

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

**922 WRIT PETITION NO.1792 OF 2021
WITH WP/1842/2021 WITH WP/11015/2021**

**SAKHARAM SABAJI THUBE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. A. G. Ambetkar, Advocate for the petitioner
Mr. S. G. Sangle, AGP for the respondent/State
Mr. R. K. Temkar, Advocate for respondent Nos. 6 and 7 in
Writ Petition No. 1792 of 2021 and respondent Nos. 7 and 8
in Writ Petition No. 1842 of 2021
Mr. S. B. Parnere, Advocate for respondent Nos. 3 to 5 in
Writ Petition No. 1792 of 2021 and respondent Nos. 5 and 6
in Writ Petition No.1842 of 2021.

**CORAM : RAVINDRA V. GHUGE &
S. G. DIGE, JJ.**

DATED : 19th April, 2022

PER COURT :-

1. By these petitions, the identically situated petitioners have put forth prayer clause "B" and "C" as under:-

"(B) By issuing writ of mandamus or any other writ, order or direction in the like nature, this Hon'ble High Court may kindly be direct the respondent No. 3 to recover entire cost/ discrepancy amount from guilty/ erring officers in pursuance of report dated 12.03.2014 prepared by the Executive Engineer. Maharashtra Rural Roads Development Agency regarding re-evaluation

of work order as Exhibit-"G".

(C) By issuing writ of mandamus or any other writ, order or direction in the like nature, this Hon'ble High Court may kindly be direct the respondent No. 3 to take legal steps for recover entire cost/ discrepancy amount from guilty/erring officers as per the representations filed by the petitioner."

2. Having considered the submissions of the learned Advocates for the respective sides, we find that the petitioners desire that this Court should invoke it's writ jurisdiction under Article 226 of the Constitution of India and issue a writ of mandamus for directing the respondent to recover the amounts from erring officers as per the report dated 12th March, 2015 prepared by the Executive Engineer, Maharashtra Rural Roads Development Agency. The Writ Petition No. 1792 of 2021 is filed on 20th July, 2020 and Writ Petition No. 1842 of 2021 is filed on 1st October, 2020.

3. The learned AGP submits on the basis of the affidavit-in-reply and specifically points out from internal page 2 of the compliance report dated 10th June, 2021 with reference to Writ Petition No. No. 1792 of 2021 to buttress

his submission that the amounts from 3 persons has already been recovered and the issue as regards the 4th person is pending legal proceedings.

4. It is well settled that a writ of mandamus can be issued if there is a statutory right vested in a litigant and a statutory authority, cast with a corresponding duty, is refusing to perform it's function. Unless a person is rendered remediless after having availed of all the statutory remedies as his grievance is not redressed, a writ of mandamus can be issued.

5. The facts and circumstances in which a Writ of Mandamus can be issued has been discussed and the law has been crystallized, in the following judgments :-

- i) Dwarka Nath Vs. Income Tax Officer, Special Circle, D Ward, Kanpur & another (AIR 1966 SC 81) (Paragraphs 4 and 5).
- ii) Padfield and others Vs. Minister of Agriculture, Fisheries and Food and others (1968) 1 All England Law Reports (H.L.) 694.

- iii) Praga Tools Corporation Vs. C.V.Imanual and others, AIR 1969 SC 1306 (Paragraph 6).
- iv) Isha Beevi on behalf of the minor Umaiben Beevi and others Vs. The Tax Recovery Officer and Addl. P.A. to Collector, Quilon & others (1976) 1 SCC 70 (Paragraph 5).
- v) Comptroller and Auditor-General of India, Gian Prakash, New Delhi & another Vs. K.S.Jaganannathan and another (1986) 2 SCC 679 (Paragraphs 18 and 20).
- vi) J.R.Raghupathy and others Vs. State of A.P. & others (1988) 4 SCC 364 (Paragraph 17 and 31).
- vii) State of Manipur & others Vs. Token Sing & others (2007) 5 SCC 65 (Paragraphs 14 and 18).
- viii) Pramod Kumar Vs. U.P. Secondary Education Services Commission and others (2008) 7 SCC 153 (paragraph No.24).
- ix) Secretary, Cannanore District Muslim Educational Association, Karimbam Vs. State of Kerala & others (2010) 6 SCC 373 (Paragraph 29, 40 and 43).

6. In the present case, the petitioners invoke the writ of mandamus for issuing a direction to the respondents to consider a report of 2014 and cause recovery of amounts. The petitioners are not remediless. They could have availed

of a statutory remedy. So also, the respondents have already recovered the amounts. It is also an admitted position that criminal proceedings against the 4 persons are under way.

7. In view of the above, Writ Petition No. 1792 of 2021 and 1842 of 2021, stand disposed off.

8. Writ Petition No. 11015 of 2021 pertains to the jurisdiction of the learned Single Judge. Hence, removed from the board.

(S.G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)

ssp