. Terracon Ecotech Pvt. Ltd.	}	Petitioner
versus		
Tree Authority, Nashik Municipal Corporation & Anr.	}	Respondents

Mr. Chaitanya Chavan with Mr. Amey Hadwale and
Ms. Geeta Undwani for the applicant/petitioner.

Mr. Rohit Sakhadeo for the respondents.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ.
& ARIF S. DOCTOR, J.**

DATE: 11th SEPTEMBER 2023

P.C.:

1. Heard Mr. Chavan, learned counsel for the petitioner and Mr. Sakhadeo, learned counsel representing respondents- Nashik Municipal Corporation (hereafter referred to as "the Corporation").

2. This writ petition was dismissed on 4th August 2023 for 2 (two) reasons, namely that (i) no one had appeared on behalf of the petitioner; and (ii) learned counsel representing the respondents had stated that since in this writ petition, the prayers being sought lie in the realm of contract, the writ petition would not be maintainable.

3. Mr. Chavan, learned counsel representing the petitioner has stated that in view of the latest pronouncement of Hon'ble Supreme Court by a Bench of 3 (three) Hon'ble Judges in the case of ***Tata Motors Limited vs. Brihan Mumbai Electric Supply and Transport Undertaking (BEST)***¹, jurisdiction of this Court under Article 226 of the Constitution of India is not completely ousted even in the contractual/tender matters, if the State or its instrumentalities are found not to have acted fairly or in a non-arbitrary manner. The Hon'ble Supreme Court in the said case of ***Tata Motors Ltd.*** (supra) has further observed that this Court, while exercising powers of judicial review under Article 226 of the Constitution of India in matters relating to tender or award of contracts, has to keep in mind that State or its instrumentalities are to act in a complete non-arbitrary manner.

4. It has further been argued by the learned counsel for the petitioners that after completion of the work relating to Geo-tagging and counting of trees pursuant to the agreement dated 10th November 2016, the petitioner was allowed to continue the same work for the reason that in the initial estimate, though the trees to be Geo-tagged and counted were shown to be 25 lakhs, however, that number was based only on an estimate and actual number of trees of the Corporation was found to be 47 lakhs. It has also been stated on behalf of the petitioner that the work relating to Geo-tagging and counting of trees was undertaken by the Corporation in deference to a direction issued by this Court vide judgment dated 20th September 2013 passed in Public

¹ AIR 2023 SC 2717

Interest Litigation No. 93 of 2009. He has also drawn our attention to various correspondences made by the authorities of the Corporation, from perusal of which, *prima facie*, it appears that the claim of the petitioner is admitted by the Corporation with some exception.

5. Though the very maintainability of the writ petition has been opposed by learned counsel representing the Corporation by citing a judgment of the Hon'ble Supreme Court in the case of ***Municipal Council Gondia vs. Divi Works & Suppliers, HUF & Ors.***², by stating that in commercial disputes the writ petitions under Article 226 of the Constitution of India ought not to be entertained. However, a plain reading of the very judgment relied upon by the respondents-Corporation would show that in the facts of that case, there were serious disputed questions of fact as also absence of material on record to support the contentions of the respondent therein. It was, thus, that the said order came to be passed. In the facts of the present case, the record is quite to the contrary. Thus, we find that reliance upon the said judgment will be of no avail to the respondents-Corporation. Additionally, having regard to the judgment in the case of ***Tata Motors Ltd.*** (supra), which has been rendered by three judges of the Apex Court and taking into account various documents, specially the correspondence made by the authorities of the Corporation with the petitioner, we have no hesitation to hold that this writ petition would be maintainable.

² Civil Appeal No. 1538 of 2022, decided on 28th February 2022

6. Accordingly, the order dated 4th August 2023 is hereby recalled and set aside and the writ petition is restored to file.
7. The interim application is disposed of accordingly.
8. Let affidavit in reply be filed by the respondent-Corporation to the writ petition within a period of 4 (four) weeks after serving a copy thereof to the learned counsel for the petitioner. 2 (two) weeks' time thereafter shall be available to the learned counsel for the petitioner to file rejoinder, if any.
9. List the writ petition on **30th October 2023**.

JAYANT
VISHWANATH
SALUNKE

Digitally signed by
JAYANT VISHWANATH
SALUNKE
Date: 2023.09.12
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(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)