

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7936 OF 2017

Baban Vilas Jadhav .. Petitioner
Versus
State of Maharashtra & ors .. Respondents

...

Mr.Surel S. Shah with Mr.Hafeezur Rahman for the petitioner.
Mr.B.V. Samant, AGP for the State.

**CORAM: S.C. DHARMADHIKARI &
SMT.BHARATI H.DANGRE,JJ.**

DATED : 5th JANUARY, 2018

P.C :-

1 By this petition under Article 226 of the Constitution of India, the petitioner seeks the following reliefs.

- (a) That this Honourable Court be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or direction thereby directing the Respondents to forthwith release the amount of royalty of Rs.33,00,000/- deposited by the Petitioner for the purposes of excavation of sand from the sand pit situated at Mauje Rethare, Budruk, Plot No.1, Taluka Karad, District

Satara, on such terms and conditions as this Honourable Court may deem fit and proper along with interest as applicable;

- (b) That this Honourable Court also be pleased to issue a Writ of certiorari or any other appropriate Writ, Order or direction thereby calling for the records and proceedings from the office of the Respondent No.1 in respect of an Application made by the Petitioner on the third day of May, 2012, and after examining the same be pleased to quash and set aside the Order passed by the Minister for revenue, Respondent No.1 dated 24th May, 2016, and after quashing the same be pleased to direct the Respondents to forthwith release the amount of royalty deposited by the Petitioner with the Treasury Office at Karad for excavation of sand from the sand pit, situated at Mauje Rethare, Budruk, Plot No.1, Taluka Karad, District Satara, on such terms and conditions as this Honourable Court may deem fit and proper alongwith interest as applicable.

2 It is stated that the petitioner participated in the tender process and was selected as a successful bidder for extraction/excavation of sands for the sand pit at Post Rethare Budruk, Taluka Karad, District Satara. Accordingly, the petitioner deposited a sum of Rs.33,00,000/- with the second respondent. Then, it is claimed that the villagers objected to the excavation of sand from the sand pit, on account of such objection, the petitioner could not carry out and complete the contracted work. Though the petitioner was handed over the sand pit, the work could not be carried out by him and the petitioner relies upon a communication dated 2nd May 2012 issued by the third respondent in this petition, namely, the Sarpanch of the Gram Panchayat. He informed that there was an obstruction and that is how the Tahsildar took cognizance of the grievance of the party like the petitioner. From all this, the petitioner wants us to believe that he was not responsible for the contract work not being carried out and within the stipulated time. He says that the contract work could not commence at all on account of the above situation, which was beyond his control.

3 A representation was made by him to the Collector of the District requesting return of the security deposit/royalty amount. A report was sought on such a representation by the State from the Collector. It is then stated that in this report, it was set out as to how there was no excavation from the sand pit, and the same was on account of the obstruction by the villagers. The report being on record and the recommendation of the Sub-Divisional Officer, it is clear that the excavation was prevented not on account of any act attributable to the petitioner, but to the villagers.

4 Despite all this, the Collector informed the State that the royalty amount cannot be returned. A copy of the report of the Collector is marked as Annexure "L" to this petition. We have carefully perused that document. Firstly, the Collector says that as far as the return of royalty amount is concerned, that cannot be returned after so many years of its deposit. The reason now placed before the authority does not appear to be the accurate or correct one in the sense the

application for return of royalty amount says that there is inadequate quantity of sand available for excavation. This is contrary to what the petitioner has been projecting throughout. Then, reliance was placed on the resolution of the Gram Sabha dated 1st May 2012 how there is no complaint made to the Collector's office by the petitioner. Secondly, on account of lapse of time, it is not possible to take cognizance of the petitioner's request.

5 Reliance was also placed by the Collector on the Government Resolution dated 25th October 2010. Then, clause C (15) of the Contract was also relied upon. It is in these circumstances, the State was requested to pass appropriate orders. The State has considered this report and eventually through the Finance Department, taken a decision that there has been no compliance with the requisite terms and conditions by the Petitioner. Secondly, the particulars of the sand excavation or non-excavation for the concerned period, have not been forwarded. The documents, in that behalf, would indicate that the petitioner was throughout

unwilling to carry out this contracted work. The document at page 18 would show that it alleges that the Petitioner did not keep the machinery ready at site and thus made no preparation at all. It is in these circumstances that the Finance Department recommended that no amount is due and payable to the petitioner. It is in these circumstances that we are also unable to agree with the petitioner's counsel that in writ jurisdiction we should issue necessary orders and directions.

6 There is a clear dispute between the State on one hand and the petitioner on the other. In paragraph no.12 of the petition, the petitioner has specifically said that there is no substance in the objections or opinion of the Finance Department, and therefore, the stand of the State Government is unsustainable.

7 After hearing the Mr.Surel Shah at length, we are unable to accept his arguments that the undisputed position allows this Court to issue the necessary directions or grant

reliefs in terms of the above prayer. These are disputed questions of fact. Firstly, whether the petitioner was prevented or obstructed by the villagers from carrying out the work, and secondly, assuming without admitting that there was any obstruction or impediment, as stated by the petitioner that is the real position at site. Further, as alleged, whether the petitioner was throughout unwilling to carry out the contracted work or avoided doing it, are all disputed matters. The dispute is essentially arising out of a contract with the State Government for excavation of sand.

8 Reliance is placed by the State on the clauses of the contract and the terms that bind the petitioner on one hand, and on the other, the petitioner has relied on the report of Circle Inspector. These issues as raised cannot be resolved in our limited jurisdiction.

9 The position was otherwise as there was no factual dispute in the matters in which the orders were passed in writ jurisdiction by this court and emphatically relied upon.

We are therefore, of the opinion that the said orders are distinguishable on facts. In writ jurisdiction, we cannot grant refund of money or deposit made in connection with the contract with the State Government. There are ample remedies available to the petitioner and he can resort to them.

10 Keeping them open and holding that in our limited jurisdiction, we cannot decide factual matters of the above nature, we dispose of this petition.

(SMT.BHARATI H. DANGRE,J)

(S.C.DHARMADHIKARI)