

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO. 12039 OF 2017

SAMBHAJI DASHRATH PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for Petitioner : Mr. Amit S. Savale
AGP for Respondents : Mr. A.B. Chate
.....

CORAM : V. K. JADHAV, J.
DATED : 13th MARCH, 2020

ORDER :-

1. By consent of the parties, heard finally at admission stage.
2. The petitioner, by way of the present writ petition, is challenging the legality and correctness of the order dated 31.7.2017 passed by the Additional Commissioner, Nashik in R.T.S. Revision Application No. 19 of 2015. The petitioner came to be prosecuted under section 48 of the Maharashtra Land Revenue Code, 1966 and a fine of Rs.14,90,425/- has been imposed on the petitioner for making storage of sand illegally.
3. Learned counsel for the petitioner submits that the first *panchanama* was drawn on 19.12.2012 wherein, initially, quantity of sand was mentioned as 45 brass, however, that is found to be encircled and changed as 120 brass. There is no explanation for such a change. Learned counsel submits that second *panchanama* was drawn on 22.2.2013 wherein, without any base, the said quantity of sand was increased from 120 brass to 240 brass. Learned

counsel submits that the concerned Talathi of Mauje Taloda, Tq. Taloda has submitted his report before the Tahsildar contending therein that the Assistant Collector had visited the spot and directed him to draw *panchanama* again in respect of the said quantity of 120 brass of sand. Learned counsel submits that since the Assistant Collector directed the Talathi to that effect, in turn the concerned Talathi has drawn *panchanama* by increasing the quantity of sand from 120 brass to 240 brass. Learned counsel submits that there is no basis for increasing the said quantity of sand and it appears that the same has been done by the Talathi by misinterpreting the directions given by the Assistant Collector. The learned counsel submits that the petitioner was to construct a drainage line in Bandri Colony at Taloda and in view of the same, keeping the stock of sand to the extent of 240 brass is unwanted and uncalled for. Learned counsel submits that even the State authorities in para 5 of the additional affidavit-in-reply dated 16.4.2018 filed by the Tahsildar, Taloda, District Nandurbar, it has been specifically admitted that the authorities have not done any measurement, however, on the basis of *panchanama*, the quantity of illegal stock of sand of 240 brass was mentioned. It has been made clear that technical measurement report was not available with the respondent authorities. Learned counsel submits that even then, imposing of fine in *lakhs* of rupees by considering the quantity of sand to 240 brass with market rate at Rs.2000/- per brass in addition to the penalty three times is improper, incorrect and illegal. Learned counsel for the petitioner, on

instructions, in the alternate submits that the petitioner would be liable to pay an amount by considering the quantity of sand as mentioned in the first *panchanama* i.e. to the extent of 45 brass.

Learned counsel for the petitioner, in order to substantiate his submissions, placed reliance on the judgment in the case of ***Vijay Dashrath Shirbhate vs. State of Maharashtra and another***, reported in **2010 (1) Mh.L.J. 936**.

4. Learned A.G.P. for the respondent authorities submits that on 15.2.2013 the Assistant Collector, Taloda had visited plot No. 383/2A wherein he found illegal stock of sand. As per the instructions given by the Assistant Collector, Taloda, the Talathi and the Circle Officer, Taloda conducted *panchanama* of illegal stock of sand stored in plot No. 383/2A. Learned A.G.P. submits that 120 brass quantity of sand was found stored in plot No. 383/2-A illegally. So also the same quantity of sand was found in plot Nos. 6, 7, 8, 9 and 13. Learned A.G.P. submits that though the authorities have not carried out any measurement through an expert, however, second *panchanama* clearly indicates about quantity of sand stored at two different places. The respondent authorities have rightly taken action against the petitioner. There is no substance in this writ petition. The writ petition is liable to be dismissed.

5. On going through the contents of the *panchanama* dated 19.12.2012 at annexures "A" (page 16) of the writ petition, it appears

that the *panchanama* pertaining to the quantity of sand allegedly stored illegally on plot Nos. 8, 9, 7, 6 and 13 came to be drawn by the concerned Talathi with the help of panch witnesses, who happened to be the villagers. I find no justification as to why the said quantity of sand, which was initially written as 45 brass, came to be changed to 120 brass. There is no explanation in the affidavit-in-reply filed by the respondent authorities in this regard. So far as the second *panchanama* drawn on 22.02.2013 is concerned, it is clear that the concerned Talathi has drawn the said *panchanama* again as per the direction given to him by the Assistant Collector on his spot visit. In the said second *panchanama*, reference has been given to the quantity of sand to the extent of 120 brass stored illegally in the land Gat No. 383/2A. Learned counsel for the petitioner has placed on record the 7x12 extract of the land Gat No. 383/2A+3/3/2 of village Taloda. On perusal of the same, it appears that the said land is N.A. land and the plot Nos. 6-A, 6-B, 7, 8, 9 and 13 are carved out in the said land Gat No. 383/2A+3/3/2. I find much substance in the statement made on behalf of the petitioner that for the same quantity of sand, two *panchanamas* have been drawn and it has been falsely stated that the stock of sand was found to the extent of 120 brass each found at two different places. It appears that the place is one and the same where the sand found stored and the two *panchanamas* came to be drawn with a gap of two months. There is no explanation submitted in the affidavit-in-reply as to why at the time of drawing of first *panchanama*, the quantity of sand as alleged in the

second *panchanama* was not noticed. The respondent State has placed on record the annexure Exhibit R-3 alongwith the affidavit-in-reply. On perusal of the same, it appears that the Talathi concerned has submitted a report to the Tahsildar wherein it has been simply stated that though the first *panchanama* was drawn, the second *panchanama* was again drawn in respect of the quantity of sand as 120 brass as per the direction given by the Assistant Collector. There is no reference in the said report Exh.R-3 that the second *panchanama* pertains to the quantity of sand at a different place in addition to the quantity of sand which was subject matter of the first *panchanama*. In the backdrop of this, it is also important to note here that the respondent authorities have not carried out any measurement. In para 5 of the additional affidavit-in-reply, it has been specifically admitted that the authorities have not done any measurement and the quantity of sand is considered only on the basis of the *panchanama*.

6. Thus, considering the entire aspects of the case, I do not find any justification in the impugned order directing the petitioner to pay charges for quantity of sand to the extent of 240 brass with the market rate, in addition to three times penalty. However, so far as the first *panchanama* dated 19.12.2012 is concerned, the said quantity of 45 brass appears to be correctly recorded. The said quantity of sand stored at the place is also in consonance with the work assigned to the petitioner. It has been discussed at length in foregoing paras that

there is no justification as to how the said quantity of 45 brass of sand was encircled and then mentioned as 120 brass. In terms of the order passed by this Court, the petitioner has deposited an amount of Rs.9,00,000/- before the Tahsildar, Taloda. The petitioner is entitled for refund of the amount, if any, after the amount to the extent of 45 brass of sand as directed by this Court, alongwith penalty in accordance with law, is deducted from the said amount. In view of the same, I am inclined to allow this writ petition partly. The petitioner would be liable to pay the price of quantity of sand to the extent of 45 brass stored illegally at the aforesaid place as per the market rate, so also the penalty in accordance with law. Hence, I proceed to pass the following order:-

O R D E R

- I. Writ petition is partly allowed.
- II. The impugned order passed by the Tahsildar, Taloda dated 28.02.2013 partly modified by the Deputy Collector, Nandurbar dated __/01/2014 in R.T.S. Appeal No. 5 of 2013 and the order passed by the Additional Collector dated 23.2.2015 confirming thereby the order passed by the Deputy Collector, Nandurbar dated __/01/2014 and the order passed by the Additional Commissioner dated 31.7.2015 in Revision No. 19 of 2015 confirming thereby the order dated 23.2.2015

passed by the Additional Collector, Nandurbar in RTS Appeal No. 10 of 2014, are hereby quashed and set aside.

and instead

- III. the petitioner shall pay the price of quantity of sand to the extent of 45 brass as per the market rate alongwith the penalty in accordance with law.
- IV. The petitioner is entitled for refund of the balance amount, if any, after the amount to the extent of 45 brass of said sand, as directed above, alongwith penalty in accordance with law, is deducted from the amount of Rs.9,00,000/- (Rupees Nine lacs) which the petitioner has already deposited before the Tahsildar, Taloda under the order of this court.
- V. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

rlj/