

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2811 OF 2021

Samir S/o Dushyant Dalal

-- Petitioner

Vs.

The State of Maharashtra and others

-- Respondents

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

Mr. A.A. Naik, Advocate for Petitioner

Ms. Hemlata Jaipurkar, AGP for Respondent Nos.1 to 5

CORAM : AVINASH G. GHAROTE, J.

DATE : 10<sup>th</sup> OCTOBER, 2022

Heard Mr. A.A. Naik, learned counsel for the petitioner and Ms. Jaipurkar, learned Assistant Government Pleader for the respondent Nos. 1 to 5 / State.

2. The impugned order dt. 23/07/2021 (page 149), which has been passed under Section 48(7) of the Maharashtra Land Revenue Code (MLR Code), imposes penalty of Rs.79,83,950/- upon the petitioner for illegal storage of sand.

3. It is contended by Mr. Naik, learned counsel for the petitioner, that Section 48(7) of the MLR Code would not be attracted in a case of storage of sand as

such storage, can be related to what is permissible u/s 48(7) of the MLR Code. He further submits, that under the order dated 09/02/2021 (page 80) the petitioner was permitted to excavate 2746 brass of sand and further under the order dt. 21/5/2021 (page 108) the petitioner was permitted to store 1200 brass of sand on the land of Gat No.68, admeasuring 1 Hectare. The order dt. 21/5/2021 records that out of 2746 brass of sand, the petitioner had excavated 1376 brass of sand, leaving quantity of 1370 brass of sand yet to be excavated. The measurement of the stored sand, was asked for from the Public Works Department by the communications dated 19/7/2021 (page 146) and 20/7/2021 (page 147). However, without waiting for the said measurement on record, the impugned order was passed on 23/7/2021 (page 149), based upon an approximation that what was lying on the land of Gat No.68 was 1910 brass of sand and by exercise of the power under Section 48(7) of the MLR Code, the penalty has been imposed (page 152).

4. Ms. Jaipurkar, learned AGP justifies the impugned order contending that since the petitioner was permitted to store only 1200 brass of sand and what was found was in excess of the same the offence u/s 48(7) of stood proved, as a result of which the impugned order is legal and correct.

5. The undisputed position is that by virtue of the order dt. 09/02/2021, (page 80), the petitioner has been permitted to excavate 2746 brass of sand and by virtue of the order dt. 21/05/2021, (page 108), what was permitted to be stored on the land of Gat No. 68, admeasuring 1 HR was 1200 brass of sand. The order dt. 21/05/2021 further records, that out of 2746 brass of sand permitted to be excavated what was indeed excavated was 1376 brass of sand and what remained to be excavated was 1370 brass of sand.

6. There are conflicting reports regarding the quantity of sand stored on the land of Gat No. 68, inasmuch as the report dt. 01/06/2021 (page 111) indicates the total sand stored to be 800 to 900 brass; the report dated 18/6/2021, (page 113) indicates 995 brass excess stored; the report dt. 06/7/2021 (page 132) indicates 1910 brass of sand totally stored. Though report was solicited from the PWD, as indicated above regarding determination of the quantity of sand stored on land of Gat No. 68, even though no report was received, the impugned order has been passed based upon a presumption that what was found stored on the land of Gat No.68, was 1910 brass of sand. A perusal of the report dated 06/7/2021 (page 132) indicates that it is a general report regarding storage of sand on various Gat numbers, one of them being Gat No.68, in respect of which it is stated that approximately 1910 brass of sand

was stored. The report also indicates that the storage of sand was in the form of a heap and therefore, it was not possible to calculate the exact quantity with any sense of accuracy and the quantity mentioned, was only on a broad approximation. As against this, the report of the PWD dated 27/7/2021 (page 153) categorically indicates the exact quantity of sand found stored on Gat No.68 to be 1397.15 brass (page 158). It is thus apparent that, the earlier reports dt. 01/06/2021; 18/6/2021 and 06/07/2021, are clearly based upon approximation as against which the report of the PWD dated 24/7/2021 is a precise report. It is therefore, apparent, that the impugned order which holds that 1910 brass of sand was found stored on the land of Gat No. 68, is clearly based upon an approximation. Though the report from the PWD was called for, the impugned order has been passed on 23/07/2021, without waiting for the report of the PWD regarding the exact quantity of sand.

7. The provisions of Section 48(7) of the MLR Code permit its invocation, when a person without lawful authority extracts, removes, collects, replaces any mineral, in this case sand, the right to which vest in, and has not been assigned by the State. In the instant matter, the right to excavate 2746 brass of sand has already been assigned by the State to the petitioner by the order dated 09/2/2021 (page 80). The only discrepancy

which has been found, as indicated by the order dt. 21/5/2021 (page 108) was storage of 1376 brass instead of 1200 brass permitted. This would clearly indicate that mere storage of excess sand, which was within the limit assigned by the order dated 09/02/2021, could not have been termed, to be without lawful authority as was the basic requirement to invoke 48(7) of the MLR Code. The impugned order, does not say that there was any illegal excavation and what all is said that there was excess storage over and above the limit of 1200 brass permitted as per the order dated 21/5/21 (page 108). This excess storage could not have been termed to be illegal or without having lawful authority as the right to this quantity already stood assigned by the State to the petitioner. It is thus apparent that the impugned order falls foul of the mandate of Section 48(7) of the MLR Code, as the said provision does not confer any authority upon the respondents, to impose any penalty on the excess sand stored, beyond the permissible limit, if it is found that such excess sand, is within the limit of the quantity assigned to the petitioner to be excavated, apart from which on a factuality itself, the quantity has not been lawfully determined before the impugned order was passed by the respondent No.3.

8. In view of the aforesaid discussion, the impugned order cannot survive and is hereby quashed and set aside.

9. Needless to mention, that the petitioner may be entitled to use of the sand which is claimed to have been stored on the land in Gat No.68 provided it does not exceed the limit of the sand assigned to the petitioner.

**(AVINASH G. GHAROTE, J.)**

*MP Deshpande*