

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

WRIT PETITION NO.7731 OF 2009

Namdeo s/o Ramdas Ghogre,
Age : 35 years, Occu : Business,
R/o. Mahankal Wadgaon,
Tal. Shrirampur, District – Ahmednagar.

.. Petitioner

Versus

1. The District Collector,
Ahmednagar, District Ahmednagar

2. The Tahasildar, Shrirampur,
Tal. Shrirampur, Dist. Ahmednagar

.. Respondents

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Advocate for petitioner : Shri R.R. Karpe
AGP for respondents no.1 & 2 : Shri A.V. Deshmukh

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**CORAM : SUNIL P. DESHMUKH &
B. U. DEBADWAR, JJ.**

Date : 11-02-2020

ORAL JUDGMENT (Per : SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard learned counsel for appearing parties finally, by consent.

2. By this writ petition, the petitioner seeks writ of mandamus to respondents to decide the representations made by him for extension of time for excavation of unlifted sand or to provide alternate sand spot or at least to refund the amount towards unlifted sand i.e. 4340 brass along with interest @ 18%,

as the actual possession of the sand spot was handed over to the petitioner on 07.05.2009 i.e. almost after lapse of two months from the date of holding of auction and the outer limit for excavation of sand was 31.07.2009. It is being claimed that due to delay in handing over the possession, sand, to the extent of agreed volume could not be excavated.

3. It is pertinent to note that, the parties are *ad idem* that 3610 brass sand out of agreed 7950 brass sand had been excavated by the petitioner by 31st July, 2009. Possession of said sand spot was handed over to petitioner and accordingly *tabe pavati* (possession receipt) was executed by the petitioner on 7th May, 2009. A communication dated 31st July, 2009 issued by the petitioner to tahsildar, Shrirampur, Exhibit.'F' (Page 45) annexed to the petition, shows that, possession of sand spot, books and receipts had been returned by the petitioner to said authorities, referring to that possession of the sand spot had been taken on 07-05-2009 and returned on 31-07-2009. Subsequently, about a month after, a letter had been written by the petitioner to the collector purportingly referring to loss been caused due to possession being handed over on 07-05-2009 and not immediately after auction in March - 2009. Thereafter, several such communications were issued. According to the petitioner, those were not being responded to.

4. Reply to the writ petition on behalf of the State refers to that possession of sand spot was handed over to the petitioner in May - 2009 after the election code of conduct had been over. It has further been referred to that, particularly in paragraph no.2, the petitioner had taken possession of sand spot on 07-05-2009 without any complaint or demur. In reply, it is stated by the State authorities that, the petitioner has excavated sand more than the quantity that was sanctioned to him.

5. The auction was governed by as many as 33 conditions. In paragraph-7 of the affidavit-in-reply various receipts from receipt books and transport pass books have been referred to claiming irregularity committed by the petitioner in the work of excavation. It has further been referred to that as a matter of fact, penalty has been levied on the petitioner for illegal excavation and transport of sand, to the tune of Rs.2,97,705/-. It is contended that, the demand under the letters as well as in writ petition is not legitimate.

6. From aforesaid, it emerges that, while possession is stated to have been belatedly handed over in May, 2009, not even half of the quantity of sand could be excavated during the long span of three months. Coupled with this, it is not the case of the petitioner that, due to delay in delivering sand spot,

corresponding increase in duration for excavation of sand had ever been sought at any time before 31-07-2009. Curiously, quite some time thereafter, such a claim is being raised only after handing over back the sand spot on 31-07-2009. It would have to be noted that, possession of sand spot had been accepted by the petitioner without any demur or protest / objection. Besides, there appears to be certain irregularities imputed in conduct of excavation. While various irregularities and illegalities being imputed and penalty being levied for excavation of more sand than agreed, it would not be said that, claims being made under the writ petition are legitimate. There is no plausible explanation coming forth with respect to the same. The petition appears to raise several disputed questions of facts. Further, with the passage of time, request for extension of time for excavation is difficult to be considered.

7. As such, at this point of time, we are not inclined to entertain the writ petition. Writ Petition is, therefore, disposed of with no order as to costs.

(**B. U. DEBADWAR, J.)**

(**SUNIL P. DESHMUKH, J.)**

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