

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

WRIT PETITION NO. 10494 OF 2012

Rajesh Durgadas Gaware

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri U. R. Awate, Advocate for the Petitioner.

Ms. Vaishali N. Patil, AG.P. for Respondent Nos. 1 to 5.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

DATE : 19TH DECEMBER, 2016.

PER COURT :

. Mr. Awate, the learned counsel for the petitioner states that, the petitioner was allowed to excavate sand from his own land in the year 2010. However, because of the floods the petitioner could not excavate the sand and on 21.06.2010 applied for extension of time. The said application was not decided. The petitioner has subsequently also applied for permission and was granted permission. The petitioner was not granted refund of the deposit amount, nor was granted extension of time to lift the said sand. According to the learned counsel the petitioner be permitted to lift the sand in the current year, by utilizing the amount deposited in the year 2010.

2. The learned Assistant Government Pleader submits that, as far as excavation of sand is concerned, rules will operate and only in consonance with the rules the said permission can be granted. It is for the Collector to take decision upon it.

3. We have considered the submissions canvassed by the learned counsel for respective parties. It is not disputed that, the petitioner had applied for permission to excavate the sand on or about 25.05.2010 and subsequently amount of Rs. 4,12,100/- is also deposited by the petitioner. It is the case of the petitioner that, he could not excavate the sand during the allotted period, because of the heavy floods.

4. It is for the authorities to consider the facts of the given case. We cannot pass any orders in this regard.

5. Considering the above, we pass the following order.

6. The petitioner may apply afresh for excavation of sand from his land gut No. 320 admeasuring 3H 20R situated at village Bolegaon, Tq. Biloli.

7. 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.

8. In that case, the amount paid by the petitioner while granting him permission to excavate the sand in the year 2010 shall be adjusted.

9. 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.

10. The Collector may also consider the G. R. dated 29.06.2016 and such other government resolutions issued from time to time applicable in the case while considering whether report of geological survey department or other departments are required in the case after considering merits and facts of the matter. If the authority comes to the conclusion that, permission cannot be granted, they may also consider the prayer for refund of amount in accordance with law. The writ petition accordingly is disposed of. No costs.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]