IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1759 OF 2025

Kinjal API Sheth (JV), A Joint Venture, having its office at : 101, Prathamesh Apartments, 86th Old Portugese Church Road, Dadar (West), Mumbai – 400 028.	]]]]]]..Petitioner

Versus

1. Municipal Corporation of Greater Mumbai, Through MCGM's Legal Department, having registered office at : Mahapalika Marg, Mahapalika Building, Fort, Mumbai – 400 001.	]]]]]
2. Office of the Deputy Chief Engineer, BC City, MCGM, Through MCGM's Legal Department, having registered office at : Mahapalika Marg, Mahapalika Building, Fort, Mumbai – 400 001.	]]]]]]..Respondents

Mr. Naushad Engineer with Mr. Aseem Naphade, Mr. Saurabh Parab, Mr. Aadil Parsurampuria, Mr. Aalam Parsurampuria, i/by Mr. Prashant Parsurampuria, Advocates for the Petitioner.

Mr. Akshay Shinde with Ms. Oorja Dhond, i/by Ms. Komal R. Punjabi, Advocates for the Respondents.

CORAM : SHREE CHANDRASHEKHAR, CJ. &
GAUTAM A. ANKHAD, J.

DATE : 16TH FEBRUARY 2026.

PER, GAUTAM A. ANKHAD, J.

Heard learned counsels for the parties. With their consent, the petition is taken up for final hearing at the stage of admission.

2. This writ petition challenges the Demand Notice dated

30th August 2023, whereby the petitioner has been called upon to pay Rs.2,93,50,175/-, that includes a penalty of Rs.83,35,000/- and re-deposit of the Earnest Money Deposit ("EMD"), only on the ground that the petitioner had not submitted a copy of the registered Joint Venture Agreement ("JV Agreement") at the time of award of the contract.

3. The brief facts relevant for adjudication are as under:

(a) The petitioner is an association of persons constituted as a joint venture and is engaged in business of infrastructure development. On 11th April 2017, E-tender was issued by the respondent no.2 for "Comprehensive Re-design and Upgradation of Mahatma Jyotiba Phule Market (Phase-II)", popularly known as "Crawford Market". Clause 83(m) of the tender requires a bidder to submit a copy of the registered agreement of the joint venture of its members before signing the contract agreement for work, failing which the EMD would be forfeited and other penal action would be taken against the bidder and its joint venture partners.

(b) On 29th June 2018, the petitioner was awarded the contract and the petitioner began performance of the works. At that stage, the petitioner submitted a notarized copy of the JV Agreement to the Chief Accounts Office of the respondent no.2. In due course, on 4th August 2018, the respondents released the EMD amount of Rs.2,10,15,175/- to the petitioner. On 10th February 2023, the respondents issued a revised Letter of Acceptance ("LOA") in respect of additional work, whereby the contract value was revised to Rs.47,63,02,951/- and the completion period was extended from 19th April 2023 to 18th May 2025. Clause (9) of the revised LOA required the petitioner to submit all requisite documents for execution of the contract within thirty days, failing which a penalty of Rs.5,000/- per day would be levied.

(c) On 17th February 2023, the petitioner registered the JV Agreement with the Sub-Registrar of Assurances and submitted a copy thereof to the respondents on 20th February 2023. It is not in dispute that the petitioner continued to execute the work and raised Running Account Bills from time to time, against which the respondents had made payments aggregating to Rs.48,32,60,434/-.

(d) On 30th August 2023, the impugned demand notice was issued alleging that the petitioner had failed to submit a registered JV Agreement at the time of the original award of the contract in 2017-18. By the said notice, the respondents sought to levy/recover Rs.2,93,50,175/- from the petitioner's RA Bills. The petitioner protested against the impugned demand by its letter dated 22nd January 2025, but the same is not withdrawn by the respondents. Apprehending coercive action, the present petition is filed.

4. Mr. Naushad Engineer, learned Senior Advocate appearing for the petitioner, submits that the impugned demand notice is arbitrary as the respondents had accepted the notarized JV Agreement in 2018, permitted the petitioner to execute substantial work under the contract, released the initial EMD, accepted the registered JV Agreement and also made payment in excess of Rs. 48 crores to the petitioner. He submits that no contemporaneous objection was raised

under clause 83(m) and after nearly five years later, the respondents cannot penalize the petitioner on the ground that the JV Agreement was not registered when the contract was first awarded to the petitioner on 29th June 2018. He further submits that the reliance placed by the respondents on the Comptroller and Auditor General for Special Audit Report in the impugned notice to raise a demand is misconceived, as the said report pertains to a different project and has no nexus with the petitioner's contract. Thus, the impugned notice ought to be quashed by this Court.

5. On the other hand, Mr. Akshay Shinde, learned counsel appearing for the respondents, submits that the dispute arises purely out of contractual obligations and involves recovery of amounts in accordance with the tender conditions. The petitioner is bound by the tender conditions including clause 83(m), which requires the bidder to submit a registered copy of the JV Agreement. The consequences of non-compliance were clearly stipulated. He submits that a Special Audit was conducted by the Comptroller and Auditor General in October 2022 in respect of various infrastructure works awarded by the respondents. The audit revealed instances of non-compliance with tender conditions, including failure to submit registered JV Agreements. It is pursuant to such audit observations, the Accounts Department issued the impugned notice to enforce compliance with the contractual terms. He also submits that the present petition suffers from delay and laches, having been filed more than one year and four months after issuance of the impugned notice and on this ground also the petition deserves to be dismissed.

6. We have perused the record and have heard the learned advocates for the parties. There is no dispute that upon being awarded

the contract on 29th June 2018, the petitioner submitted a notarized copy of the JV Agreement, which was accepted by the respondents without demur. Acting upon such acceptance, the respondents permitted the petitioner to execute the contractual work. Significantly, on 4th August 2018, the respondents released the petitioner's EMD of Rs.2,10,15,175/-. On 10th February 2023, the respondents then awarded further works through a revised LOA and within a period of 30 days as required under clause (g) of the revised LOA, submitted the registered JV Agreement to the respondents on 20th February 2023. Thus, even assuming that there was an initial deficiency, the same stood cured on 20th February 2023 when the revised LOA was issued. At no point between June 2018 and August 2023 did the respondents raise any objection regarding non-submission of a registered JV Agreement. Clause 83(m) of the tender conditions undoubtedly stipulates submission of a registered JV Agreement and provides for forfeiture of the EMD and other penal consequences in the event of non-compliance. However, such a stipulation cannot be invoked in a mechanical manner after having been waived or treated as non-essential by the respondents themselves. The registered JV Agreement is on record now and the respondents cannot be permitted to impose penal consequences for non-compliance of clause 83(m), which is cured and accepted by the respondents on 20th February 2023. In our view, the impugned action of the respondents is ex facie arbitrary and unsustainable. The conduct of the respondents in waiving the requirement of clause 83(m) is evident from its payment of over Rs.47 crores to the petitioner under the revised LOA.

7. The reliance placed by the respondents on the Special Audit Report of the Comptroller and Auditor General does not advance their case. An audit observation qua a third party cannot justify arbitrary

recovery from a contracting party, particularly where the respondents themselves had accepted the registered JV Agreement on 20th February 2023. Such a report does not confer a fresh cause of action to the respondents and cannot be the basis to initiate penal action against the petitioners after 5 years.

8. The contention of the respondents that the present dispute is purely contractual and therefore not amenable to writ jurisdiction is also devoid of merit. While it is true that this Court does not ordinarily interfere in contractual matters, but where the action of a public authority is arbitrary, unreasonable, or violative of Article 14 of the Constitution of India, the exercise of writ jurisdiction is clearly warranted. The impugned demand raised after an inordinate delay and contrary to the respondents prior conduct falls squarely within the realm of arbitrariness. The objection regarding delay and laches is equally untenable. The impugned demand has continuing adverse civil consequences, as the respondents seek to recover substantial amounts from the petitioner's R.A bills. In such circumstances, the petitioner cannot be non-suited on the ground of delay, when the impugned action is otherwise arbitrary and unsustainable in law. The respondents have not suffered any pecuniary loss. It cannot deny the petitioner the amounts that are due and payable for the work carried out by the petitioner. For the above reasons, Writ Petition is allowed in terms of prayers (a) and (b) which read as under:

> *"(a) That this Hon'ble Court be pleased to exercise its powers under Article 226 of the Constitution of India and be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction of this Hon'ble Court under Article 226 of the Constitution of India calling for the records and proceedings of the Impugned Letter/Communication dated 30th August 2023 bearing no.Dy.C.E./B.C./1043/City (being Exhibit "F") issued by respondent no.2 and after examining the legality, correctness and/or validity of the same be pleased to quash and set*

aside the same and/or direct the same to be recalled by respondent no.2;

(b) *That this Hon'ble Court be pleased to exercise its powers under Article 226 of the Constitution of India and be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction of this Hon'ble Court under Article 226 of the Constitution of India and be pleased to direct respondent no.2 to release the petitioner's RA Bills against the sum of Rs.2,93,65,175/- withheld by respondent no.2 under the garb of its impugned letter/communication dated 30th August 2023 (at Exhibit "F") bearing no.Dy.C.E./B.C./1043/City."*

[GAUTAM A. ANKHAD, J.] **[CHIEF JUSTICE]**

SNEHA ABHAY DIXIT Digitally signed by SNEHA ABHAY DIXIT Date: 2026.02.24 16:10:36 +0530