

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

WRIT PETITION NO.12715 OF 2021

**SAGAR MASCHYA VYAVSAIK SAHAKARI SANSTHA LTD.
THROUGH ITS PRESIDENT SHAIKH HAMID SHAIKH RASHID
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Mr. G. R. Syed, Advocate for petitioner
Mr. S. B. Yawalkar, AGP for respondent Nos. 1 to 5
Mr. S. S. Ware, Advocate for respondent Nos. 6 to 8 – absent.

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**CORAM : MANGESH S. PATIL AND
Y. G. KHOBRAGADE, JJ.**

DATE : 19.12.2022

PER COURT :-

Heard learned advocate for the petitioner and the learned AGP.

2. Respondents Nos. 6 to 8 have been duly served with notice for final disposal but they have not filed any reply, also none is present for them when the matter is called out.

3. The petitioner is a society registered under the Maharashtra Cooperative Societies Act, carrying on business of

fishing and duly registered for the area of Partur taluka, district Jalna. The right to fishing for a period of five years was allotted to it by the respondent No.5 by order dated 06.07.2018 in view of the provisions of the Maharashtra Land Revenue (Nistar Patrak and Regulation of Fishing) Rules 1973 (for short, "the rules of 1973").

4. The petitioner is aggrieved by the fact that respondents Nos. 6 and 7 i.e. the Gramsevak and the Grampanchayat have granted fishing rights to the respondent No.8, as if the reservoir vests in the local body or the Zilla Parishad, when in fact, it does not.

5. The learned advocate for the petitioner submits that the petitioner has been duly given permission for fishing in the government tank in accordance with the law. The petitioner has secured the permission to undertake fishing activity for a period of five years.

6. The learned AGP referring to the affidavit-in-reply of the respondent No.5 - Tahsildar submits that it is a matter of record that reservoirs vest in the State Government and pursuant to Rule 10 of the rules of 1973, a reply was sought from the village panchayat of respondent Nos 6 and 7, but there was no response. Accordingly,

since the petitioner was found entitled to have the fishing rights, those have been awarded to it pursuant to Rule 10 of the rules of 1973.

7. As far as the facts are concerned, for want of any objection being raised by respondent Nos. 6 to 8 on facts, since no replies have been filed, we have no sufficient reason to discard the stand of the petitioner particularly when the respondent No.5 - Tahsildar in her affidavit-in-reply has approved its rights to undertake fishing activity.

8. Pursuant to Rule 10 of the rules of 1973, if a reservoir vests with the State Government, it can grant permission to undertake fishing activity. It is pursuant to such provision that the petitioner has derived the rights of fishing. Once having reached such conclusion, the respondent Nos. 6 and 7 could not have legally granted any right to the respondent No.8 which would run counter to the rights derived by the petitioner pursuant to the permission received by the order dated 06.07.2018.

9. We allow the writ petition in terms of prayer clause (B), which reads as under:

“B) By issuing writ of certiorari or any other appropriate writ order or direction in like nature, this Hon’ble Court may kindly be quashed and set aside the impugned order issued by the Respondent No.6 and 7 dated 25.04.2021 [Exhibit-E] thereby granting fishing Rights over the fishing tanks situated at Gut No.170 and 418 of the village Amba Tq: Partur, Dist: Jalna in favour of the Respondent No.8 and respondent No. 5 to 8 may kindly be directed to hand over the possession of the fishing tanks to the petitioner.”

[Y. G. KHOBRADE, J.]

[MANGESH S. PATIL, J.]

SMS