

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

CRIMINAL WRIT PETITION NO.1239 OF 2022

**SARASWATI TRADING COMPANY THROUGH ITS
PROPRIETOR KERBA BALASAHEB BHENDEKAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

....
Mr. J.M. Murkute, Advocate for the Petitioner
Mr. R.D. Sanp, APP for Respondent Nos.1 and 2
....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 17 OCTOBER 2022

PER COURT:-

. Heard Mr. J.M. Murkute, learned counsel for the petitioner and Mr. R.D. Sanap, learned APP for the respondents/State.

2. This Court vide order dated 16.09.2022 was pleased to direct the learned APP Mr. Sanap to place on record the copy of notification, if any, regarding establishment of the Special Court in view of provisions of Mines and Mineral (Development and Regulation) Act, 1957.

3. Mr. Sanap, learned APP for the respondents/State has made a statement on 14.10.2022 by placing on record the communication received from the Socicitor-cum-Deputy Secretary, Law and Judiciary Department, Government of Maharashtra, Aurangabad (marked 'X') and the communication received from the Desk Officer, Mantralaya, Mumbai (marked 'Y'). He made a statement that no Special Court is established in the Parbhani, District under Mines and Minerals (Development and Regulation) Act, 1957.

4. In the above background, the position is now clear that no Special Court is established under the Mines and Minerals (Development and Regulation) Act, 1957.

5. Mr. Murkute, learned counsel for the petitioner invited my attention to the impugned order passed by the learned Judicial Magistrate, First Class, Sonpeth below exhibit 1 in Criminal M.a. No. 134 of 2022 dated 11.08.2022 as well as the order passed by the Additional Sessions Judge, Gangakhed, District Parbhani in Criminal Revision No.14 of 2022. He pointed out that both the courts below under erroneous legal platform were pleased to reject the

application for releasing the sand. He invited my attention to the impugned order passed by the learned Judicial Magistrate, First Class, dated 11.08.2022, more particularly, para Nos. 8 and 9.

6. On going through the impugned order dated 11.08.2022, it would reveal that the learned Magistrate was pleased to turn down the application to release the property only on the ground that in view of the provisions of Mines and Minerals (Development and Regulation) Act, 1957, only Special Court is empowered to entertain and decide such kind of application, and it has no jurisdiction. That observations are found incorrect in view of communication received from the Socicitor-cum-Deputy Secretary, Law and Judiciary Department, Government of Maharashtra, Aurangabad, and the Desk Officer, Mantralaya, Mumbai (marked 'X' and 'Y' respectively). It is stated in the communication marked as 'Y' that no such notification is issued by the Law and Judiciary Department, Government of Maharashtra regarding establishment of Special Courts under the Mines and Minerals (Development and Regulation) Act, 1957.

7. Having regard to the above legal position, now there is no hurdle before the learned Judicial Magistrate, First Class, Sonpeth to decide that application on its own merits, particularly in the light of the say given by the Revenue Authority that the sand seized in the case is duly excavated from the site, and as per the order of the District Collector. As such, the learned Magistrate is required to consider the say given by the Revenue Authority, and accordingly pass the order regarding release of sand, even by imposing certain conditions, if required. Under these circumstances, the following order is passed.

ORDER

- (i) The criminal writ petition stands allowed.
- (ii) The impugned order passed below Exhibit 1 in Cri. M.A. No. 134 of 2022 dated 11.08.2022 by the learned Judicial Magistrate, First Class, Sonpeth, Dist. Parbhani, and the judgment and order passed by the learned Additional Sessions Judge, Gangakhed, District Parbhani in Criminal Revision No. 14 of 2022 are hereby quashed and set aside.

(iii) The learned Judicial Magistrate, First Class, Sonpeth is hereby requested to decide Cri. M.A. No.134 of 2022 on its own merits and in the light of observations made by this Court within a period of three (03) weeks from the date of receipt of writ of this Court by giving an opportunity to both the sides.

(iv) The criminal writ petition is accordingly disposed of.

(v) No order as to costs.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane