

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CONTEMPT PETITION NO. 421 OF 2016
IN
WRIT PETITION NO. 6698 OF 2016
ALONGWITH
CIVIL APPLICATION NO. 1715 OF 2017
IN
W.P. NO. 6698 OF 2016**

Ganesh Traders through its proprietor ... Petitioner/
Shri Ganesh Shantaram Tajnpure Applicant.

V/s.

State of Maharashtra and Others. ...Contemnors/
Respondents.

Mr. Uday P. Warunjikar i/by Mr.J.S.Yadav, Advocate for the
Petitioner / Applicant.

Mr. A. I. Patel, AGP for the State.

**CORAM : NARESH H. PATIL AND
SMT. BHARATI H. DANGRE,JJ.**

**ORDER RESERVED ON : 26th JULY, 2017
ORDER PRONOUNCED ON : 04th AUGUST, 2017**

P.C. : (Smt. Bharati H. Dangre, J.)

1 The present contempt petition has been instituted
by the Petitioner, alleging disobedience of the order dated 07th
July, 2016 passed by the Division Bench of this Court (Coram :
V.M. Kanade & M.S.Sonak,JJ.) in the writ petition no. 6698 of

2016. It is alleged that the said subject order is disobeyed by the Secretary of Revenue and Forest Department and its Desk Officer, Mantralaya, Mumbai, the Collector and Additional Collector, Nashik and the Tahasidar, Dist. Nashik. It is prayed that since the alleged disobedience of order dated 7th July, 2016 by the Respondents is willful and intentional, they should be punished under the provisions of the Contempt of Courts Act, 1971.

2 Writ petition no. 6698 of 2106 was filed by the petitioner - Ganesh Traders, through its proprietor, being aggrieved by communication dated 16.05.2016 issued by the Section Officer of the Revenue and Forest Department, Mantralaya, Mumbai, thereby rejecting the request of the petitioner for grant of extension for excavation of the sand. According to the petitioner, he was allotted the Sand Ghat at Mauje Bhagur, Taluka and Dist. Nashik in pursuance of auction for excavation of 353 brass of sand from the river bed Darana for the period till 31.09.2015. It is the case of the Petitioner before the court that he was not put in possession of the Ghat till 31.08.2015 and by that time the Ghat submerged into water and thus he was left with only the period of one month till 31.09.2015 to excavate the sand. He, therefore, made a request to the authorities for grant of extension since the period contemplated under the auction was to expire on 31.09.2015 and the time left to him was too short to excavate

the required amount of sand for which he had bidden. The Section Officer of the Revenue and Forest Department rejected the said request on 16.05.2016 by intimating the petitioner that the request cannot be granted in the light of the policy of the State Government contained in the Government Resolution dated 12.03.2013, governing the sand excavation policy in the State. Said rejection was challenged by the petitioner in the writ petition.

The said writ petition was heard by the Division Bench of this court on 7th July, 2016 and the following order came to be passed.

“PC.

Learned AGP appearing on behalf of the State, on instructions of Mr. Parhate, Desk Officer, Revenue Department, submits that State Government is ready to extend the period of excavation of sand till 31st December, 2016, without claiming any additional compensation. Statement is accepted. In view of this statement, nothing survives in the petition. Writ petition is accordingly disposed of.”

3 According to the Petitioner in spite of the said order, the sand ghat was not handed over to him though he made repeated requests to that effect, which constrained him to file present contempt petition.

We have heard Advocate Shri Warunjikar for the petitioner and AGP Shri Patel for the State. Alongwith the Contempt Petition, Civil Application No.1715/ 2017 filed by the

petitioner for grant of extension of time, permitting him to excavate the sand is also listed before us.

4 We have perused the record pertaining to the writ petition no. 6698 of 2016. We have noted that in the said writ petition after its disposal on 7th July, 2016, a civil application no. 270 of 2017 came to be filed on behalf of the State Government, for recalling of the order dated 07th July, 2016. The said relief was sought on the basis that on 07th July, 2016 Shri Parhate, Desk Officer, was present before the court alongwith the original documents. However, due to miscommunication and mis-understanding the correct factual position could not be properly conveyed to the Court which has resulted into passing of the order dated 07th July, 2016. It was contended before the court that granting of such relief in the said application by way of concession is against the policy of the State Government, relating to excavation of sand.

The Civil application was heard by the same Division Bench of this Court on 06.06.2017, which had passed the order dated 07.07.2016. The said Division Bench has disposed of the civil application by the following order :

“PC.

1. The Petitioner - State is aggrieved by an order dated 7th July, 2016 passed by this Court extending the period of excavation of sand till the end of December, 2016. The learned AGP appearing on behalf of the Petitioners submitted that the concession which was

given by the learned AGP to this Court is contrary to the policy of the State Government. He has brought to our notice policy of the State Government and the various other instances in support of the said submission.

2. Mr. Warunjikar, learned counsel appearing on behalf of the Respondent submitted that despite the order being passed by this Court, Respondent was not permitted to excavate the sand, and after he filed a contempt petition, present civil application is taken out by the State Government. The Respondent may take recourse to such remedy which is available in law.

3. We have perused the said order. The said order was passed in view of the concession made by the learned AGP, on the instructions of Mr. Parhate, Desk Officer, Revenue Department. The said period of excavation is over, and the civil application has become infructuous. It is clarified that the said order which was passed granting extension is without prejudice to the rights and contentions of the State Government and it may not be treated as a precedent. Civil application is accordingly disposed of in the aforesaid terms.”

5 The counsel for the petitioner vehemently argued that, the respondents are clearly in breach of the aforesaid orders. We have perused both the orders. The order dated 7th July, 2016 was passed on a concession given by the learned AGP, on the instructions. The Division Bench on 6th June, 2017 observed that the period of excavation is over and, therefore, the civil application has become infructuous. It was further clarified by the court that the order which was passed, granting extension, is without prejudice to the rights and

contentions of the State Government and it may not be treated as a precedent.

6 In our considered view the policy of the State Government, as contained in the government resolution dated 12.03.2013 by virtue of clause 22, clearly stipulates that the period of contract for sand excavation would be for one year and generally it would be from 1st October to 30th September and whatsoever may be the date of the auction, the period shall come to an end on 30th September. The policy stipulates that there will be no extension of the said period for the reasons like the sand found being less in quantity or non-availability of the roads and /or the presence of the water in the sand bed or any other human or unnatural calamities of whatsoever nature. The State Government has, therefore, in unequivocal terms laid down its policy in the form of government resolution, which was issued in terms of the directions issued by this court in writ petition, wherein directions were issued to frame sand policy. The said policy is, therefore, in conformity with the directions issued by this court.

Neither the Assistant Government Pleader nor any officer of the rank of the Section Officer of the State Government was authorized to give any concession which was dehors of the policy of the State Government and even after such statement being made with in inadvertence/ mis-

understanding, it would not bind the State Government. Extension of the time for excavation of sand beyond 30th September, is strictly prohibited by the State Government and any statement made contrary to the said policy, would not entail any benefits to the petitioner. This court had, therefore, clarified its earlier order dated 07th July, 2016, by observing that the order which was passed is without prejudice to the rights and contentions of the State Government.

7 In the light of the aforesaid observations we are of the opinion that there is no intentional disobedience of the order passed by this court and no case is made out for invoking the contempt jurisdiction of this court and the present contempt petition is, therefore, dismissed.

8 Civil Application No. 1715 of 2017 is also rejected in view of the fact that there is no provision for grant of extension in the light of the policy decision of the State Government in respect of the excavation of sand.

(SMT. BHARATI H. DANGRE,J.)

(NARESH H. PATIL,J.)

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