

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 1322 of 2022**

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DIVYA SIMANDHAR CONSTRUCTION PRIVATE LIMITED  
Versus  
VADODARA MUNICIPAL CORPORATION

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Appearance:

MS ARCHANA R ACHARYA(2475) for the Petitioner(s) No. 1  
NANAVATI & CO.(7105) for the Respondent(s) No. 1,2,3

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**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE  
ARAVIND KUMAR  
and  
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

**Date : 06/06/2022**

**ORAL ORDER**

**(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR)**

- 1.** This Special Civil Application is filed for following reliefs:-
- (A) YOUR LORDSHIPS be pleased to issue a writ of mandamus, or a writ in the nature of mandamus or any other appropriate writ, order or direction and be pleased to restrain the respondent corporation not to proceed further in pursuant to the order dated 31.12.2018 passed by the respondent no.1, which is already set aside by this Hon'ble Court vide order dated 14.03.2019 passed in Special Civil Application No. 5083 of 2019.
- (B) YOUR LORDSHIPS be pleased to issue a writ of mandamus, or a writ in the nature of mandamus or any other appropriate writ, order or direction and be pleased to direct the respondent corporation update the status of the petitioner on the website of the respondent corporation by deleting the name of the petitioner from the list of companies black listed.
- (C) YOUR LORDSHIPS be pleased to issue a writ of mandamus, or a writ in the nature of mandamus or any other appropriate writ, order or direction and be pleased to direct the respondent corporation to release the outstanding payments to the petitioner and permit the petitioner to complete the two on-going projects viz. Balaji Party Plot to 40 Meter Ring Road Vadsar Billabong School Vadodara and Ila Society via Atladara Water Tank to Municipal Limit, in the interest of justice;

- (D) Pending the hearing and final disposal of the petition, YOUR LORDSHIPS be pleased to restrain the respondent corporation not to proceed further in pursuant to the order dated 31.12.2018 passed by the respondent no.1, which is already set aside by this Hon'ble Court vide order dated 14.03.2019 passed in Special Civil Application No. 5083 of 2019.
- (E) Pending the hearing and final disposal of the petition, YOUR LORDSHIPS be pleased to direct the respondent corporation update the status of the petitioner on the website of the respondent corporation by deleting the name of the petitioner from the list of companies black listed.
- (F) Pending the hearing and final disposal of the petition, YOUR LORDSHIPS be pleased to direct the respondent corporation to release the outstanding payments to the petitioner and permit the petitioner to complete the two on-going projects viz. Balaji Party Plot to 40 Meter Ring Road Vadsar Billabong School and Ila Society via Atladara Water Tank to Municipal Limit, in the interest of justice.

**2.** We have heard arguments of Ms. Archana Acharya, learned counsel appearing for the petitioner, and Mr. Maulik Nanavati, learned counsel appearing for respondent Nos.1 to 3. Perused the records.

**3.** Petitioner is a company registered under the provisions of Companies Act, 1956 and is engaged in the business of road construction apart from carrying out other works. Petitioner is registered as Group-A Class-AA- "Approved Contractor". Petitioner is also registered as Contractor with State Road & Building Department and claims to have completed several contracts.

**4.** Petitioner was issued with three work orders for road surfacing at Vadodara, vide work orders dated 8.1.2015, 18.1.2015 and 31.12.2015. It is the claim of petitioner that Certification Engineers International Limited had carried out inspection of quality of the work carried out by petitioner and certificate is issued and yet, payments have not been made. Petitioner also claims to have been allotted work order dated 3.3.2017 in respect of 18 meter road construction from Ila Society via Atladara Water Tank to Municipal limit by calling for tender and following due procedure.

**5.** Respondent on completion of three years of issuance of completion certificates, namely issued on 7.4.2015, 18.5.2015 and 7.6.2015, an FIR being C.R. No.I-56 of 2018 is said to have been registered by Deputy Executive Engineer of Vadodara Municipal Corporation against petitioner for offences punishable under Sections 406, 420, 465, 467, 468 and 471 of Indian Penal Code alleging that Directors of petitioner company have caused damage and loss to the Corporation in relation to the three work orders issued in the year 2015. Petitioner is said to have been enlarged on bail. Petitioner is also said to have challenged initiation of proceedings.

6. In the meanwhile, on the strength of FIR registered, a resolution is said to have been passed by Municipal Corporation on 31.12.2018 for blacklisting the petitioner for a period of 5 years on the ground of petitioner having indulged into irregularities and causing loss to the Corporation and by the very same order, payments due to the petitioner is said to have been withheld. This action of respondent Corporation was challenged by petitioner in Special Civil Application No.5083 of 2019, assailing the impugned resolution of the corporation dated 31.12.2018. The Coordinate Bench while issuing notice on 11.3.2019 had granted interim relief, namely had stayed the said impugned order dated 31.12.2018. Said Special Civil Application came to be disposed of vide order dated 14.3.2019 (Annexure-A) on the short ground of impugned order was passed in violation of principles of natural justice, namely it was passed without even issuing show cause notice to petitioner and without hearing the petitioner. While setting aside impugned resolution/ order dated 31.12.2018, Coordinate Bench also granted liberty to the Corporation to pass fresh orders and directed the Corporation to grant opportunity to the petitioner and pass orders after extending opportunity of hearing. This order undisputedly has

reached finality.

**7.** By virtue of said liberty granted, a notice dated 22.4.2019 (Annexure-G) was issued to the petitioner which has been duly replied by petitioner on 30.4.2019 (Annexure-H) denying the contents of the notice. It is this notice which is issued to the petitioner, which has been challenged in the petition contending *inter alia* that resolution dated 31.12.2018 has been set aside and therefore, Corporation while issuing impugned notice could not have relied upon the said order or resolution and hence, it is to be set aside.

**8.** *Per contra*, Mr. Maulik Nanavati, learned advocate appearing for respondents would support the action of the respondents by relying upon order dated 14.3.2019 passed in Special Civil Application No.5083 of 2019.

**9.** As could be seen from the order passed in Special Civil Application No.5083 of 2019, the Coordinate Bench while setting aside resolution/ order dated 31.12.2018 has remanded the matter back to the Corporation to redo the matter. To put it differently, Corporation has been called upon to pass fresh orders, if so advised, after hearing the petitioner and extending

opportunity to petitioner. It is this liberty which has been granted to the Corporation has ignited the issuance of notice dated 22.4.2019 to the petitioner by the respondent Corporation and same has also been duly replied by petitioner. As such, petitioner cannot have any grievance to contend that such notice could not have been issued or in the said notice, order dated 31.12.2018 (resolution of the Corporation) could not have been relied upon by Corporation. It is open for the authorities to decide, adjudicate and resolve the said notice which is issued for blacklisting the petitioner by considering the reply submitted by the petitioner, which is already on record, vide Annexure-H dated 30.4.2019. Merely because said resolution dated 31.12.2019 has been set aside would not by itself empower the petitioner to contend that respondent could not rely upon the same inasmuch as the Coordinate Bench while setting aside order dated 31.12.2018 has remanded the matter back to the Corporation for adjudication afresh. If the authorities deem it proper to rely upon their own earlier order, it is for them to justify it while passing final order. In that view of the matter, we do not see any infirmity to interfere at this juncture. The only succor which can be extended to the petitioner is the fact that order of blacklisting

having been set aside by the Coordinate Bench vide order dated 14.3.2019 passed in Special Civil Application No.5083 of 2019, it would not be open for the respondent Corporation to treat petitioner as a blacklisted person till order to said effect is passed.

**10.** It is also made clear that petitioner shall appear on **27.6.2022 at 11.00 a.m.** before respondent No.3 for further hearing without waiting for orders of this Court or notice from the respondent Corporation. Ordered accordingly.

Sd/-  
(ARAVIND KUMAR,CJ)

Sd/-  
(ASHUTOSH J. SHASTRI, J)

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THE HIGH COURT  
OF GUJARAT

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