

POPATRAO VYANKATRAO PATIL

A

v.

THE STATE OF MAHARASHTRA & ORS.

(Civil Appeal No. 1600 of 2020)

FEBRUARY 14, 2020

B

[S. A. BOBDE, CJI, B. R. GAVAI AND SURYA KANT, JJ.]

Constitution of India: Art.226 – Scope of interference – Auction of sand blocks of river – Appellant was highest bidder and he deposited the entire auction amount but he was not put in possession – He filed representation for refund of auction amount – The Panchnama prepared by the Circle Officer exhibited that neither possession of the sand block was given to the appellant nor excavation of sand was done from the said sand block – The said position was reiterated by the Tehsildar, Sub-Divisional Officer and also Collector – However, in the transit the file was lost and as such appellant was not granted possession of sand block nor refund was made to him – State Government also rejected his prayer for refund – Appellant filed writ petition – High Court refused to entertain the petition on the ground that it involved question of facts – On appeal, held: Normally, when a petition involves disputed questions of fact and law, High Court would be slow in entertaining the petition under Art.226 of the Constitution – However, it is a rule of self-restraint and not a hard and fast rule – Even if there are disputed questions of fact which fall for consideration but if they do not require elaborate evidence to be adduced, the High Court is not precluded from entertaining Art.226 petition – However, such a plenary power has to be exercised by the High Court in exceptional circumstances – In this case, undisputedly, the appellant was highest bidder for the sand block in question and made deposit of full auction amount – Subsequently after all the authorities found that neither the possession of the sand block was handed over to him nor the excavation of sand from the said sand block was done, at the instance of the Collector, the file for grant of refund was being processed – However, appellant was denied the refund on the ground that the file in transit was misplaced – It could thus be seen that the denial on the part of the respondents to refund the amount to

C

D

E

F

G

H

- A *appellant was unreasonable – The action of authorities, in denying refund of the amount of the appellant, when they themselves had failed to give possession of the sand block and as a result of which the appellant could not excavate the sand, would smack of arbitrariness – In this premise, High Court was not justified in relegating the appellant to file a suit – Respondents directed to refund the entire amount received from the appellant along with interest. Government litigant: The State should act as a model litigant.*

Allowing the appeal, the Court

HELD: 1. Even if there are disputed questions of fact which

- C fall for consideration but if they do not require elaborate evidence to be adduced, the High Court is not precluded from entertaining a petition under Article 226 of the Constitution. However, such a plenary power has to be exercised by the High Court in exceptional circumstances. The High Court would be justified in exercising such a power to the exclusion of other available remedies only when it finds that the action of the State or its instrumentality is arbitrary and unreasonable and, as such, violative of Article 14 of the Constitution of India. In any case, in this case, there were hardly any disputed questions of facts. [Paras 5, 6][794 E-H]
- E *ABL International Ltd. & Anr. v. Export Credit Guarantee Corp. of India Ltd. & Ors. (2004) 3 SCC 553 – relied on.*
- F **2. It is undisputed, that the appellant was the highest bidder for the sand block in question. The appellant has deposited an amount of Rs. 62,26,085/-.** The Panchnama prepared by the Circle Officer clearly exhibited that neither possession of the sand block in question was given to the appellant nor excavation of sand was done from the said sand block. The said position was reiterated by the Tehsildar in his report submitted to the Collector. The
- G Sub-Divisional Officer in his report addressed to the Collector also confirmed the said position. It appears, that subsequently after all the authorities including Circle Officer, Tehsildar, Sub-Divisional Officer and the Collector found that neither the possession of the sand block was handed over to the appellant nor the excavation of sand from the said sand block was done, at
- H

the instance of the Collector, the file for grant of refund was being processed. It further appears, that the file in transit was misplaced and on this ground the appellant was denied the refund. It could thus be seen, in these admitted facts, that the denial on the part of the respondents to refund the amount to the appellant can, by no stretch of imagination, be called as reasonable. The action of the respondents, in denying the refund of the amount, when the respondents themselves had failed to give possession of the sand block and as a result of which the appellant could not excavate the sand, would smack of arbitrariness. In this premise, the High Court was not justified in relegating the appellant to file a suit. [Paras 7, 8][794 G-H; 795 A-F]

A

B

C

3. The State should act as a model litigant. In view of the undisputed position, that in spite of the appellant being the highest bidder and in spite of him depositing the entire amount of auction, since the possession of the sand block was not given to him for reasons not attributable to him and he could not excavate the sand, he will be entitled to get refund of the amount deposited by him. [Paras 9, 10][797 B-E]

D

Urban Improvement Trust, Bikaner v. Mohan Lal (2010)

1 SCC 512 – relied on

Case Law Reference

(2004) 3 SCC 553	relied on	Para 5
(2010) 1 SCC 512	relied on	Para 9

E

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1600 of 2020.

F

From the Judgment and Order dated 06.08.2018 of the High Court of Judicature at Bombay in Writ Petition No. 8708 of 2017.

Sudhanshu S. Choudhari, Yogesh S. Kolte, Mahesh P. Shinde and Prashant Papatrao Patil, Advs. for the Appellant.

Aaditya A. Pande and Sachin Patil, Advs. for the Respondents.

G

The following Judgment of the Court was delivered :

JUDGMENT

1. Leave granted.
2. Heard the learned counsel for the parties.

H

- A 3. The appellant has approached this Court being aggrieved by the order dated 6.8.2018, passed by the Division Bench of the High Court of Judicature at Bombay in Writ Petition No. 8708 of 2017 thereby, declining to entertain the petition since the petition involves question of facts.
- B 4. The facts, in brief, giving rise to the present appeal are as under:

The respondent – District Collector, Satara had issued a notice of public auction for auctioning the sand blocks of Krishna river in the year 2012. The appellant had submitted his bid for excavation of sand insofar C as Gat No. 956A, Plot No. 2 at village Rethare Khurd, Taluka Karad. The agreed quantity of excavation was 8500 brass. The appellant's bid being the highest i.e. Rs. 59,75,000/-, he was awarded the tender.

On 3.1.2012, the appellant deposited Rs.15,00,000/- as one-fourth (1/4th) amount of auction with Government treasury. On 16.1.2012, the D appellant deposited remaining auction amount of Rs. 44,83,500/. The appellant also deposited Rs. 1,19,500/- towards environmental cost and Rs. 1,23,085/- towards income tax. As such, the total deposit made by the appellant was Rs. 62,26,085/- towards allotment of sand block.

However, since the said sand block was at a distance of about E 100 ft. from the school, the villagers of Rethare Khurd village had opposed the excavation of sand. As such, though the appellant had deposited the entire amount, he was not put in possession of the said sand block. In the circumstances, the appellant made a representation to the Revenue Minister, Government of Maharashtra for refund of the auction amount. F As the appellant's representation was sent to the Collector, Satara to make enquiry, the Collector, Satara (respondent No. 2 herein), in turn, by letter dated 11.6.2012 sought a report from the Tehsildar, Karad.

On 15.6.2012, statement of the appellant came to be recorded by G the Circle Officer, Kale (respondent No. 5 herein). He also prepared a Panchnama of the sand block in question which exhibited that possession of sand block was never given to the appellant and that there was no excavation of sand from the said sand block.

The Tehsildar, Karad - respondent No. 4, submitted a detailed report dated 9.8.2012 to the Collector, Satara pointing out the factual position. The Sub-Divisional Officer, Karad – respondent No. 3, in turn, H submitted a report on 4.9.2012 reiterating the factual position. It appears,

that in the transit the file was lost and as such, though the appellant was not granted possession of the sand block and though yet he had not excavated any sand, the refund of the amount could not be made to him. It appears that there were further correspondences between the authorities and finally, the Desk Officer of the respondent No.1 – State Government vide order dated 25.3.2014 rejected the prayer of the appellant seeking refund of the auction amount.

A

B

The appellant again made several representations. Since there was no response, the appellant approached the High Court by filing Writ Petition No. 8708 of 2017. As stated earlier, by the impugned order, the High Court refused to entertain the petition on the ground that it involves question of facts.

C

5. No doubt that, normally, when a petition involves disputed questions of fact and law, the High Court would be slow in entertaining the petition under Article 226 of the Constitution of India. However, it is a rule of self-restraint and not a hard and fast rule. In any case, this Court in *ABL International Ltd. & Anr. vs. Export Credit Guarantee Corp. of India Ltd. & Ors.*¹ has observed thus:

D

“19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of *Gunwant Kaur* [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact”

E

F

While summing up the conclusions in the aforesaid case, this Court concluded thus:

G

“27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

¹(2004) 3 SCC 553

H

- A (a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.
- (b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.
- B (c) A writ petition involving a consequential relief of monetary claim is also maintainable.
- 28.** However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition.
- D The Court has imposed upon itself certain restrictions in the exercise of this power. (See *Whirlpool Corp. v. Registrar of Trade Marks* [(1998) 8 SCC 1].) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.”
6. It could thus be seen, that even if there are disputed questions of fact which fall for consideration but if they do not require elaborate evidence to be adduced, the High Court is not precluded from entertaining a petition under Article 226 of the Constitution. However, such a plenary power has to be exercised by the High Court in exceptional circumstances. The High Court would be justified in exercising such a power to the exclusion of other available remedies only when it finds
- G that the action of the State or its instrumentality is arbitrary and unreasonable and, as such, violative of Article 14 of the Constitution of India. In any case, in the present case, we find that there are hardly any disputed questions of facts.
7. It is undisputed, that the appellant was the highest bidder for H the sand block in question. The appellant has deposited an amount of

Rs. 62,26,085/- . The Panchnama prepared by the Circle Officer, Kale - respondent No. 5, clearly exhibited that neither possession of the sand block in question was given to the appellant nor excavation of sand was done from the said sand block. The said position is reiterated by the Tehsildar, Karad – respondent No.4 in his report submitted to the Collector - respondent No.2 dated 9.8.2012. The Sub-Divisional Officer, Karad – respondent No.3 in his report dated 4.9.2012, addressed to the Collector, Satara also confirmed the said position. A perusal of the letter dated 3.10.2012, addressed by the Collector, Satara to the Tehsildar and Sub-Divisional Officer also does not dispute the said position. However, he directed his subordinates to submit original file of the appellant's sand block with his office for refund of the amount deposited by the appellant.

A

B

C

8. It appears, that subsequently after all the authorities including Circle Officer, Tehsildar, Sub-Divisional Officer and the Collector found that neither the possession of the sand block was handed over to the appellant nor the excavation of sand from the said sand block was done, at the instance of the Collector, the file for grant of refund was being processed. It further appears, that the file in transit was misplaced and on this ground the appellant was denied the refund. It could thus be seen, in these admitted facts, that the denial on the part of the respondents to refund the amount to the appellant can, by no stretch of imagination, be called as reasonable. The action of the respondents, in denying the refund of the amount of the appellant, when the respondents themselves had failed to give possession of the sand block and as a result of which the appellant could not excavate the sand, would smack of arbitrariness. In this premise, we find that the High Court was not justified in relegating the appellant to file a suit.

D

E

F

9. This Court, has time and again held, that the State should act as a model litigant. In this respect, we can gainfully refer to the following observations made by this Court in *Urban Improvement Trust, Bikaner vs. Mohan Lal*²:

G

“6. This Court has repeatedly expressed the view that Governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. We may refer to some of the decisions in this behalf.

²(2010) 1 SCC 512

H

- A 7. In *Dilbagh Rai Jarry v. Union of India* [(1974) 3 SCC 554 : 1974 SCC (L&S) 89] this Court extracted with approval the following statement [from an earlier decision of the Kerala High Court (*P.P. Abubacker case* [Ed.: *P.P. Abubacker v. Union of India*, AIR 1972 Ker 103 : ILR (1971) 2 Ker 490 : 1971 Ker LJ 723], AIR pp. 107-08, para 5]): (SCC p. 562, para 25)
- B “25. ... ‘5. ... The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State’s interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, Government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The layout on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic showdowns where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of Government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957.’”
- C
- D
- E
- F
- G 8. In *Madras Port Trust v. Hymanshu International* [(1979) 4 SCC 176] this Court held: (SCC p. 177, para 2)
- H “2. ... It is high time that Governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a Government or a

public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.”

A

B

9. In a three-Judge Bench judgment of *Bhag Singh v. UT of Chandigarh* [(1985) 3 SCC 737] this Court held: (SCC p. 741, para 3)

“3. ... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen.”

C

D

10. In view of the undisputed position, that in spite of the appellant being the highest bidder and in spite of him depositing the entire amount of auction, since the possession of the sand block was not given to him for reasons not attributable to him and he could not excavate the sand, he will be entitled to get refund of the amount deposited by him.

E

11. In the premises, the appeal is allowed. The impugned order of the High Court dated 6.8.2018 is set aside. The respondents are directed to refund the entire amount received from the appellant along with interest at the rate of 6% per annum from the date on which the appellant made the first request for refund till the date of realisation. There shall be no order as to costs.

F