

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 CRIMINAL WRIT PETITION NO. 1568 OF 2022

NANDKUMAR UTTAMRAO MUNDHE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Garje Nisargraj B.
APP for Respondents : Mr. S. J. Salgare
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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 30 NOVEMBER 2022

ORDER :-

1. Heard learned Advocate appearing for the petitioner.
2. Learned APP waives service for all the respondents.
3. By invoking the constitutional powers of this Court under Article 226 and 227 of the Constitution of India, the petitioner seeks direction/writ of mandamus against the respondents to register an offence and to direct any independent agency to investigate the crime.
4. The facts which are unearthed are that the petitioner is a contractor and a social worker. He submits that he as well as his

business partner Arun Bhausahab Munde and others had acquired one piece of land ad-measuring 21 Are from gat no. 724/1 at village Kasbe Shevgaon, District Ahmednagar. According to the petitioner, his partner Arun Mundhe and his brother Uday Mundhe had hatched a conspiracy and they took advantage of having old receipt books of sand contracts in the name of Uday Mundhe to store about 400 to 500 brass of sand.

5. Learned Advocate for the petitioner has tried to demonstrate on the basis of the documents attached as to how the same receipt numbers have been used to commit fraud. He also pointed out that there is an agreement between Uday Mundhe and the Collector, Ahmednagar in respect of taking the auction of the sand and how to maintain the register as well as the terms thereof. It has been tried to contend that though the format has been prescribed as to how the daily transaction has to be registered/written in the said register, yet according to him, those terms are not adhered to. Learned Advocate for the petitioner has also taken us through various representations those have been made by the petitioner to the authorities for taking auction. Since no action has been taken, he has filed the present writ petition.

6. At the outset, it is to be noted from the documents which have been produced by the petitioner that the sale deed in respect of 21 Are land appears to have been executed on 29.02.2012. In the sale deed one Arun Bhausahab Mundhe, Uday Bhausahab Mundhe, Nandu Uttamrao Mundhe (present petitioner) and one Prayaga Bhaskarrao Sanap are shown as purchasers. They have purchased the said piece of land from one Shriram Radhakisan Dhoot. Thereafter, there is a document styled as *kararnama/pratidhnyapatra* which was executed by Uday Bhausahab Mundhe in favour of Collector, Ahmednagar which is in respect of taking the auction of excavation of sand and it is executed on 25.03.2011. There is no mention about the land gat number i.e. 25 Are land out of gat no. 724/1. Rather, it mentions gat nos. 693 and 694 which is adjacent to river Godavary. So, This Court cannot appreciate the connection between the agreement as well as the sale deed. Further documents also show that there was an application by Uday Mundhe to change the place of storage of sand. But that application and appeal appears to have been rejected by the concerned authority. It is to be noted from the agreement that the said excavation was permitted for a year. Now, the petitioner contends that there is still 400 to 500 brass sand illegally sold in gat no. 724/1.

7. The record regarding receipts and everything appears to have been started from 2018 when the complaint application was made by the present petitioner. We are unable to get any reason as to why the petitioner had not made any representation/complaint immediately after the expiration of period of the auction. The petitioner claims to be a partner. Under such circumstance, whether independently he can be said to be a proper person to make a complaint, that too of a criminal nature, is a question. Suffice it to say from the record that the complaint appears to have been made by the petitioner belatedly, i.e. from 2018 onwards. It has been tried to be submitted that he was making representations after representations to the respondent authorities. Submission of representations cannot be taken as substitute to the statutory right. At the most a citizen can wait for a reasonable time after making a representation and if the authority is not taking any step, then, other mode/alternative modes will have to be adhered to or explored.

8. Now also, we are unable to get any answer in the memorandum of the petition as to why the petitioner had not lodged a private complaint against any of those persons who, according to him, is responsible for any crime. Apart from that, he could have also prayed for action under Section 156(3) of the Code of Criminal Procedure to

the appropriate Magistrate. When such alternative efficacious remedy is available, so also the petitioner is coming belatedly before this Court, this cannot be taken as a case/proceeding where we should exercise the constitutional powers under Articles 226 and 227 of the Constitution of India. The petition stands rejected.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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