

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****PUBLIC INTEREST LITIGATION NO. 154 OF 2009**

Rahatad Mahadeo Koli Jamat)
through its President, Changya Hari Patil,)
resident of Village Rahatad, Tal. Tala,)
Dist. Raigad.) **..... Petitioner**

VERSUS

1. State of Maharashtra,)
through its Secretary,)
Revenue and Forests Department,)
Mantralaya, Mumbai – 32.)

2. Collector, Raigad)
at Alibag, Dist. Raigad)

3. Sub Divisional Officer, Mangaon,)
Dist. Raigad)

4. Tahsildar, Tala,)
Tal. Tala, Dist. Raigad)

5. District Mining Officer, Raigad)
at Alibag, Dist. Raigad)

6. Pradeep Damagude,)
at Post Bhalegaon, Tal. Roha,)
Dist. Raigad.)

7. Sahadeo Karanje,)
at Post Mandad, Tal. Tala,)
Dist. Raigad)

8. Hafiz Bankotkar,)
at Post Mandad, Tal. Tala,)
Dist. Raigad)

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| 9. Vilas Hamak, |) | |
| at Post Mandad, Tal. Tala, |) | |
| Dist. Raigad |) | |
| 10. Krishna Talekar, |) | |
| at Post Khajani, Tal. Roha, |) | |
| Dist. Raigad |) | |
| 11. Vinayak Dhamane, |) | |
| at Post Kandane, Tal. Roha, |) | |
| Dist. Raigad |) | |
| 12. Sham Kotwal, |) | |
| at Post Mithagar, Tal. Murud, |) | |
| Dist. Raigad |) | |
| 13. Shankar Sheth, |) | |
| At Post Taluka Murud, Dist. Raigad |) | |
| 14. Nakti, |) | |
| at Vizoli, Tal. Roha, Dist. Raigad |) | Respondents |

None for the Petitioner.

Mr.P.G.Sawant, A.G.P. for the Respondent nos. 1 to 5.

Mr.Sachin D.Bagal, i/b. Mr.Pradeep M.Patil for Respondent nos. 6 to 14.

**CORAM : A.S.OKA &
R.D. DHANUKA, JJ.**

DATE : 7th SEPTEMBER, 2016

ORAL JUDGMENT (PER A.S.OKA, J.)

None appeared for the petitioner. Time is sought on behalf of the respondent nos. 6 to 14. Learned A.G.P. represents 1st to 5th respondents. We have perused the petition, annexures to the petition and affidavits filed on record. By filing this public interest litigation, the petitioner has invited attention of the Court to the

alleged instances of illegal extraction of sand from Rajapuri Creek in Raigad District. The prayer in this petition is for initiating action against those who are indulging in illegal mining. A writ of prohibition is prayed for as against respondent nos. 6 to 14 who are private parties.

2. There is an affidavit filed by Shri Anil Bhimrao Kamble, District Mining Officer, working in Collector's Office which is dated 18th February, 2011. Paragraph (3) of the said affidavit refers to the directions issued by the District Collector to the Sub-Divisional Officer on various dates from 2009 onwards to take action against illegal excavation of sand from Rajapuri Creek. In paragraph (3), the District Mining Officer has stated thus :-

(3) I further say that accordingly Tahasildar, Tala had taken meeting of Respondent Nos. 6 to 14 and warned them against illegal excavation of sand. I further say that the Tahasildar, Tala had formulated special teams to keep constant watch against the illegal excavation of sand. I further say that the Tahasildar and the Police Inspector, Tala had personally visited the spot to verify illegal excavation of sand, if any, being done at any time. The District Mining Officer alongwith the Circle Inspector and the Mining Inspector had personally visited Mandad Rajapuri Creek on 30/01/2011 and 05/02/2011 and had found that no illegal excavation was being done. They had also prepared Panchanamas of their joint visits. Hereto annexed and marked as Exhibit – 3 collectively are the copies

of Panchanamas.

3. In paragraph (4), it is stated that by order dated 10th February, 2010, the said spot of excavation of the sand was auctioned by the Collector and the successful bidder was permitted to excavate sand having quantity of 7040 brass subject to payment of agreed amount. In paragraphs (5) and (6) of the said affidavit, the District Mining Officer has stated as under :-

(5) I say that once the period for the authorized and regulated excavation was over the administration has taken highest possible care that no unauthorized/illegal excavation is taking place. Wherever such incidences are reported action is taken immediately and vigilance in that area is increased.

(6) I say that as far as the Mandad Rajapuri Creek is concerned once the period for the authorized excavation was over on 31/7/2010, the Tahasildar, Tala along with the Circle Inspector and the Talathi have done spot inspections from time to time and have done Panchanamas of the same to ensure that no illegal excavation was being done.

4. In paragraphs (8) and (9) the District Mining Officer stated thus :-

(8) I further say that as per directions give by the Hon'ble Court during the hearing on 31/01/2011, on 05/02/2011, vigilance squads was deputed at the site in question on the 24x7 basis. No incidence of any unauthorized excavation is reported since then.

(9) I further say that no intentional, willful disobedience

could ever occur from us of the same. I submit that this office is taking proper legal steps and action against the illegal excavation of minor – minerals. I assure this Hon'ble Court that even-after constant vigilance if any wrong doers are found, stern action would be taken against them which would act as a deterrent to any further attempt of unauthorized excavation.

5. There is another affidavit dated 21st February, 2011 filed by Shri Ramesh Mahadu Nagothkar, Incharge Tahsildar, Taluka Tala, District Raigad. He has narrated the steps taken by him on the basis of the orders passed by the Collector. In paragraph (7), he has given all the particulars of inspection carried out and Panchanamas drawn from August 2010 to January 2011.

6. It is stated that in the Panchanamas drawn on the site visits made on the dates specified in paragraph (7), no activity of illegal mining of sand has been recorded.

7. An affidavit in rejoinder has been filed by the President of the petitioner on 23rd February, 2011 for dealing with the affidavit filed by the District Mining Officer. All instances of illegal excavation setout in the said affidavit are from 12th August, 2009 till 3rd February, 2010. Not a single incident of illegal excavation of sand after February 2011 is alleged in the affidavit in rejoinder.

8. Therefore, it is not possible to doubt the correctness of the assurances contained in the affidavit of Shri Anil Bhimrao Kamble, District Mining Officer.

9. Hence, we dispose of the PIL by passing the following order :-

(a) We accept the statements and assurances in the affidavit of Shri Anil Bhimrao Kamble, District Mining Officer, Collectors' Office, Alibaug, District Raigad dated 18th February, 2011 as the assurances and undertakings given on behalf of the State Government;

(b) We direct that action initiated against those who have indulged in illegal excavation of sand shall continue notwithstanding disposal of this PIL;

(c) We direct the District Collector of Raigad District and District Mining Officer of Raigad District to take all possible steps for preventing illegal excavation of sand in Rajapuri Creek;

(d) In the event any person is found illegally extracting the sand, not only that criminal law shall be set in motion against the wrong doers but also necessary proceedings for recovery shall be initiated in accordance with section 48 of the Maharashtra Land Revenue Code, 1966;

(e) If the petitioner hereafter finds that still there are instances of illegal excavation of the sand from the said spot, he is free to lodge specific complaints in that behalf to the District Mining Officer, District Raigad who shall take immediate steps on the basis of the said complaint in accordance with law;

10. Rule is disposed of in terms of the above directions. There will be no order as to costs.

(R.D.DHANUKA, J.)

(A.S.OKA, J.)