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

WRIT PETITION NO. 4998 OF 2021

Jai Bhavani Reti Utpadak Sahakari
Sanstha Maryadit

..... Petitioner

Vs.

The Collector, Collectorate District
Palghar & Ors.

..... Respondents

Mr. Kranti L.C. for the Petitioner
Mrs. M. P. Thakur, AGP for the State

**CORAM: S.V.GANGAPURWALA &
R.N. LADDHA, JJ.**

DATED : OCTOBER 4, 2022

P.C.

1 We have heard the learned Counsel for the Petitioner and
learned AGP for the State.

2 The learned Counsel for the Petitioner submits that the
Petitioner restricts its prayer to the extent of refund of amount in
respect of the unutilized permits.

3 The learned AGP submits that there is no provision for refund
of the amount. Once the period of permit is over the Petitioner shall
not claim any right over it. Reliance is placed on Government
Resolution dated 21st May 2015.

4 Per contra, according to the learned Counsel for the Petitioner, the Petitioner was not responsible for non excavation of total sand. The permits were issued to the Petitioner in the midst of the months because of which the Petitioner could not utilize the permits. The Petitioner could not excavate about 6762 brass sand because of late issuance of the permits in several months. The Petitioner has given the details of the date of issuance of permits every month, the days which the Petitioner lost of excavation because of late issuance of permit every month and the permits remained to be unutilized.

5 If the permit is issued on the first day of the month and the permit remained unutilized, then it is the Petitioner to blame himself. State would not be responsible for it. However, if the permit is issued in the midst of the month and the Petitioner is not given total days for excavation then the Authority has to consider the reasons for lapse of the permits. Same exercise ought to have been done while passing the impugned order. The said exercise has not been demonstrated to be done by the Authority while passing the impugned order.

6 The chart showing the dates of issuance of the permit every month, total permits, remaining permits and the effective days given to the Petitioner, is reproduced below:

Date of Issue	Total Permits	Remaining Permits	Effective Days
20 th November 2015	5500	326	10 days
4 th February 2016	6000	10	25 days
28 th March 2016	5800	5	3 days
3 rd February	5500	543	55 days
3 rd March	5500	543	27 days
31 st March 2017	3000	1483	30 days
18 th April 2017	2500	1483	12 days
29 th April 2017	2000	140	32 days
1 st July 2017	1200		30 days
24 th July 2017	1200	26	7 days
1 st August 2017	600	167	30 days
25 th October 2017	100	14	6 days
28 th November 2017	100	31	2 days
31 st March 2018	2000	577	30 days
2 nd May 2018	300	59	29 days
Total Unutilized Permits		3381 (6762 Brass)	

7 The Collector shall consider the date of issuance of permits and whether it was possible for the Petitioner to excavate the quantum of the sand within the days available to the Petitioner.

8 In case the Collector is satisfied that because of late issuance of the permits the Petitioner could excavate the sand then the Petitioner may request the Collector for refund of the proportionate amount. Same shall be decided by the Collector on its own merits, expeditiously, preferably within three months.

9 With the aforesaid observations, the Writ Petition is disposed of.

10 Depending upon the decision taken by the Collector, the consequences shall follow.

(R.N. LADDHA,J.)

(S.V. GANGAPURWALA, J.)