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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

PUBLIC INTEREST LITIGATION NO.76 OF 2017

Ganesh s/o Baloji Hatnure,
Age: 41 years, Occu: Agriculture,
R/o. Rajapur, Post Karkheli,
Tq. Dharmabad, District Nanded

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Principal Secretary for
Revenue and Forest Department,
Mantralaya, Mumbai
2. The Divisional Commissioner,
Aurangabad Division,
Aurangabad
3. The Collector, Nanded,
District Nanded
4. The Sub Divisional Officer,
Dharmabad, Tq. Dharmabad,
District Nanded
5. The Tahsildar,
Dharmabad, Tq. Dharmabad,
District Nanded
6. Noosrat Constructions,
At Karkheli, Tq. Dharmabad,
District Nanded
Through its proprietor,
M. Maijoddin M. Salimoddin,
Age: 45 years, Occu: Business,
R/o. Karkheli, Tq. Dharmabad,
District Nanded

..RESPONDENTS

Mr V. D. Hon, Senior Advocate i/b Mr A. V. Hon, Advocate for petitioner;
Mr A. R. Kale, A.G.P. for respondents Nos.1 to 5;
Mr K. M. Nagarkar, Advocate for respondent No.6

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**CORAM : PRASANNA B. VARALE
AND
MANISH PITALE, JJ.**

DATE : 28th September, 2018

ORAL ORDER:

Heard Mr Hon learned Senior Counsel appearing on behalf of the petitioner.

2. The petitioner is before this Court in the present public interest litigation with a grievance which is reflected in the order passed by the Division Bench of this Court on 21st August, 2017, which reads thus:

“.... 5. The allegation of the petitioner is that the respondent no.6 is carrying out excavation of mines and minerals from land Gut No.388 at village Yewati Tq. Dharmabad Dist. Nanded and operating a Stone Crusher at village Junni Tq. Dharmabad Dist. Nanded in Gut No.250. According to the petitioner, these lands are the Government lands and the unauthorized excavation and operation of the Stone Crusher, though reported to the respondent nos.3, 4 and 5 from time to time, no steps for stopping of the illegal excavation and operating of the Stone Crusher are taken by these respondents.....”

3. Taking cognizance of the grievance, the Division Bench of this Court directed learned Asstt. Govt. Pleader to immediately inform the concerned

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officers to stop the illegal excavation and operation of the Stone Crusher, if any, and submit a report within stipulated period.

4. The affidavit-in-reply is filed in this Court on behalf of respondent No.2 i.e. the Deputy Commissioner (Revenue), Aurangabad. The Deputy Commissioner states in para 5 of the said reply that the Additional Divisional Commissioner, Aurangabad has made an inquiry and after hearing concerned parties including complainant, respondent No.6 and the concerned Collector has submitted a report to respondent No.2 on 26th June, 2016. In the inquiry, the report submitted by the Collector has been upheld, wherein the Collector has imposed penalty of Rs.8,23,532/-. The respondent No.6 has preferred an appeal and the same is pending. The copy of the report dated 26th October, 2017 and the report of the Collector, dated 22nd June, 2016 are also placed on record along with the affidavit-in-reply.

5. The report of the Collector, Nanded submitted to the Deputy Commissioner, dated 22nd June, 2016 shows that the penalty was imposed for excavation of sand and the issue for renewal of licence to the stone crusher was also considered. Insofar as a spot, namely, Gut No.34, situated at village Hasnali, Tq. Dharmabad is concerned, the permission for renewal was granted, whereas insofar other spot is concerned, no report was received, as such, no licence was granted for excavation of minerals. The report deals with various spots receiving the report from the lower

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authorities and the action taken by the competent authority, such as, imposing penalties. The report of the Additional Divisional Commissioner, Aurangabad, dated 26th October, 2017 shows that the Divisional Commissioner was concurring with the report of the Collector and further it is stated that one of the construction companies, namely, Nusrat Constructions was subjected to imposition of penalty and it was also directed by the authorities that if the said company fails to pay the amount of penalty, the said amount would be treated as a charge over the landed property of the company. Then a statement is made in the affidavit-in-reply of respondent No.2 and it reads that respondent Nos.3 and 4 have already submitted affidavit stating that no illegal excavation is going on as on today.

6. Mr Hon, learned Senior Counsel for the petitioner was before this Court with a prayer clause (C), which reads thus:

“Issue writ of mandamus or writ in the nature of mandamus to the respondent Nos.1 to 5 to forthwith take necessary action for recovery of entire amount of illegal excavation of mines and minerals carried out by respondent No.6 since 1990 onwards from the Government Gairan land Gat No.388 situated at village Yewati, Tq. Dharmabad, District Nanded and illegally operating the stone crusher at village Junni, Tq. Dharmabad, District Nanded in Gat No.250 and also to take necessary legal action including filing of criminal prosecution for committing illegal acts”.

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7. The petition is filed on 7th June, 2017. The prayer (C), wherein he is seeking direction from this Court to respondent Nos.1 to 5 for recovery of certain amount and it is submitted by the petitioner that this illegal excavation was going on from 1990. Now, there is no reason in the petition that if such illegal activities are going on from 1990, what prevented the petitioner to approach this Court as early as possible and why he was awaiting for approaching this Court till 2017. Secondly, Mr Hon submits that the State Government be directed to impose penalty on respondent No.6 for illegal excavation from the year 1990 till date. Issuing directions only on assumptions and allegations of the petitioner would be a guess work. There would be no basis for us to undertake such exercise of guess work and then directing the respondents to impose the amount of penalty on respondent No.6 for unknown quantity allegedly excavated from this spot. We are not inclined to accept this submission of learned Counsel for the petitioner.

8. We direct the authority like the Divisional Commissioner and the Additional Divisional Commissioner as well as the Deputy Commissioner, who was before us by filing affidavit-in-reply, to ensure that they should abide by the statement made before this Court in the affidavit-in-reply dated 27th February, 2018, particularly in paragraph 6 of the said reply. If such compliance is observed by the authorities in view of the statement made before this Court, the grievance raised by the petitioner stands redressed.

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9. Considering all above referred facts, we are of the opinion that there is no need to keep the present public interest litigation pending in this Court. In view of the affidavit filed and referred to by us and the statement made before this Court, the present public interest litigation, as such, is disposed of accordingly.

(MANISH PITALE, J.)

(PRASANNA B. VARALE, J.)

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