

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 2148 of 2013

District : Ahmednagar

M/s. Waghchaure and Company,
Aurangabad, through its Proprietor
Kiran Janardhan Waghchaure,
R/o. Aurangabad,
Taluka & District : Aurangabad,
Through his General Power of Attorney,
Machindra s/o. Babanrao Choudhari,
Age : 42 years,
Occupation : Agriculture & Business,
R/o. Nagardevale,
Taluka & District : Ahmednagar. .. Petitioner.

versus

1. The State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.
2. The Collector, Ahmednagar,
District : Ahmednagar.
3. The Tahsildar,
Rahuri, Taluka : Rahuri,
District : Ahmednagar. .. Respondents.

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*Mr. V.D. Hon, Senior Advocate, holding for
Mr. A.D. Shinde, Advocate, for the petitioner.*

*Ms. S.S. Raut, Asst. Government Pleader, for
respondent nos.1 to 3.*

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**CORAM : S.V. GANGAPURWALA &
A.M. BADAR, JJ.**

DATE : 3RD MARCH 2016

ORAL JUDGMENT (Per S.V. Gangapurwala, J.) :

1. Mr. Hon, the learned Senior Counsel for the petitioner, submits that pursuant to the proclamation inviting tenders for excavation of sand from river bed of Mula at village Aradgaon [Taluka : Rahuri, District : Ahmednagar], the petitioner had filled in the tender. The petitioner being highest bidder, was allotted sand spot so as to excavate sand to the extent of 10,300 brass for Rs. 51,00,000/-. The petitioner had deposited amount of Rs. 51,00,000/- and thereafter was issued order to excavate sand of the quantity allotted to the petitioner i.e. 10,300 brass. The learned Senior Counsel submits that the petitioner was not permitted to excavate sand by the villagers. Time to time, applications were given. Thereafter, Tahsildar called for the meeting. Subsequently, the villagers agreed to permit the petitioner to excavate the sand. The petitioner started excavation of sand actually on 30-5-2011 in accordance with the terms and conditions of the tender. The learned Senior Counsel submits that on 20th June 2011, a surprise visit was made by the Assistant Engineer. He carried out Panchanama in which it was mentioned that on 20th June 2011, the petitioner excavated sand to the extent of 4,474 brass. The learned Senior Counsel further submits that it was learnt by the petitioner that the flying squad had made a surprise visit and Panchanama was drawn in between 6.00 p.m. to 9.00 p.m. in dark. The said measurement was behind back of the petitioner and it is stated that the petitioner had excavated sand to the

extent of 17817 brass and the petitioner was directed to pay towards license fee and penalty amount to the tune of Rs. 7,94,40,925/-. According to the learned Senior Counsel, the petitioner approached this Court. This Court had set aside the order on the ground of non-observance of principles of natural justice and directed the authority to re-consider the case.

2. The learned Senior Counsel for the petitioner further submits that the petitioner subsequently filed detail say to the show cause notice and lastly the respondents on the basis of the Panchanama came to the conclusion that the petitioner excavated sand to the extent of 7678.66 brass, whereas the petitioner was issued 75 transit pass-books could excavate sand to the tune of 7,500 brass. As such, the petitioner was directed to pay penalty of Rs. 16,46,825/-. According to the learned Senior Counsel, 25 % of waste material from excavation has not been deducted by the respondents. It is further submitted that the measurement which was carried out after a long delay would not be correct measurement. The petitioner was entitled to excavate sand to the extent of 10,300 brass and even according to the respondents, the petitioner has excavated sand to the extent of 7678.66 brass. According to the learned Senior Counsel, the measurement is *per se* illegal. There is no authenticity of the same after a long delay. The said measurement is much after the excavation of sand was started.

3. Ms. Raut, the learned Asst. Government Pleader for the respondents, submits that the petitioner was issued 75 transit pass-books and as per the same, it is recorded that the petitioner has excavated sand to

the extent of 7500 brass. 25 % deduction of waste material has already been done initially when the contract is awarded. The learned Asst. Government Pleader further submits that the Government Resolution dated 5th September 2003 specifically lays down that if any vehicle is carrying sand more than its capacity or more than what has been recorded, then excavation of excess sand is illegal and which invites penal action. The same has been rightly taken. As per the record, the petitioner has excavated 7,500 brass of sand. However, on measurement it is found that the petitioner has excavated 7678.66 brass of sand i.e. 178.66 brass in excess, for which penalty of Rs. 16,46,825/- has been rightly imposed.

4. We have considered the submissions canvassed by the learned Senior Counsel for the petitioner and the learned Asst. Government Pleader for the respondents.

5. The fact that the petitioner was successful bidder and was allotted sand spot to excavate sand to the extent of 10,300 brass is not disputed. It is also not disputed that the petitioner has deposited amount of Rs. 51,00,000/- for excavation of the said sand to the tune of 10,300 brass. Even according to the respondents, the petitioner has excavated sand to the extent of 7678.66 brass. The only contention of the respondents is that the petitioner has been issued 75 transit pass-books and as recorded, he has excavated sand to the extent of 7,500 brass. On measurement, it is found that the petitioner has excavated 7678.66 brass of sand i.e. at the time of second measurement. As per the earlier measurement dated 24-6-2011, it was stated that the petitioner has excavated sand to the extent of 17,817 brass, whereas the second Panchanama / measurement is dated 1st

September 2012 which is more than one year after the excavation was done. It is stated that when second measurement was done, there was not much flow of water in the river. However, the same would be on presumption. How far the second measurement can be said to be correct and can be taken into account, is a question. There was vast difference between two measurements, the one which was done on 24-6-2011 and another on 1-9-2012. No reason is forthcoming for such vast difference between two measurements and the said excavation is below 10,300 brass of sand i.e. the quantum of the sand which the petitioner was entitled to excavate. The measurement dated 1-9-2012 does not inspire confidence for more than one reason i.e. there is a major variance between earlier measurement and subsequent measurement. So also, the same is almost after one year of the excavation wherein the sand spot could have undergone change because of one more rainy season.

6. Considering the aforesaid conspectus of the matter and the material on record, it cannot be said that the petitioner has excavated the sand beyond permissible limit.

7. In the result, the Writ Petition is allowed.

(a) The impugned order dated 4-2-2013 passed by respondent no.3 i.e. Tahsildar, Rahuri, is quashed and set aside.

(b) It is submitted that the petitioner has deposited amount of Rs. 15,00,000/- in this Court as per order dated 23rd May 2012 in Writ Petition No. 4423 of 2012. In case, the said amount is lying with this

Court, the petitioner is permitted to withdraw the same along with accrued interest, if any.

8. Rule is made absolute in the above terms. No costs.

(A.M. BADAR)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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