

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

**WRIT PETITION NO. 9442 OF 2018**

Shankar Ramdas Chaudhari  
Proprietor of Radhe Radhe Building  
Materials Suppliers,  
Age: Major, Occu.: Business,  
R/o At Post Uttran, Tq. Erandal, Dist. Jalgaon ..PETITIONER

VERSUS

1. State of Maharashtra  
Through its Secretary,  
Forest and Revenue Department,  
Mantralaya, Mumbai-32
2. Divisional Commissioner,  
Nashik, Dist. Nashik
3. The Collector  
Jalgaon, Dist. Jalgaon
4. The Sub-Divisional Officer,  
Amalner, Dist. Jalgaon
5. Tahsildar,  
Tahsil Office, Amalner ..RESPONDENTS

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Mr. R.F. Totala, Advocate h/f Mr. R.A. Karwa, Advocate for petitioner  
Mr. A.S. Shinde, A.G.P. for respondent – State

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**CORAM : R.G. AVACHAT, J.**  
**RESERVED ON : 17<sup>th</sup> OCTOBER, 2020**  
**PRONOUNCED ON : 21<sup>st</sup> FEBRUARY, 2020**

**JUDGMENT :**

Rule. Rule made returnable forthwith. With consent of learned  
Counsel for the parties, heard finally. Perused record and proceedings.

2. The challenge in this writ petition is to order dated 26<sup>th</sup> May, 2016 passed by the Collector, Jalgaon and confirmed by the Divisional Commissioner, Nashik vide order dated 22<sup>nd</sup> May, 2018. By the impugned orders, application of the petitioner for refund of security deposit amount and bank guarantee with accrued interest thereon has been turned down.

3. The facts, in brief, necessary to decide this petition are as follows :-

Petitioner is the proprietor of 'Radhe Radhe Building Material Suppliers'. He specifically deals in excavation, transportation and sale of sand. Auction of sand spots in the district of Jalgaon took place in the year 2015. It was an e-auction process. The petitioner, being highest bidder, had been granted a Sand Spot (Gut) No.16 situated at village Nalkheda, Tq. Amalner, Dist. Jalgaon. The said sand spot was in the riverbed of river Tapi. As such, vide order dated 05<sup>th</sup> March, 2015, the petitioner was authorized to excavate, transport and sell sand from the said sand spot. The permission was for the period from 05<sup>th</sup> March, 2015 to 30<sup>th</sup> September, 2015 or up to excavation of sand of 8481 brass, whichever is earlier. In short, after excavation of sand of 8481 brass or on 01<sup>st</sup> October, 2015, whichever is earlier, the petitioner was to hand over possession of the sand spot back to the State.

4. The petitioner deposited sum of Rs.85,01,111/- towards contract price, besides sum of Rs.16,96,200/- towards security deposit and furnished

bank guarantee of Rs.2,00,000/-. After the contract period was over, the petitioner on 15<sup>th</sup> October, 2015 applied to the Additional Collector, Jalgaon for refund of the security deposit and bank guarantee. The Collector, Jalgaon, by order dated 23<sup>rd</sup> November, 2015 forfeited the security amount and bank guarantee on the ground that the petitioner has committed breach of conditions/term nos. 5, 9, 28, 29, 38 and 41 and also condition/term no. 4 in clause 'kh' of environmental conditions contained in order dated 05<sup>th</sup> March, 2015.

5. The petitioner had challenged the order of Collector, Jalgaon dated 23<sup>rd</sup> November, 2015 by filing Writ Petition No. 592 of 2016. The petition was allowed with a direction to supply a copy of report of Sub-Divisional Officer, Amalner to the petitioner and decide the petitioner's application for refund of security deposit afresh after giving him an opportunity of hearing. The petitioner thereafter filed his written explanation before the Collector, Jalgaon. It appears that after having given the petitioner an opportunity of hearing, the Collector, Jalgaon by order dated 26<sup>th</sup> May, 2016 forfeited the security deposit alongwith bank guarantee. The petitioner challenged the said order by filing Writ Petition No. 8156 of 2016. Since there was alternative remedy available for the petitioner, said writ petition was disposed of by order dated 26<sup>th</sup> February, 2018 with a liberty to avail remedy of appeal. The petitioner, thereafter preferred the appeal/revision before the Additional Commissioner (Revenue), Nashik Division. The Additional Commissioner was pleased to

confirm the order of Collector, Jalgaon dated 26<sup>th</sup> May, 2016. This is how the petitioner is before this Court.

6. Mr. R.F. Totala, learned Counsel for the petitioner would submit that State of Maharashtra, vide Government Resolution dated 12<sup>th</sup> March, 2013, has issued guidelines to deal with the complaint as regards excavation of sand, stones, etc. A committee headed by the Collector, has been constituted to deal with such complaints. The guidelines have not been complied with. The petitioner had never been informed of the alleged breach of conditions of the order granting him permission to excavate sand. During the contract period no action has been taken against the petitioner. The report submitted by Sub-Divisional Officer, Amalner dated 13<sup>th</sup> May, 2015 was wrong and illegal. Respondent No.5–Tahsildar did not produce any evidence before the Collector in proof of breach of the condition. The petitioner, in fact, could not excavate the sand up to the permissible limits as due to heavy rains there was water in the river. The petitioner has, therefore, approached the Collector, Jalgaon asking for extension of contract period. In view of learned Counsel, for all these reasons, the orders impugned in this writ petition are liable to be set aside with a direction to return the security deposit amount alongwith bank guarantee.

7. Learned A.G.P. produced on record the record and proceedings of the matter before the Tahsildar. He would submit that the revenue authorities

had no reason to make false report against the petitioner. There are no allegations of malafides or bias. Learned A.G.P. supported the impugned orders.

8. Admittedly, the petitioner, being the highest bidder, was granted permission to excavate 8481 brass of sand from Sand Spot (Gut) No.16. The permission was valid up to 30<sup>th</sup> September, 2015. The petitioner deposited/paid the bid amount of Rs.85,01,111/- plus 1/4<sup>th</sup> thereof as security deposit and furnished bank guarantee of Rs.2,00,000/-. The permission to excavate the sand was granted with not less than fifty conditions.

9. Pursuant to the orders passed by Division Bench of this Court in Writ Petition No. 4830 of 2010, Government of Maharashtra issued Government Resolution dated 10<sup>th</sup> March, 2013 spelling out therein its policy as regards excavation of minerals like sand, stones, etc. Clause 16 of the said government resolution would indicate that the complaints are received from public in general as regards breach of conditions of grant of excavation of sand, damage to roads and river side agricultural fields. If such complaint is received from any person, the same was to be dealt with by six member committee headed by the Collector or Additional Collector. The complainant, if felt aggrieved by the decision of the committee, has been given remedy of an appeal to the Divisional Commissioner.

10. Learned Counsel for the petitioner would submit that the Sub-Divisional Officer's report dated 13<sup>th</sup> May, 2015 states that complaints were received from the Representatives of People. No such complaint has ever been referred to the district level committee. In short, according to learned Counsel the revenue authorities in their individual capacity did not have any right to investigate into any complaint and make a report.

11. True, no proceeding before the district level committee has ever been held. It is however to be noted that the revenue officers have authority to check/control unauthorise or illegal excavation of sand. Clause 14 of the said government resolution states that revenue authorities, within whose jurisdiction the cases of unauthorized excavation of minerals would be found, shall be responsible thereto and would be liable to be dealt with for disciplinary action. Sub-clause(B) of Clause 14 of the government resolution authorises the Collector to constitute or form tahsil/taluka level flying squads to check and control unauthorised excavation of minerals.

12. Sub-Divisional Officer's report dated 13<sup>th</sup> May, 2015 makes reference to not less than five communications. This report refers to the communications made by Tahsildar, Amalner on 27<sup>th</sup> April, 2015 and 07<sup>th</sup> May, 2015. There is a letter dated 19<sup>th</sup> March, 2015 of Tahsildar on record addressed to the Circle Officer, Patonda. It was with reference to the District Collector's order dated 05<sup>th</sup> March, 2015 granting the petitioner permission of

excavation of sand. Tahsildar directed Circle Officer to check whether the petitioner has been observing the terms and conditions of the order granting him permission for excavation of sand. It is in pursuance of this communication, the Circle Officer had paid visit to the said sand spot and found breach of some of the conditions. The Circle Officer, in turn, gave his report (Page No.381 of record and proceedings) to Tahsildar informing that the petitioner had been making use of machinery like suction pump for excavation of sand. The report further states that penal action had been taken against some of the transporters. Vehicles transporting sand have been checked. The report further states that the petitioner did not register three cell phone numbers in accordance with condition/term no.28. No SMS has been forwarded by the petitioner indicating compliance of condition/term no.29.

13. Sub-Divisional Officer's report further indicate that sand spot was visited by the Circle Officer and senior Geologist together on 10<sup>th</sup> April, 2015. The petitioner was asked to remain present during the said visit. The visit was aimed at finding how much quantity of sand had been excavated.

14. The letter dated 07<sup>th</sup> April, 2015 was issued by Tahasildar to the petitioner informing to have not submitted CCTV footage and monthly statement regarding quantity of sand excavated. The Circle Officer's report was accompanied by his panchanama. Same was placed before the Collector.

As such, the Collector has passed impugned order on the basis of factual report submitted by his subordinates. The report submitted by the Circle Officer cannot be doubted since no case of bias or malafides is attributed to his report.

15. Conditions/terms breached by the petitioner are as follows :-

(5) A permission of the competent authority has to be obtained for making use of machinery for excavation of sand.

(28) The petitioner was expected to give three cell phone numbers for smooth implementation of Sand Mining Approval and Tracking System (SMATS).

(29) The petitioner was to forward SMS giving details as to quantity of sand loaded in the transport vehicle, vehicle number, sand spot number, destination of the vehicle, etc.

(38) The sand loaded in the transport vehicle has to be covered with a plastic sheet/tarpaulin.

(41) Use of suction pump for excavation of sand is prohibited. In exceptional cases permission to use such pump may be granted by state government after considering the report from the department of Ground Water Survey.

16 Clause (kh) pertains to the conditions regarding ecology and environment. Although there is no material to indicate breach of condition/term nos. 9 and (kh) (4) of the order dated 05<sup>th</sup> March, 2015 granting the petitioner permission to excavate sand, the report of the Circle Officer undoubtedly makes out a breach of other conditions noted above. On receipt of reports from Circle Officer and Tahsildar, Sub-Divisional Officer put

up a note before the Additional Collector on 13<sup>th</sup> May, 2015 indicating breach of some more conditions/terms.

17. Admittedly, CCTV cameras had been installed at the sand spot. The CCTV footage had not been submitted by the petitioner. It was the petitioner, who was in control of the operation of CCTV at the spot. Close reading of record and proceedings would indicate that on receipt of report of the Circle Officer, Tahsildar forwarded his report to the Sub-Divisional Officer, who in turn forwarded the same in his own words to the Collector. Pursuant to the report of Sub-Divisional Officer, the amount in security deposit has been forfeited. It is reiterated that the petitioner has not come with a case of malafides or bias. The documents in the nature of reports came into being in discharge of the official duties. Reading of record and proceedings would indicate that the reports were immediately placed before the Additional Collector with a recommendation for taking appropriate action against the petitioner.

18. The petitioner was not authorised to excavate the sand post contract period. The report indicates that on the next day of the contract period was over, the petitioner excavated sand. It was his defence that SMS in that regard were forwarded by State. He had, therefore urged for not taking any penal action against him in this regard. True, this aspect may not have a

bearing as to issue involved in this writ petition. The fact however remains that the petitioner excavated the sand even after the contract period was over.

19. As per the terms and conditions of order dated 05<sup>th</sup> March, 2015, security deposit and bank guarantee are liable to be forfeited partly or in entirety in case of breach of any of the conditions of the order. The field officers found the petitioner to have committed breach of some of the terms and conditions of the order granting him permission to excavate the sand. The Collector, Jalgaon was justified in passing the impugned order. No interference, therefore, is called for. Writ petition fails. Same is therefore dismissed. Rule is discharged.

( R.G. AVACHAT, J. )

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