

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO.59 OF 2016
WITH
CIVIL APPLICATION NO.15 OF 2014
WITH
CIVIL APPLICATION NO.60 OF 2016
WITH
CIVIL APPLICATION NO.14 OF 2014
WITH
CIVIL APPLICATION NO.214 OF 2013
IN
PUBLIC INTEREST LITIGATION NO.27 OF 2011**

Suresh Kashinath Patil and Others ...Applicants

vs.

State of Maharashtra and Others ...Respondents

Mr. R.S. Apte, Senior Counsel a/w. Mr. S.S. Ambedkar and Mr. Saurabh Oka, for the Applicant.

Mr. Nitin Deshpande, AGP for Respondent Nos. 1, 7 and 8.

CORAM : SHANTANU KEMKAR &
MAKARAND KARNIK, JJ.

DATE : AUGUST 09, 2016

PC.:

Not on board. Upon mentioning taken on board.

2. Heard the learned counsel for the parties.

3. We find that this Court by an order dated 15th June, 2015
passed the following order:

“5] In view of the above, it appears that since the Court of the learned JMFC at Vasai is already seized of the factual controversy between the parties, this Court should not make any further probe in the present proceedings being Civil Application No.14 of 2014. At the same time, the fact remains that the Applicants had deposited Rs.15,00,000/with the Registry of this Court and the question whether the same should be refunded to the Applicants or the entire amount or a part thereof should be allowed to be forfeited by the authorities was to be considered later on.

6] Now that the factual question is being going to be examined by the Court of the JMFC at Vasai, we accede to the request of the learned AGP to permit SDO, Vasai to withdraw the amount of Rs.15,00,000/with the accrued interest thereon from the Registry of this Court subject to the condition that depending on the orders which may be passed by the learned JMFC at the conclusion of the trial, the amount or a part thereof will be permitted to be appropriated by the SDO, Vasai or the amount or a part thereof may be ordered to be refunded to the Applicants. It will also be open to the learned Magistrate to pass any orders regarding payment of interest in case any part of the amount is to be refunded to the Applicants. In case, the learned JMFC takes the view that the Applicants had committed theft of sand, it will be open to the authorities to take further action in accordance with law.

7] The Applicants shall return the unutilized passes which according to the Applicants pertain to sand measuring 7272 brass to the SDO, Vasai within two weeks from today.

8] The Civil Application No.14 of 2014 is accordingly disposed of in the above terms.

9] It is clarified that the Civil Application was confined to the quantity of sand which was lying at Gat No.7 (New Gat No.12) Near Vaitarna Bridge, which according to the Applicants was to the tune of 19200 brass. The authorities are at liberty to take action in accordance with law, in respect of any other quantity of sand which might have been illegally excavated by any party.”

4. The grievance of the Petitioner is that in spite of the

aforesaid order being passed by the Division Bench of this Court, the Tahsildar, Vasai has issued notices dated 22nd December, 2015 to the Petitioners thereby directing the Petitioners to deposit the total amount of Rs. 46.46 Crores. According to the learned senior counsel for the Petitioners, in view of the said order passed by this Court the impugned notices could not have been issued by the Tahsildar.

5. The Respondent-State has filed the affidavit in reply in which at para Nos. 2 and 3 the following statement has been made.

“2. I say that the Tahsildar, Vasai has issued a notice dated 22nd December, 2015 to the Applicants because the Applicants are liable to pay fine. Since, this is a matter of recovery of revenue, he had issued notices promptly to 24 persons on 22nd December, 2015 amounting to Rs. 46,46,00,000/- in question. In view of the order of this Court dated 15th June, 2015 passed by the Division Bench in Civil Application No. 14 of 2014 in Public Interest Litigation No. 27 of 2011, it has been decided to keep the said notice suspended till the J.M.F.C., Vasai finally decides the criminal prosecution initiated against the Applicants for theft of sand. The aid notice is pre-mature in the light of order of this Court.

3. I say that a pre-mature action may not amount to willful breach of the order of this Court. The intention appears to be recovery of revenue and fine. Therefore, this Court may accept the apology of the Respondents and dispose of the Civil Application in the light of this affidavit.”

6. Having gone through the stand taken by the Respondent-

State in para 2 and 3, we find that the State has realized it's mistake in issuance of notices dated 22nd December, 2015 and in the circumstances, the Respondent-State has made the aforesaid statement in para 2 and 3. In view of the aforesaid, we accept the apology tendered by the Respondent-State and quash the notices dated 22nd December, 2015. However, with liberty in terms of the earlier order dated 15th June, 2015 passed by this Court.

7. In the circumstances, the Contempt Petitions are dropped and the Civil Applications stand disposed of.

(MAKARAND KARNIK, J.)

(SHANTANU KEMKAR, J.)