

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
925 WRIT PETITION NO.5443 OF 2021

SHAIKH NASER SHAIKH IBRAHIM
AND ANOTHER

..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. A. B. Kharosekar, Advocate for the Petitioners.
Mr. A. R. Kale, AGP for Respondent Nos.1 to 5.

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CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.
DATED : 04th MAY, 2021.

PER COURT:-

1. At the request of learned counsel for petitioners leave to correct the name of petitioner no.2.

2. The petitioners seek release of JCBs seized by respondents.

3. The petitioner no.2 had earlier filed Criminal Writ Petition No.1741/2020 for release of JCBs. The said JCBs are also subject matter of present writ petition. The Criminal Writ Petition was disposed of. In paragraph no.4 of the said order the Court observed as under:

"this Court holds that the relief claimed in the present matter to direct the police to release the JCBs of the petitioner cannot be given."

4. For the same relief the present writ petition is filed. There cannot be Civil Writ Petition filed, when the same relief sought in the

Criminal Writ Petition is negatived. This Court while exercising its jurisdiction under Civil Writ Petition cannot sit over the order passed by the Division Bench in Criminal Writ Petition.

5. The petitioners are at liberty to take steps as are permissible under law.

6. In view of the order already passed in Criminal Writ Petition No.1741/2020 dated 20th January 2021, it would not be possible to entertain the present Writ Petition. It is made clear that we have not considered the contentions on merits. The petitioners are at liberty to take such steps as are permissible under law.

7. The respondents Authority may pass further order with regard to the penalty after following due procedure expeditiously. Mr. Kharosekar, learned counsel submits that show cause notice was issued by the Revenue Authority against the dead person. The petitioners are also at liberty to file Statutory Appeal as may be permissible.

8. Writ Petition is disposed of. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE