

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

WRIT PETITION NO. 4242 OF 2016

(Akash s/o Gajanan Suryavanshi vs. The State of Maharashtra thr. its Secretary, Department of Revenue & Ors.)

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

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
MRS. SWAPNA JOSHI, JJ.
FEBRUARY 06, 2017.**

Heard Shri A.A. Naik, learned counsel for the petitioner and Ms. Ritu Kaliya, learned AGP for the respondents.

2. It is not in dispute that major grievance of the petitioner can be resolved if time bound consideration of the proposal dated 16.11.2016 (Annexure – R-III) with reply affidavit is ordered. That proposal is submitted by the Collector, Buldhana to the State Government.

3. The income-tax amount deducted and paid out of said amount is for and on account of present petitioner. Same can be said about the deduction under MVAT. Hence, if these amounts are already credited to the account of the petitioner by the respondent – State, the competent authority shall issue necessary TDS certificate to the petitioner so as to enable him to either appropriate it on some other account or then to claim refund. However, if the amount is still not credited by the State, State shall

without crediting it, arrange to return to the petitioner.

4. The respondents have agreed to process refund for Sand Ghat at Linga Deokhed 'A' and Deokhed Kingaonjattu. They have mentioned that no excavation could take place from those Sand ghats. As far as Sand Ghat at Linga Deokhed 'A' is concerned, out of total sand quantity of 7420 Brass available for excavation, proposal shows that 6100 brass is already excavated. The Collector, Buldhana, therefore, has observed that the petitioner is not entitled to claim any refund from that Sand Ghat.

5. The petitioner claims that official records support excavation of only 4800 brass from Linga Deokhed 'B' Sand Ghat and as per policy, State Government can permit proportionate refund even in relation to it also.

6. Shri Naik, learned counsel submits that the quantity of 6100 brass has been worked out behind the back of the petitioner.

7. In this situation, we find that the interest of justice can be met with by directing the respondents to extend to the petitioner an opportunity of hearing to find out the volume of sand excavated by him at Linga Deokhed 'B' Sand Ghat. The petitioner shall remain present before Respondent No. 2 – Collector with necessary records for this purpose on 23.02.2017 and shall abide by his further instructions in the matter. The authorities shall verify the

records of the petitioner, its own records and then quantify the volume excavated. If as per the policy of the State Government, refund is contemplated, the modified proposal in relation to Linga Deokhed 'B' sand ghat shall be submitted to Respondent No. 1 within a period of next three weeks.

8. Respondent No. 1 shall then process it as per law and if it finds any amount refundable, shall arrange to refund the said amount to the petitioner within next eight weeks.

9. Insofar as other two Sand ghats are concerned, the proposal of Respondent No. 2 at Annexure – R-III shall be processed by respondent No. 1 within next eight weeks from the date of communication of this order to it and amount found refundable shall be made over to the petitioner in terms of this order.

10. The acceptance of amount by the petitioner shall not preclude him from challenging the correctness of the exercise undertaken.

11. Accordingly, writ petition is partly allowed and disposed of. However, there shall be no order as to costs.

JUDGE

JUDGE

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