

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9485 OF 2015

Anusayabai W/o. Ramrao Patil

.. **Petitioner**

Versus

The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai and others

.. **Respondents**

Shri N. E. Deshmukh and R. H. Mewaza, Advocates for the Petitioner.
Shri S. M. Ganachari, A. G. P. for Respondents.

CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.
DATE : 10TH AUGUST, 2016.

PER COURT :-

1. Mr. Deshmukh, the learned counsel for the Petitioner states that, the Petitioner owns agricultural land admeasuring 0.44 H. bearing Gut No. 354 situated at village Ganjgaon, Taluka – Biloli. The land of the Petitioner is situated on the tributary of river Godavari. Almost every year flood takes place wherein the river over flows. As a result the sand carried alongwith the water flow gets spread on the agricultural land owned by the Petitioner. The learned counsel submits that, on 26.08.2014 Petitioner applied for permission to the Collector, Nanded to lift sand on the payment of royalty. After getting all the reports from the geological department and other departments the Collector after following the procedure of law granted permission to excavate 2319 brass of sand. The Petitioner paid royalty and the security deposit for an amount of Rs. 27,00,000/- approximately. The order was issued on 26.08.2014 and on 27.08.2014 Circle Inspector handed over the sand spot immediately. The Petitioner could not excavate the sand even for a

day due to flood like situation. The said fact was informed to the authorities. According to the learned counsel, the Petitioner as such moved for extension of time to excavate the said sand with the Collector, however, the said application is rejected only on the ground that the period granted for excavation was only up to 30th September, 2014.

2. The learned counsel submits that, the time be extended.

3. Mr. Ganachari, the learned A. G. P. for the Respondents submits that, there is no provision for extension of time to excavate the sand. The clauses of the agreement entered into by the Petitioner with the Respondent are clear wherein the Petitioner is entitled to lift the sand only up to the specified date i.e. up to 30th September, 2014. Considering the said agreement the order has been rightly passed.

4. We have considered the submissions.

5. Upon perusal of the impugned order it is manifest that even the Collector has come to the conclusion on the basis of the report of the Circle Officer and the panchanama conducted that the Petitioner could not lift the sand from 28th August, 2014 to 19th September, 2014 and Collector has further observed that in view of the agreement the request of the Petitioner cannot be granted.

6. The Government Resolution relied by the Petitioner dated 29th June, 2016 also does not lay down any specific direction with regard to the extension of time. The Government Resolution dated 8th May, 2006 is referred to in the said Government Resolution dated 29th June, 2016. However, the said Government Resolution is not being made available to this court.

7. Be that as it may, it is almost two years the order has been passed. The authorities will have to consider the present scenario and will also have to get the reports from the geological department and the other departments to consider the feasibility and viability for excavation

of the sand from the land of the Petitioner, for the same it may not be possible to pass any orders. It is also a fact that the Petitioner has deposited approximately an amount of Rs. 27,00,000/- and has not been in a position to utilize the benefit of excavation of the sand. To adjust the equities we pass the following order -

ORDER

A] The Petitioner may apply afresh for excavation of sand from his land bearing Gut No. 354 admeasuring 0.44 H. situated at village Ganjgaon, Taluka – Biloli.

B] If, the Collector after getting the necessary reports of the geological department and the other departments is satisfied that the excavation of sand from the land of Petitioner is permissible then may pass the fresh order to that effect.

C] In that case, the amount paid by the Petitioner while granting him permission to excavate the sand in the year 2014 shall be adjusted.

D] The Petitioner may file an application within two (2) weeks from the date of this order and the Collector concerned shall pass necessary orders on the said application after complying with all legal formalities, expeditiously and preferably within three (3) months from the date of receipt of application.

8. The Writ Petition is accordingly disposed of. No costs.

[K. K. SONAWANE, J.] [S. V. GANGAPURWALA, J.]