

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4703 OF 2015.

M/s Mahalaxmi Constructions thr.its Proprietor

..VS..

State of Mah. & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.C.S.Kaptan, Sr.Advocate with Mr.M.V.Samarth,
Advocate for the petitioner.
Mr.A.Z.Fulzele, Addl.G.P. for respondent nos.1 to 6.

**CORAM : B.P.DHARMADHIKARI AND
P.N.DESHMUKH, JJ.**

DATED : MARCH 23, 2016.

Heard Shri C.S.Kaptan, Senior Counsel with
Shri Samarth, Advocate for the petitioner and learned
Additional Government Pleader for respondent nos.1 to
6. Nobody appears for respondent nos. 7 and 8.

Grant of licence to petitioner to excavate
sand from sand ghat after following prescribed
procedure on 28th of January, 2015 is not in dispute.
Said grant was valid up to 30th of September, 2015.

On 19th of June, 2015 respondents found
about 450 Brass of sand stored illegally on Survey
Nos.367 and 376. The panchanama was performed on
that day and the sand has been seized thereafter on 20th
of July, 2015 by separate documents.

This action is assailed before us.

Learned Senior Advocate invites our

attention to Condition Nos. 9 and 10 of the lease document to urge that removal and stocking of sand is expressly alleged. The petitioner on 15th of June, 2015 had sought permission to convert these lands for non-agriculture use. Tahsildar, Tumsar had sought guidance from District Mining Officer on 9th of July, 2015 on that application.

Ultimately, it is not in dispute that said non-agriculture permission is given to petitioner. Learned Senior Counsel Shri Kaptan submits that this assertion in amended paragraph no.19-F of Writ Petition has not been controverted.

He has drawn our attention to Clause 16 on which respondents have placed reliance, to urge that their requirement of N.A. permission has been seen as condition precedent while in lease documents, in terms and conditions there was no such stipulation. He also relies upon the provisions of Section 48 of Maharashtra Land Revenue Code to submit that once sand is found to be removed legally from sand ghat, said provision has no application.

Learned AGP is relying upon reply affidavit. He submits that the petitioner has stored sand unauthorizedly without obtaining necessary permission, hence action has been taken under Section 48(7) of the Act. He points out that the N.A. permission did not exist on the date on which the sand was seized.

He also relies upon the Scheme of Section 48(7) of the Act to urge that said Section contemplates separate order of seizure and thereafter confiscation. According to him, as yet no order of confiscation has been passed. He therefore states that petitioner can approach this Court only after confiscation order is passed.

Perusal of lease document dated 28th of January, 2015, particularly Clause Nos.9 and 10 show an obligation cast upon petitioner to remove the sand from site of excavation within ten days after the lease period is over, otherwise the said stock of sand vests in State Government. The provisions therefore show that the petitioner has to store the sand excavated from sand ghat on some other land. Petitioner accordingly moved an application under Section 44 of Maharashtra Land Revenue Code to convert two lands for N.A. use so as to enable him to store the sand there. His application dated 15th of June, 2015 was pending on 19th of June, 2015 or 22nd of June, 2015 when panchanama or *Japtinama*, mentioned supra, have been carried out. Petitioner has, on oath, stated that on 14th of September, 2015 the respondent no.5 Tahsildar granted permission and permitted the N.A. user. Copy of that order is also annexed with writ petition as annexure 22. The order permits N.A. user for period of four months after 14th of September, 2015.

In this situation, we find that ultimately permission which petitioner sought on 14th of June, 2015 has been granted to him for period of four months. It is not the case of respondents that the petitioner has excavated sand in excess of allotted quota or then after expiry of lease period. Thus, sand legally excavated was stored for some days on a land which was not converted to N.A. use as per Section 44 of Maharashtra Land Revenue Code.

In present facts, we find that act of seizure or confiscation of such sand is too harsh. Hence, without observing anything on other contentions raised by respective counsel, only on this count, we set aside the said seizure and direct respondents to release the seized sand back to the petitioner. Needless to mention that all other contentions are kept open.

The respondent no.2 – Collector shall grant petitioner fifteen days time for removing said 450 Brass of sand from land Gat Nos.367 and 376.

Writ petition is thus partly allowed and disposed of.

No costs.

JUDGE

JUDGE

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