

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

WRIT PETITION NO.10852 OF 2019

Vishal D. Sankhe ... Petitioner

V/s.

The Collector, Palghar and ors.... Respondents

Mr.Suresh M. Sabrad with Mr.Amey C. Sawant for the
Petitioner.

Mr.S.L. Babar, AGP for the Respondents-State.

**CORAM : UJJAL BHUYAN, J.
DATE : OCTOBER 17, 2019.**

P.C.:-

1. Heard Mr.Suresh M. Sabrad, learned counsel for the petitioner and Mr.S.L. Babar, learned AGP, Maharashtra for the respondents.

2. Considering the limited grievance expressed by the petitioner, court is of the view that issuance of formal notice is not necessary, as the case can be disposed of at this stage of the proceeding itself.

3. Respondent No.1 issued order dated 10th February, 2016 permitting petitioner to de-silt 10,000 brass of sludge (silt) from the area in question for a period of one year from 10th February, 2016 to 9th February, 2017 on depositing an amount of Rs.40,95,700/-.

4. It is submitted that petitioner had deposited the said amount, but during the period in question there was hardly any sludge for desiltation by the petitioner. Whatever was there, was desilted by the petitioner. Thereafter, petitioner approached respondent No.1 for refund of an amount of Rs.31,05,600/-, as the said amount was quantified to be the balance of the amount already deposited by the petitioner liable to be refunded.

5. Respondent No.1 forwarded report to the State Government alongwith the recommendation for refund of the amount claimed by the petitioner, since the balance quantity of sludge was not available to the petitioner for desiltation. State Government informed respondent No.1 vide letter dated 8th December, 2017

that the claim of the petitioner should not be entertained, as the amount could not be refunded.

6. Following such decision of the State Government, claim of the petitioner was rejected by respondent No.1 vide order dated 8th January, 2018.

7. It is submitted by learned counsel for the petitioner that acting on wrong advice petitioner filed the revision application before the Additional Commissioner of Konkan Division in December, 2018 alongwith an application for condonation of delay. However, Additional Commissioner rejected the application for condonation of delay vide order dated 6th May, 2019 and thereby, the review petition.

8. Against such decision, petitioner filed review application before the State Government. Taking a technical view, State Government passed order dated 19th September, 2019 rejecting the application filed by the petitioner. View taken by the State Government was

that instead of filing revision before the Additional Commissioner, petitioner ought to have filed review petition before the State Government.

9. Learned counsel for the petitioner submits that instead of dismissing the review application by the petitioner No.1 on such a technical ground State Government could have converted the said revision application as an application for reviewing its own decision dated 8th December, 2017. Learned counsel for the petitioner further submits that notwithstanding the above, petitioner may be given liberty to file a review petition before the State in which event State Government may be directed to hear the review petition on merit.

10. Having regard to the above and taking an overall view of the matter, court is of the view that it would in the interest of justice if petitioner is given liberty to file a review petition before respondent No.6 for review of the decision dated 8th December, 2017. If such a review

petition is filed within a period of 30 days from today, respondent No.6 shall consider the same on its own merit and take an appropriate decision one way or the other in accordance with law within a period of four months from the date of filing of the review petition after giving an opportunity of hearing to the parties.

11. With the above, Writ Petition is disposed of.

(UJJAL BHUYAN, J.)

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