

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

PUBLIC INTEREST LITIGATION NO.25 OF 2019

- | | | | |
|----|---------------------------------|-----|-------------|
| 1. | Bapu Shankar Dighe |) | |
| | Age 46 years, Occu. Agri. |) | |
| | R/o Dhanore, Tq. Rahuri, |) | |
| | Dist. Ahmednagar |) | |
| 2. | Shri Dadasaheb Kusabapu Pawar |) | |
| | Age 40 years, Occu. Agri. |) | |
| | R/o Pawar Wasti, Kolhar Road |) | |
| | Tambhere, Tq. Rahuri, |) | |
| | Dist. Ahmednagar |).. | Petitioners |
| | Versus | | |
| 1. | The State of Maharashtra |) | |
| | Through the Principal Secretary |) | |
| | Revenue & Forest Department, |) | |
| | Mantralaya, Mumbai -32. |) | |
| 2. | The Hon'ble State Minister |) | |
| | Revenue and Forest Department |) | |
| | Mantralaya, Mumbai -32. |) | |
| 3. | The Divisional Commissioner |) | |
| | Nashik Division, Nashik. |) | |
| 4. | The Collector, Ahmednagar |) | |
| | Dist. Ahmednagar |) | |

5. The Sub-Divisional Officer)
Rahata, Dist. Ahmednagar.)
6. The Tahsildar, Rahata,)
Rahata, Dist. Ahmednagar,)
7. Pradeep Bhausaheb Ghuge)
Age 42 years, Occ. Business,)
R/o. Malunja, Tq. Sangamner)
Dist. Ahmednagar.).. Respondents

Mr.V.D. Sapkal, Senior Advocate a/w Mr.S.N. Suryawanshi for the petitioners.

Mr.S.B. Yawalkar, AGP for the respondent nos.1 to 6.

Mr.K.N. Shermale for the respondent no.7.

**ALONG WITH
WRIT PETITION NO. 3180 OF 2021**

Pradeep Bhausaheb Ghuge)
Age 38 years, Occ. Business,)
R/o. Malunja, Tq. Sangamner)
Dist. Ahmednagar.)

Versus

1. The State of Maharashtra)
Through the Principal Secretary)
Revenue & Forest Department,)
Mantralaya, Mumbai -32.)
2. The Deputy Secretary)
Revenue and Forest Department)
Mantralaya, Mumbai -32.)

3. The Hon'ble State Minister)
Revenue and Forest Department)
Mantralaya, Mumbai -32.)
4. The Divisional Commissioner)
Nashik Division, Nashik.)
5. The Additional Commissioner)
Nashik Division, Nashik.)
6. The Collector, Ahmednagar)
Tal & Dist. Ahmednagar)
7. The Sub-Divisional Officer)
Rahata, Tal. Rahata, Dist. Ahmednagar.)
8. The Tahsildar, Rahata,)
Tq. Rahata, Dist. Ahmednagar,).. Respondents

Mr.K.N. Shermale for the petitioner.

Mr.S.B. Yawalkar, AGP for the respondent nos.1 to 8.

**CORAM : R.D. DHANUKA &
S.G. MEHARE, JJ.**

RESERVED ON : 29th APRIL, 2022

PRONOUNCED ON : 10th JUNE, 2022

Judgment :- (per R.D.Dhanuka, J.)

. The petitioners in Public Interest Litigation No.25 of 2019 have prayed for writ of certiorari for quashing and setting aside the impugned orders dated 27th August 2014, 18th January 2017 and 9th

April 2018 passed by the learned Minister (Revenue) and for an order and direction that the respondents authorities be directed to recover amount of Rs.1,74,00,636/- along with interest from the respondent no.7 in view of the order dated 13th July 2011 passed by the respondent no.4.

2. The petitioners have also prayed for writ of mandamus for restoration of the order dated 13th July 2011 passed by the respondent no.4 and for an order and direction to recover the penalty to the tune of Rs.1,74,00,000/- from the respondent no.7 imposed upon him in terms of the order dated 13th July 2011 passed by the respondent no.4.

3. The petitioner in writ petition and the respondent no.7 in the Public Interest Litigation No.25 of 2019 has filed the Writ Petition No.3180 of 2021 inter alia praying for a declaration that the order dated 21st September 2020 issued by the Deputy Secretary of Revenue and Forest Department, Mantralaya, Mumbai is illegal, arbitrary and against the provisions of law and also prayed for writ of certiorari for quashing and setting aside the order dated 6th January 2020 passed by the Additional Commissioner, Nashik Division, Nashik in R.T. S. Appeal No. 496 of 2020.

4. By consent of parties, both the proceedings were heard together and are being disposed of by a common order.

5. Some of the relevant facts for the purpose for deciding these proceedings are as under :-

6. The petitioner who is the respondent no. 7 in the PIL is described as the respondent no.7 in latter part of this judgment and the petitioners in PIL are referred to as the petitioners in this judgment.

7. It is the case of the petitioners that the petitioner no.1 is the agriculturist and is local resident of village Dhanore and his agricultural lands are situated on the opposite bank of Pravara river where the respondent no.7 has done illegal excavation of land which has adverse effect on the water table around the lands of the petitioner. The petitioner no.2 is a permanent resident of Taluka Rahuri, District Ahmednagar and also a social worker and agriculturist.

8. Some time in the year 2011, the State Government invited a tender for lifting of sand in village Hanumantgaon, Taluka Rahata, District Ahmednagar. By an order dated 28th March 2011, the respondent no.7 was allotted the said tender for his highest bid of Rs.1,10,00,000/- against the Government price of Rs.98,20,000/- subject to the terms and conditions contained in the Government Resolution dated 25th October 2010. The duration of the said tender was upto 31st July 2011.

9. It is the case of the petitioners that the said tender was accepted for lifting of 20000 brass sand. First permit for lifting 1000 brass sand was granted in favour of the respondent no.7. The respondent no.6 conducted inspection of the spot and it was found that against the permit of 1000 brass, the respondent no.7 has illegally lifted sand to the extent of 3836 brass i.e. much above the permit granted in his favour.

10. On 16th May 2011, the respondent no.6 passed an order imposing penalty of Rs.1,74,00,000/- for illegal excavation of sand. An appeal preferred by the respondent no.7 against the said order was dismissed by the respondent no.5 by an order dated 31st March 2012.

The said order was confirmed by all the revenue authorities in the proceedings filed by the respondent no.7.

11. On the basis of the report forwarded by the respondent no.6, the respondent no.4 passed an order dated 13th July 2011 thereby cancelling the tender allotted in favour of the respondent no.7 vide order dated 28th March 2011. The respondent no.6 issued direction for initiating appropriate steps for recovery of the fine in view of the order dated 16th May 2011. The respondent no.7 filed an appeal impugning the said order dated 13th July 2011 by filing an appeal before the Divisional Commissioner, Nashik Division, Nashik. The respondent no.7, however, withdrew the said appeal by filing pursis.

12. On 27th August 2014, learned Minister partly allowed the said appeal filed by the respondent no.7 and directed repayment of the proportionate amount of the deposit to the respondent no.7 to the extent of the quantity of sand which the respondent no.7 could not lift under the tender awarded to the respondent no.7. Learned Minister however, specifically rejected the prayer of the respondent no.7 seeking extension of time for excavation of the sand.

13. It appears that the respondent no.4 Collector, Ahmednagar sent proposal for review of the order dated 27th August 2014 before the learned Minister under Section 258 of the Maharashtra Land Revenue Code, 1966 (for short "the said MLR Code"). The said review application was entertained by the learned Minister. Learned Minister passed an order dated 18th January 2017 thereby rejecting the review application filed by the learned Collector.

14. Learned Minister, however, proceeded to set aside the order

dated 13th July 2011 passed by the learned Collector by which the tender allotted to the respondent no.7 was cancelled and fine was imposed upon him. Learned Minister further ordered that in view of the allotted tender in favour of the respondent no.7 in the year 2011-2012, he would be entitled to excavate and transport the remaining sand in view of the allotment of tender during the year 2016-2017 till 30th September 2017.

15. It is the case of the petitioners that learned Minister without any application or without hearing either of parties suo-moto extended the period for excavation of sand in the said order upto 30th September 2018. Learned Minister also did not invite any report from the respondent nos.4 to 6 and did not consider the facts existing as on that day nor considered the fact that the respondent no.7 had illegally lifted the excavated sand.

16. Pursuant to the said order dated 9th April 2018 passed by the learned Minister issuing corrigendum, the Additional Collector, Ahmendnagar granted permission to the respondent no.7 to lift the sand from the sand spot allotted to him in view of the orders dated 18th January 2017 and 9th April 2018 subject to terms and conditions of the Government Resolution dated 3rd January 2018. The possession of the spot was delivered to the respondent no.7 on 21st May 2018 by drawing panchnama and a copy of the punchnama was forwarded by the respondent no.6 to the respondent no.2. It is the case of the petitioners that the respondent no.7 accordingly started indiscriminately lifting the sand after 21st May 2018 illegally. The petitioners thereafter applied for necessary documents under the provisions of Right to Information Act, 2005 and filed this public interest litigation.

17. Mr. Sapkal, learned senior advocate for the petitioners

invited our attention to various documents annexed to the Public Interest Litigation and would submit that the respondent no.7 has excavated the sand beyond the maximum prescribed depth as contained in clause 10(c) of the Government Resolution dated 25th October 2010. Learned Collector had thus rightly initiated the action against the respondent no.7 in view of the respondent no.7 having excavated sand beyond the minimum prescribed depth and had rightly imposed fine and confiscated the deposited amount. He submitted that the respondent no.2 Minister thus could not have interfered with the said order and that also suo-moto and without recording any reason while setting aside the order dated 13th July 2011.

18. It is submitted that the respondent no.2 Minister has no power under MLR Code and the Government Resolution to set aside the action initiated against the order passed by the learned Collector. The review application was filed by the Collector against the order passed by the learned Minister. He submits that the learned Minister has not only rejected the application filed by the learned Collector but has suo moto granted various reliefs in favour of the respondent no.7 though no application was filed by the respondent no.7 for such reliefs. The respondent no.2 had no power to set aside the order dated 13th July 2011 which had attained finality in view of the respondent no.7 having withdrawn the appeal against the said order dated 13th July 2011. There was no change in policy for allotment of sand spots and not to extend time to excavate sand in favour of the respondent no.7.

19. It is submitted that there was huge loss of revenue due to the said illegal order passed by the respondent no.2 Minister on his own thereby extending the period of excavation of sand, contrary to the provisions of the Government Resolution applicable to the permission

for excavation of sand granted in favour of the respondent no.7. Learned Minister could not have exercised such power purportedly under Section 258 of MLR Code. The order passed by the learned Collector on 13th July 2011 imposing penalty and cancelling award of tender was a reasoned order and was confirmed by the then State Minister vide its order dated 27th August 2014. The said order had attained finality.

20. It is submitted by the learned senior advocate that the learned Minister totally failed to appreciate that the respondent no.7 had already lifted 3836 brass of sand i.e. much over and above the permit granted in his favour and had committed serious illegality and breach of terms and conditions while granting such permission and had committed breach of the Government Resolution. The Minister has no suo moto power to grant extension of time for excavation of sand upto 9th April 2018 or for any other period in the teeth of the Government Resolution dated 3rd January 2018.

21. Learned senior advocate invited our attention to the polity issued by the State Government on 25th October 2010 relating to the excavation of sand. He also relied upon Clause 17 of the said Government Resolution and would submit that if the respondent no.7 was aggrieved by any action on the part of the authority below, he had an alternative remedy for seeking redressal under the said provision. The respondent no.7 had already availed of such remedy by filing proceedings before the learned Collector and thereafter before various authorities including learned Minister. The respondent no.7 had withdrawn his appeal unconditionally before the Commissioner.

22. Learned senior advocate invited our attention to Clause 15

of the said Government Resolution and would submit that under the said clause, any extension of time for excavation of sand was specifically prohibited. Learned Minister has totally overlooked the said clause of the Government Resolution while granting extension of lease and that also without any application made by the respondent no.7 in that regard. He also placed clause 13 of the Government Resolution and submits that in view of the respondent no.7 having committed breach of excavating sand more than quantity permitted by the authority, the Collector had rightly imposed penalty against the respondent no.7. It is submitted that the Collector at the first instance had no power to file any such review before the learned Minister. Learned Minister could not have passed an order of corrigendum in favour of the respondent no.7 to grant extension of permission to excavate sand on 30th September 2018.

23. Learned senior advocate placed reliance on the judgment of Supreme Court in case of **Banarsi & Ors. Vs. Ram Phal, AIR 2003 SC 1989** and in particular paragraphs 12 and 13 in support of the submission that the respondent no.7 not having filed any application or any appropriate application permissible in law before the learned Minister, the learned Minister could not have granted any relief in favour of the respondent no.7 in the review application filed by the Collector.

24. Learned senior advocate also placed reliance on the judgment of this Court in case of **Ajit Manjur Kamgar Sahakari Sanstha Vs. State of Maharashtra & Ors., 2006 (6) Bom. C. R. 402** and in particular paragraphs 3, 6 and 7 in support of the submission that no reliefs could have been granted in favour of the respondent no.7 in absence of the proceedings filed by the Collector. He submitted that in

earlier round, learned Minister did not grant full relief in favour of the respondent no.7. Learned Minister had only passed an order for refund of the amount in favour of the respondent no.7. He invited our attention to the interim order passed by this Court on 7th June 2018 in Writ Petition No.5370 of 2018 filed by the respondent no.7 herein and would submit that by the said order, directions contained in paragraph 7 of the order passed by the learned Minister on 18th January 2017 and the corrigendum dated 9th April 2018 came to be stayed and the respondent no.7 has been restrained from excavating sand from the sand spot.

25. Learned senior advocate for the petitioners invited our attention to the communication dated 21st September 2020 passed by the Deputy Secretary of Revenue and Forest Department, Mantralaya stating that as per opinion of Law and Judiciary Department, the Revenue and Forest Department, the Joint Secretary, Revenue and Forest Department communicated to the Divisional Commissioner, Nashik that corrigendum dated 9th April 2018 passed by the then Minister of State Revenue stands cancelled and accordingly the order of the District Collector, Ahmednagar be cancelled by taking it in revision. The Divisional Commissioner, Nashik was further directed to communicate to the District Collector, Ahmednagar to take penal action under the Section 48(7) of the MLR Code against the respondent no.7 for illegally excavating of 2880 brass of sand. He submits that since there was no ad-interim order in existence for some time, the respondent no.7 took various illegal steps. He submits that the learned Minister was required to decide the said proceedings not under the provisions of the MLR Code but subject to the remedy provided under the provisions of the said scheme.

26. Learned Minister could not have exercised powers under the provisions of the MLR Code unless the condition under Clause 20 of MLR Code were satisfied. The provisions of MLR Code were not applicable to the facts of this case. The appeal filed by the respondent no.7 against the order of Tahsildar was maintainable under the provisions of MLR Code because the order was passed by the Tahsildar under the provisions of MLR Code. The Collector had passed the order imposing penalty and cancelling permission granted to the respondent no.7 for excavation of sand based on the breach of condition no.17 under Government Resolution, on 13th July 2011. Remedy for the respondent no.7 against the said order was to approach the Commissioner by the respondent no.7 which was rightly invoked under the Government Resolution. The said appeal was however withdrawn by the respondent no.7. The appeal against the order of the Commissioner, if any, would have been maintainable against the learned Minister under Clause IV of the Government Resolution prescribing scheme for excavation of sand.

27. Learned senior advocate invited our attention to the order passed by the learned Minister on 27th August 2014 and would submit that the prayer for extension of license for excavation of sand made by the respondent no.7 was specifically rejected. He invited our attention to the review application filed before the learned Commissioner by the learned Collector and prayers therein. He also invited our attention to the order passed by the learned Minister on the said review application. It is submitted that the learned Collector had rendered a finding that the respondent no.7 was a defaulter and all benefits granted or availed of illegally shall be refunded by the respondent no.7.

28. Mr. Shermale, learned counsel for the respondent no.7 in Public Interest Litigation No.25 of 2019 and for the petitioner in Civil

Writ Petition No.3180 of 2021 on the other hand invited our attention to the order passed by the Tahsildar and would submit that no opportunity was granted by the Tahsildar to his client when the order was passed. Appeal filed by his client was dismissed. He submits that only upon the directions issued by the Collector, Tahsildar imposed penalty upon his client. The Subordinate officer had abided by the order passed by the Collector.

29. It is submitted that the Directorate of Geology and Mining had granted permission on 4th May 2018 to the respondent no.7 for excavation of sand. The Revenue Department however, did not follow the order of corrigendum issued by the learned Minister. A committee presided over by the Collector as a Chairman was constituted on 18th May 2018. A committee directed the Tahsildar to grant permission to the respondent no.7 and accordingly the Additional Collector granted permission to excavate sand to the respondent no.7 on 18th May 2018. The possession of the said sand spot was handed over to the respondent no.7 on 21st May 2018 by the Circle Officer.

30. Learned counsel for the respondent no.7 placed reliance on Section 258 of the MLR Code and would submit that learned Minister has suo-moto powers to grant relief to any of the parties to the proceedings. He invited our attention to the corrigendum issued by the learned Minister and thereafter by the Additional Collector and would submit that the petitioners in PIL are not concerned with the corrigendum. He submits that the resolution was passed by the Gram Panchayat in village Hanumantgaon in favour of the petitioners and against the respondent no.7. The petitioners are not the sand excavator in the same Taluka.

31. Learned counsel submitted a compilation of judgments. He relied upon the following judgments :-

- (i) *Judgment of the Hon'ble Supreme Court in case of **Dattaraj Thaware Vs. State of Maharashtra**, 2005 (1) SCC 590 and in particular paragraphs 4, 11 and 16;*
- (ii) *Judgment of the Hon'ble Supreme Court in case of **The Assistant Commissioner of State Tax Vs. M/s. Commercial Steel Limited** decided on 3rd September 2021 in Civil Appeal No.5121 of 2021 and in particular paragraph 11;*
- (iii) *Judgment of the Hon'ble Supreme Court in case of **Sai Kripa Mangal Karyalaya & Ors. Vs. Nagpur Municipal Corporation & Ors.**, 2015 (11) SCC 347 and in particular paragraphs 23 and 24;*
- (iv) *Judgment of the Hon'ble Supreme Court in case of **Popatrao Patil Vs. State of Maharashtra**, 2020 (4) SCALE 245 and in particular paragraphs 8 and 9;*
- (v) *Judgment of this Court at Aurangabad bench in case of **Janardhan Aher Vs. State of Maharashtra** decided on 12th February 2014 in Civil Writ Petition No.10336 of 2013 & other connected matters and in particular paragraph 4;*
- (vi) *Judgment of the Hon'ble Supreme Court in case of **Esteem Properties Pvt. Ltd. Vs. Chetan Kamble & Ors.** decided on 28th February 2022 in Civil Appeal No.10425 of 2010 and other connected matter;*
- (vii) *Judgment of this Court at Aurangabad bench in case of **Gram Panchyat, Ekurka & Ors. Vs. State of Maharashtra & Ors.** decided on 28th January 2021 in Writ Petition No.5589 of 2020 and in particular paragraph 10;*
- (viii) *Judgment of this Court at Nagpur bench in case of **Harihar Mahadev Patil Vs. State of Maharashtra** decided on 15th March 2019 in Writ Petition No.7165 of 2018 and in particular paragraphs 8 & 10;*

32. It is submitted by the learned counsel for the respondent no.7

that the petitioners in PIL was not a party even to the quasi judicial proceedings before the authority including the learned Minister. The petitioners are the resident of village Dhanore, Taluka Rahuri, District Ahmednagar and have no locus to file PIL. He submits that PIL is publicity interest litigation and is not bonafide.

33. Learned counsel placed reliance on Rule 18 of MLR Rules, 2013 and would submit that period of lease is not more than 20 years. State Government has thus powers to grant extension of period of lease. The respondent no.7 withdrew the appeal filed before the Commissioner on the earlier occasion as the earlier decision was final and was not appealable. The respondent no.7 had rightly filed the proceedings before the State Government and the same were within the jurisdiction of the learned Minister. It is submitted by the learned counsel that the provision of Section 5 of the Code of Civil Procedure, 1908 applies to the revenue authority.

34. It is submitted that the respondent no.7 had filed an application for extension of lease before the learned Minister. The order passed by the learned Minister in the first round of litigation directing the State Government to refund the deposit to the respondent no.7 partly has not been challenged by the State Government admittedly. Learned Minister has exercised executive powers under Article 162 of the Constitution of India while granting permission to excavate the sand to the respondent no.7 and cannot be considered as without jurisdiction. State Government has right to issue corrigendum to clarify the order passed by the learned Minister and such corrigendum has force of Government Resolution. The order passed by the learned Minister was placed before the committee headed by the Additional Collector. State

Government thereafter implemented the order passed by the learned Minister.

35. In so far as the prayers in the writ petition filed by the respondent no.7 is concerned, it is submitted that the order imposing the penalty for excavation of sand is passed after new Government came in power in State of Maharashtra. In the first round of litigation, the then State Government in power had supported the case of the respondent no.7. He submits that the Deputy Secretary has cancelled the corrigendum issued by the learned Minister without any authority of law after new Government came in power.

36. Learned counsel for the respondent no.7 tendered a copy of the criminal Writ Petition No.690 of 2021 and would submit that the said writ petition was also filed by these petitioners in PIL and are in habit of filing frivolous litigation. Learned counsel for the respondent no.7 in PIL submits that condition prescribed in Government Resolution prohibiting permission for extension to excavate sand has already been revoked subsequently.

37. Mr.Yawalkar, learned counsel for the State relied upon the averments made in the affidavit-in-reply filed by the State to justify the stand taken by the State Government in opposing the writ petition filed by the respondent no.7.

38. Mr.Sapkal, learned senior advocate for the petitioners in PIL in his rejoinder arguments submits that both the petitioners are the agriculturist and have their lands situated opposite bank of Pravara river. The wrong and illegal orders passed by the learned Minister are liable to

be ignored. If penalty is imposed by the Collector, only in that event, Section 48 of the MLR Code will be attracted. Since the action is taken by the Government under the provisions of the said scheme or under the said Government Resolution, remedy for aggrieved party was provided in the said scheme and not under the provisions of the MLR Code. He reiterated the submission that the extension of permission to excavate sand is specifically prohibited.

39. It is submitted that the order passed by the learned Minister is in the teeth of the said provisions of the Government Resolution prescribing the scheme. He submits that the learned Minister has no powers to invoke Article 162 of the Constitution of India for granting permission to excavate sand contrary to the Government Resolution. All executive acts of the State Government have to be taken in the name of the Hon'ble Governor. The executive order and quasi judicial orders are passed in two separate and distinct powers conferred on the authority. Both the powers cannot be exercised together. He submits that since there are large number of land mafia in the State of Maharashtra, the petitioners have filed this PIL with bonafide intention and is maintainable.

40. Learned senior advocate for the petitioners submits that the so called deletion of condition forming part of the scheme prohibiting extension of permission to excavate sand cannot be effected by subsequent Government Resolution and in any event cannot apply with retrospective effect. The prohibition under the scheme when the permission to excavate the sand would continue to apply.

REASONS AND CONCLUSIONS :-

41. The questions that arises for consideration of this Court in these two proceedings are (I) whether the learned Minister could have granted extension for permission to excavate sand in favour of the respondent no.7 though there were no proceedings filed by the respondent no.7 before the learned Minister and more particularly in the review application filed by the Collector ? (ii) Whether learned Minister could have issued a corrigendum to the permission granted for excavation of sand when such relief was specifically rejected by the Collector and the appeal filed by the respondent no.7 against the said order before the Commissioner was withdrawn unconditionally ?

42. It is not in dispute that the possession of the sand spot was handed over to the respondent no.7 on 31st March 2011 for excavating 1000 brass of sand subject to the terms and conditions in the Government Resolution dated 25th October 2010. On 27th April 2011, Officer of PWD Department while taking inspection of the sand spot found that the respondent no.7 had illegally lifted 3836 brass of sand which was beyond the permit issued to him for excavation of sand. It was also found that the respondent no.7 had carried out the digging into the river bank which was contrary to the said the Government Resolution dated 25th October 2010.

43. It is not in dispute that the Tahsildar had passed an order thereby imposing fine of Rs.1,74,00,636/- upon the respondent no.7 for illegal excavation of sand. The respondent no.4 Collector vide order 13th July 2011 cancelled the permission for excavation of sand granted to the respondent no.7. RTS appeal filed by the respondent no.7 against the said order dated 16th May 2011 was dismissed by the Sub-Divisional

Officer. It is not in dispute that the respondent no.7 withdrew the appeal filed by him before the Divisional Commissioner, Nashik Division on 15th February 2014 unconditionally. However, in the appeal filed by the respondent no.7 before the learned State Minister (Revenue and Forest), learned Minister allowed the said appeal partly thereby directing refund of proportionate amount of deposit to the respondent no.7 for the unlifted quantity of sand.

44. It is not in dispute that against the said order dated 27th August 2014, the Collector filed a proposal under Section 258 of MLR Code before the learned Minister seeking review of the order dated 27th August 2014. While entertaining the said review application filed by the learned Collector, the learned Minister dismissed the said review application filed by the learned Collector and has set aside the fine imposed on the respondent no.7 vide order dated 13th July 2011 by the learned Collector and further extended the time for lifting of sand for the year 2016-2017 upto 30th September 2017 without any application filed by the respondent no.7 tenable in law or otherwise.

45. The respondent no.2 passed another order on 9th April 2018 thereby issuing corrigendum modifying the order dated 18th January 2017 extending the time for lifting of sand upto 30th September 2018. Based on such illegal order passed by the learned Minister without authority, the possession of sand was handed over to the respondent no.7 on 21st May 2018 in presence of the revenue authorities. Pursuant to the said illegal order passed by the learned Minister, the respondent no.7 started excavating the sand for some time. This Court by an order dated 7th June 2018 in Writ Petition No.5370 of 2018 was pleased to stay the said order dated 18th January 2017 and the corrigendum dated 9th April 2018 issued by the learned Minister

and restrained the respondent no.7 from excavating sand from the sand spot. The said ad-interim order passed by this Court on 7th June 2018 is in force till today.

46. The respondent no.7 in support of his contention and to justify the order passed by the learned Minister strongly placed reliance on Section 258 of MLR Code and submitted that the Minister has absolute power to grant permission to excavate sand and to grant other reliefs though the respondent no.7 had not filed any separate application or proceedings before the learned Minister when the Collector had filed an application for seeking review of the order passed by the learned Minister on 27th August 2014. Learned Minister directed the refund of proportionate amount of deposit made by the respondent no.7 for unexcavated portion of the sand.

47. In our view, the rights and remedies of the parties against the specific orders were specifically provided under Clause 17 of the Government Resolution dated 25th October 2010 annexed at Exhibit 'A' to the petition. The remedy under Section 258 of the MLR Code thus could not have been invoked for seeking review of the orders passed by the State Government for any of its or his predecessors in office. Be that as it may, a perusal of said Section 258 of the MLR Code indicates that even if State Government and every Revenue or Survey Officer may, either on its or his own motion could have exercised powers of review of orders only on the grounds set out in Section 258 (2) of the MLR Code.

48. It is not the case of the State Government that the learned Minister had exercised the powers of review on his own motion in so far as the reliefs granted to the respondent no.7 are concerned, and more

particularly when the review application filed by the learned Collector under Section 258 of the MLR Code seeking recall of the order dated 27th August 2014 passed by the learned State Minister (Revenue and Forest) allowing the appeal filed by the respondent no.7 partly thereby was heard. The then State Minister (Revenue and Forest) by the said order dated 27th August 2014 had rejected the prayer for extension of time to lift the sand made by the respondent no.7 on the said appeal arising out the order passed by the respondent no.5 dismissing the RTS Appeal No.107 of 2011 filed by the respondent no.7 vide order dated 31st March 2012.

49. It is not the case of the respondent no.7 or the State Government that the said impugned order dated 18th January 2017 and 9th April 2018 passed by the learned Minister granting extension of time for lifting sand by the respondent no.7 for the year 2016-2017 upto 30th September 2018 and granting further extension by issuing corrigendum by order dated 9th April 2018 were passed on the ground of (i) discovery of new and important matter or evidence; (ii) some mistake or error apparent on the face of the record; (iii) any other sufficient reason.

50. In our view, both the orders passed by the learned Minister i.e. on 18th January 2017 and 9th April 2018 are thus ex facie without jurisdiction, without authority of law, contrary to and in the teeth of Government Resolution dated 25th October 2010 and thus deserves to be quashed and set aside. There is no substance in the submission made by the learned counsel for the respondent no.7 that learned Minister could have passed such order granting extension of time for lifting sand initially upto 30th September 2017 and thereafter issuing corrigendum on 9th April 2018 upto 30th September 2018 even if no application was

filed by the respondent no.5 dismissing the RTS appeal No.107 of 2011.

51. It is not disputed by the respondent no.7 that the appeal filed by the respondent no.7 before the Divisional Commissioner, Nashik Division against the order dated 31st March 2012 passed by the respondent no.5 dismissing RTS Appeal No.107 of 2011 filed by the respondent no.7 against the order dated 16th May 2011 passed by the respondent no.7 was thereby unconditionally withdrawn. The order passed by the respondent no.5 in RTS Appeal No.107 of 2011 filed by the respondent no.7 against the order dated 16th May 2011 had attained finality. The order passed by the then State Minister (Revenue & Forest) dated 27th August 2014 thereby rejecting the prayer made by the respondent no.7 for extension of time to lift the sand had also attained finality.

52. A perusal of the affidavit-in-reply filed by the respondent nos.4 to 6 in Writ Petition No.5370 of 2018 which was converted into PIL indicates that the State Government has taken a stand that the respondent no.7 had lifted 3836 brass of sand from the sand spot and thus the order of penalty of Rs.1,74,00,000/- was imposed on the respondent no.7. It is also stated in the said affidavit that after the order passed by the learned Minister granting extension of time to excavate sand, the Additional Collector passed an order dated 18th May 2018 directing the respondent no.6 for giving possession of sand stock to the respondent no.7 and accordingly the Circle Officer had handed over possession of sand stock to the respondent no.7 on 21st May 2018.

53. It is stated that a complaint from villagers of Hanumantgaon had been received on 4th June 2018 that the machines like pokland and JCB were being utilised by the respondent no.7 for lifting the sand. On

the same day, villagers of Hanmantgaon stopped lifting of sand from the sand stock allotted to the respondent no.7. Some of the revenue officers along with villagers of Hanumantgaon visited the sand stock no.1 at Hanumantgaon on 4th June 2018. At that time, a Pokland Machine had been observed at the bank of river. The said Pokand Machine had been confiscated and submitted to Loni Police Station, Taluka-Rahata.

54. The respondent no.6 submitted a report to the respondent no.4 Collector. The respondent no.4 directed the respondent no.7 to stop the lifting of sand from the said sand stock by an order dated 5th June 2018. The lifting of sand had been stopped from 4th June 2018. The respondent no.6 passed an order on 4th June 2018 appointing a team for measurement of the sand stock. The said team after taking measurement submitted a report on 5th June 2018 to the respondent no.6.

55. In paragraph 7 of the affidavit-in-reply filed by the respondent no.7, it is stated that though the learned Minister had granted extension to excavate sand by an order dated 18th January 2017, due to water availability in the sand ghat, the respondent no.7 could not carry out excavation of sand. The respondent no.7 accordingly again approached the learned Minister to pass an order of corrigendum. Learned Minister passed an order on 9th April 2018 granting extension of time for excavation of sand till 30th September 2018. The respondent no.7 in the affidavit-in-reply did not point out as to how the learned Minister could have granted such relief in favour of the respondent no.7 by extending the time to excavate sand when the earlier order passed by the learned Minister rejecting the prayer had attained finality and also as to how the learned Minister could have passed such order in the review application filed by the learned Collector when there was no application of any nature whatsoever filed by the respondent for such

relief. The respondent no.7 could neither point out any application for renewal of the permission to excavate sand nor could point out the maintainability of such application.

56. The Hon'ble Supreme Court in case of **Banarsi & Ors. Vs. Ram Phal (supra)** has held that in the absence of cross appeal preferred or cross objection taken by the plaintiff-respondent, the First Appellate Court did not have jurisdiction to modify the decree in the manner in which it had been done. Within the scope of appeals preferred by the appellants the First Appellate Court could have either allowed the appeals and dismissed the suit filed by the respondent in its entirety or could have deleted the latter part of the decree which granted the decree for specific performance conditional upon failure of the defendant to deposit the money in terms of the decree or could have maintained the decree as it was passed by dismissing the appeals.

57. The Hon'ble Supreme Court held that what the First Appellate Court had done was not only to set aside the decree to the extent to which it was in favour of the appellants but also granted an absolute and out and out decree for specific performance of agreement to sell which was to the prejudice of the appellants and to the advantage of the respondent who had neither filed an appeal nor taken any cross objection. In our view, principles laid down by the Hon'ble Supreme Court in the case of **Banarsi & Ors. Vs. Ram Phal (supra)** would apply to the facts of this case. We are respectfully bound by the principles of law laid down by the Supreme Court.

58. This Court in case of **Ajit Manjur Kamgar Sahakari Sanstha Vs. State of Maharashtra & Ors. (supra)** has taken a similar view in case of the proceedings arising out of the provisions of MLR

Code and held that in the absence of appeal filed by the petitioner, the Additional Collector could not have passed the impugned order in the appeal filed by the petitioner to the prejudice and disadvantage of the petitioner. This Court accordingly passed an order thereby restoring the order passed by the Sub-Divisional Officer and was pleased to quash and set aside the Additional Collector and Additional Commissioner. The principles of law by this Court in the case of **Ajit Manjur Kamgar Sahakari Sanstha (supra)** would apply to the facts of this case. We are respectfully bound by the said judgment.

59. In so far as the judgment of the Supreme Court in case of **Dattaraj Thaware Vs. State of Maharashtra (Supra)** relied upon by the learned counsel for the respondent no.7 is concerned, the Hon'ble Supreme Court held that when there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, such petition is to be thrown out. There is no dispute about the said propositions of law laid down by the Hon'ble Supreme Court in the said judgment. However in this case, both the petitioners are agriculturists and are social workers and have no personal interest in the subject matter of PIL nor has filed the petition with any oblique motive. The said judgment in case of **Dattaraj Thaware Vs. State of Maharashtra (Supra)** would not assist the case of the respondent no.7.

60. In so far as the judgment of the Supreme Court in case of **The Assistant Commissioner of State Tax Vs. M/s. Commercial Steel Limited (supra)** relied upon by the learned counsel for the respondent no.7 is concerned, the Hon'ble Supreme Court has carved out the exceptional circumstances in which existence of an alternative remedy is not an absolute bar to the maintainability of the petition under Article 226 of the Constitution of India. In so far as the Writ Petition filed by

the respondent no.7 i.e. Writ Petition No.3180 of 2021 is concerned, in our view, the said writ petition is not maintainable in view of there being alternative remedy available against the order passed by the Additional Commissioner, Nashik Division. The other reliefs sought by the petitioner-respondent no.7 in the said writ petition are consequential to the substantial reliefs.

61. In so far as the judgment of the Hon'ble Supreme Court in case ***Sai Kripa Mangal Karyalaya & Ors. Vs. Nagpur Municipal Corporation & Ors. (supra)*** relied upon by the learned counsel for the respondent no.7 is concerned, the Hon'ble Supreme Court has held that if the PIL lacks bonafides and if there is inordinate delay in filing writ petition, PIL shall not be entertained by this Court. In this case, none of the exceptions carved out for non-maintainability of PIL are satisfied. The said judgment in case of ***Sai Kripa Mangal Karyalaya & Ors. Vs. Nagpur Municipal Corporation & Ors. (Supra)*** would not assist the case of the respondent no.7.

62. In so far as the judgments of the Supreme Court in cases of ***Popatrao Patil Vs. State of Maharashtra (supra)*** and ***Janardhan Aher Vs. State of Maharashtra (supra)*** relied upon by the learned counsel for the respondent no.7 are concerned, the said judgments would not apply even remotely in the facts of this case.

63. In so far as the judgment of the Supreme Court in case of ***Esteem Properties Pvt. Ltd. Vs. Chetan Kamble & Ors. (supra)*** relied upon by the learned counsel for the respondent no.7 is concerned, the Hon'ble Supreme Court has laid down the guidelines as to when the PIL can be entertained by the High Court or the Supreme Court. In the facts of that case, the Hon'ble Supreme Court held that it was not clear that

the bonafides of the petitioner were considered in a proper perspective by the High Court. The principles of law laid down in this judgment are clearly distinguishable in the facts of this case.

64. In so far as the judgment of this Court in case of ***Gram Panchyat, Ekurka & Ors. Vs. State of Maharashtra & Ors. (supra)*** relied upon by the learned counsel for the respondent no.7 is concerned, this Court in the said judgment has held that issuance of Government resolution by the concern department is in exercise of the powers vested under Article 162 of the Constitution of India. In our view, the reliance placed on the judgment of this Court in support of the submission that the learned Minister has exercised powers while granting extension of time to excavate sand was under Article 162 of the Constitution of India and this Court cannot interfere with the said powers exercised under the said provisions is totally absurd and has to be rejected at the threshold. Learned Minister has no power to invoke Article 162 of the Constitution of India while passing the order of extension of time to excavate sand in the review application filed by the Collector or otherwise. Such order granting relief in favour of the respondent no.7 cannot be considered as the subordinate legislation.

65. On the contrary, the respondent no.7 has placed reliance on Section 258 of the MLR Code and has contended that the impugned orders are passed by the learned Minister under the said provision. Be that as it may, order under Section 258 of MLR Code cannot be construed as sub-ordinate legislation under Article 162 of the Constitution of India.

66. In so far as the judgment of this Court in case of ***Harihar Mahadev Patil Vs. State of Maharashtra (supra)*** relied upon by the

learned counsel for the respondent no.7 is concerned, in our view, the said judgment would not even remotely apply to the facts of this case and thus would not advance the case of the respondent no.7.

67. In so far as the reliance placed by the respondent no.7 on the Criminal Writ Petition No.690 of 2021 filed by the petitioners in the PIL herein in support of the submission that the petitioners are in habit of filing frivolous PIL is concerned, learned counsel for the respondent no.7 has not pointed out any observation or findings recorded by this Court in the said PIL against the petitioners that they are in habit of filing frivolous petition. Reliance placed on the said Writ Petition No.690 of 2021 is thus misplaced.

68. In so far as the prayers in Writ Petition No.3180 of 2021 filed by the respondent no.7 are concerned, the respondent no.7 has prayed for a declaration that the order dated 21st September 2020 issued by the Deputy Secretary of Revenue & Forest Department, Mantralaya, Mumbai is illegal, arbitrary and against the provisions of law. The respondent no.7 prayed for setting aside the order dated 6th January 2020 passed by the Additional Commissioner, Nashik Division, Nashik and not to take any adverse action against the petitioners pursuant to the said order dated 6th January 2020.

69. The respondent no.7 has also prayed for a declaration that the order dated 13th August 2021 is illegal, arbitrary and against the provisions of law. All these orders which are the subject matter of these proceedings impugning the action taken by the Deputy Secretary (Revenue and Forest Department) cancelling the corrigendum issued by the respondent no.2 and directing the respondent no.5 to initiate action against the respondent no.7 in the PIL and the petitioner in the

writ petition are subsequent to the orders impugned in the PIL.

70. In our view, since the impugned orders passed by the learned Minister granting extension of time to excavate sand and thereafter issuing corrigendum thereby granting further extension of time till 30th September 2018 are totally illegal, without authority of law and without jurisdiction, subsequent orders passed by the authorities which are impugned in the Writ Petition No.3081 of 2021 are justified and thus no interference with the impugned order in the writ petition is warranted. The writ petition is totally devoid of merit.

71. Be that as it may, order granting the extension of time for lifting the sand granted by order dated 18th January 2017 and extended upto 30th September 2018 by an order dated 9th April 2018 has become infructuous in view of the fact that both the orders have been stayed by an ad-interim order dated 7th June 2018 which is in force till date. The respondent no.7 thus in any event cannot excavate the sand beyond 30th September 2018. Interim order passed by this Court has not been challenged by the respondent no.7 before the Hon'ble Supreme Court. In our view, the petitioner in PIL has thus made out a case for various reliefs. The petitioners in Writ Petition No.3180 of 2021 has failed to make out a case for grant of any relief.

72. We accordingly pass the following order :-

- (i) PIL No.25 of 2019 is allowed in terms of prayer clauses (A) to (D).
- (ii) Writ Petition No.3180 of 2021 is dismissed. Rule is discharged.
- (iii) Registry is directed to refund the amount of Rs.1 lakh deposited by the petitioners at the time of converting the Writ Petition No.5370

of 2018 into PIL within four weeks from the date of this order.

- (iv) There shall be no order as to costs.
- (v) Parties as well as office to act on the authenticated copy of this order.

(S. G. MEHARE, J.)

(R. D. DHANUKA, J.)

73. At this stage, Mr. Shermale, the learned counsel for the petitioner in Writ Petition No. 3180 of 2021 and for the respondent No. 7 in PIL No. 25 of 2019 seeks stay of this judgment and order for a period eight weeks.

74. At the request of Mr. Shermale, the learned counsel for the respondent No. 7 in P. I. L. No. 25 of 2019, we direct the State Government not to take any steps to recover any amount against the petitioner in Writ Petition No. 3180 of 2021 for a period of eight (08) weeks from today.

(S. G. MEHARE, J.)

(R. D. DHANUKA, J.)