

FARAD CONTINUATION SHEET.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.1585/2008.

M/s Field Star Dwelling Associates

..VS..

Municipal Corporation of City Amravati.

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Office Notes, office Memoranda of Coram appearances, Court's orders or directions and Registrar's order.	Court's or Judge's order
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**CORAM: D.D.SINHA and
C.L.PANGARKAR,JJ.**

DATE : 30th June, 2008.

1. Heard Mr.Anand Jaiswal, Advocate for the petitioner and Mr.J.B.Kasat, Advocate for the respondent – Corporation.

2. The learned counsel for the petitioner states that in the instant case, the petitioner entered into an agreement with the respondent – Corporation on 1/9/2003 and as per the said agreement, the petitioner was running Sanskriti Bhavan as per the terms and conditions mentioned in the agreement. It is contended that the respondent – Corporation has issued a show cause notice dated 15/11/2007, whereby the petitioner

was called upon to submit the explanation as to why his agreement should not be terminated for various reasons mentioned in the said show cause notice. The petitioner replied to the said show cause notice on 21/11/2007, wherein it is submitted that the allegations made against the petitioner in the said show cause notice are not true and correct. The learned counsel for the petitioner further contended that on 15/3/2008 the respondent – Corporation issued a communication, calling upon the petitioner to appear for personal hearing on 17/3/2008. The said communication was received by the petitioner on 16/3/2008 and therefore, by letter dated 17/3/2008 the petitioner requested the respondent – Corporation to grant three days time for the purpose of collecting the documents and other evidence to show that the allegations made in the show cause notice are not sustainable in law and also not based on the facts and materials. The learned counsel for the petitioner has submitted that the respondent – Corporation, without giving any time to the petitioner passed the impugned order and cancelled the agreement. The learned counsel, therefore, contended that the respondent may be directed to give an opportunity of hearing to the petitioner in the matter so that the

petitioner would be in a position to demonstrate that the activities carried out by the petitioner is consistent with the terms and conditions of the agreement.

3. Mr.Kasat, learned counsel for the respondent – Corporation, has raised a preliminary objection about the maintainability of the writ petition on the ground that there is a arbitration clause, and in case the petitioner has any dispute about the action taken by the respondent, in such a situation the petitioner has a remedy to invoke the arbitration clause and therefore, the present petition is not maintainable. The learned counsel for the respondent – Corporation has further submitted that there are disputed questions of fact which are involved in the present writ petition, therefore on this count also the writ petition is not maintainable. The learned counsel for the respondent does not dispute that the respondent-Corporation had issued a communication dated 15/3/2008 whereby the petitioner was called for hearing on 17/3/2008. It is also not in dispute that before passing the impugned order, the petitioner was not heard by the respondent – Corporation.

4. Considered the contentions canvassed by the respective counsel. It is no doubt true that whenever there is a arbitration clause and if the agreement is cancelled, in such a situation the parties, no doubt, are required to invoke the arbitration clause. However, in the instant case, the respondent – Corporation itself has issued the communication to the petitioner on 15/3/2008, whereby the petitioner was called upon to appear for hearing before the respondent on 17/3/2008. It appears that the said communication was received by the petitioner on 16/3/2008 and therefore, the petitioner requested the respondent – Corporation to grant him 3 to 4 days time to collect the document in order to produce them before the respondent – Corporation. In such peculiar situation, it would have been proper for the respondent – Corporation to grant some time to the petitioner to produce the necessary documents and it was open for the Corporation to take any decision thereafter.

5. In the present case, since we are not adjudicating upon the issue on merit, the argument advanced by learned counsel for the respondent – Corporation that there are disputed questions of fact involved, has no consequence. In

the circumstance, we dispose of the petition with the direction to the respondent – Corporation to grant hearing to the petitioner. The petitioner undertakes to appear before the Commissioner, Amravati Municipal Corporation, Amravati on 15/7/2008 at 10.30 a.m. We have not set aside the impugned order passed by the authorities, however, the authorities are entitled to reconsider the issue after giving opportunity of hearing to the petitioner. If the authorities come to the conclusion other than one already recorded in the impugned order, in that event the authorities are entitled to modify the order in question. If authorities came to the same conclusion after giving hearing to the petitioner, in that event the authorities are also free to confirm the said order. With these observations and directions, the writ petition is disposed of.

Steno copy of this order be supplied to the parties.

JUDGE

JUDGE.

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