

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

WRIT PETITION NO. 10151 OF 2017

Madhav Vitthal Shere & Ors.

... Petitioners

VERSUS

The State of Maharashtra & Ors.

... Respondents

.....
Mr S. P. Brahme, Advocate a/w & Mr A. R. Syed, Advocate for the
petitioners

Mr S. G. Karlekar, AGP for respondent/State

.....

WITH
WRIT PETITION NO. 10612 OF 2017
WRIT PETITION NO. 10693 OF 2017

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE : 08TH JANUARY, 2018.

ORDER:

1. Mr Brahme, learned counsel for the petitioners submits that, the application was made for excavation of the sand from the land owned by the petitioners. Due to accumulation of the sand, the petitioners were not in a position to perform the agricultural operations. It is a policy of the respondent/State to permit the owners of the land to excavate the sand from their land. The only reason for rejection of the application is the difference of opinion

amongst the Senior Geologist and the Agricultural Officer about the quantity of the accumulation of sand. The Id. advocate submits that, the petitioners are ready to excavate the minimum sand as per the report.

2. Mr Karlekar, learned AGP submits that, the land of the petitioners is now forming part of the river belt. The proposal is submitted to the Government for acquisition of the petitioners land. It would not be advisable to allow excavation of the sand from the river bed. Even the reports given by the Agricultural Officer and the Senior Geologist are different. Minimum 2 mtr depth has to be maintained.

3. We have considered the submissions canvassed by the learned counsel for the respective parties. It appears that, there is a difference in opinion about depth of sand available between Senior Geologist and Agricultural Officer. According to the report of Sr. Geologist, the depth of the sand is less than as reported by the Agricultural Officer.

4. The order impugned in the petitioner does not refer to the fact that the land of the petitioner is a part of river bed.

5. Be that as it may, in case the respondents are intending to acquire the land, there is no impediment to the respondent to initiate acquisition proceedings of the writ land. However, till that time, the petitioners cannot be prevented to excavate the sand when the policy permits. The petitioners can be allowed to excavate the minimum sand as suggested by the report.

6. In light of the above, the impugned orders are quashed and set aside. The Collector, Nanded shall decide the said applications of the petitioners for excavation of the sand and if there is no any other impediment, the respondents shall allow the petitioners to excavate the minimum sand as per the report received by it. The applications of the petitioners shall be decided on the basis of the report expeditiously and under any circumstances within a period of 4 weeks from today.

7. The writ petition stands disposed of. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

sgp