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

917 WRIT PETITION NO.6372 OF 2023

**SANTOSH VISHWAMBHAR WAGHAMRE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
PRINCIPAL SECRETARY AND OTHERS**

....

Mr S. S. Thombre, Advocate for Petitioner;
Mr S. G. Karlekar, A.G.P. for Respondents/State

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATE : 15th June, 2023

PER COURT:

1. The Petitioner has put forth prayer clauses (B), (C), (D) and (E), which read as under :-

“(B) By issuing a writ of mandamus, orders, directions or any other appropriate writ in the like nature, direct Respondent Nos.2 and 3 issue work order for lifting the sand stock in question and allow him to lift the sand stock in view of his highest bid in auction process by accepting the remaining amount from him;

(C) By issuing a writ of mandamus, orders, directions or any other appropriate writ in the like nature, the impugned letter dated 8th June, 2023 issued by Respondent No.3 to Respondent No.2 may kindly be quashed and set aside;

(D) Pending hearing and final disposal of this writ petition, the effect, operation, execution and

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implementation of impugned letter dated 8th June, 2023 issued by Respondent No.3 to Respondent No.2 may kindly be stayed, and for that purpose, issue necessary orders;

(E) Pending hearing and final disposal of this writ petition, the respondent Nos. 2 and 3 to issue work order for lifting the sand stock in question and allow him to lift the sand stock in view of his highest bid in auction process by accepting the remaining amount from him and for that purpose, issue necessary orders;”

2. We have considered the submissions of the learned Advocate for the Petitioner and the learned A.G.P. on behalf of the Respondents. We have perused the petition paper book with their assistance.

3. There is no dispute that the E-tendering process was followed for the purposes of lifting of the confiscated sand at Mauje Manjrath, Tq. Majalgaon. The approximate available stock of sand in the sand ghat was estimated at 380 brass. It is also undisputed that the Petitioner is the highest bidder, who has already deposited 25% amount in accordance with the policy. It is equally undisputed that, he has been granted the said sand ghat in the concerned auction.

4. The Petitioner contends that the sand stock at issue is a confiscated stock as it was unauthorizedly excavated by some

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other person. The stock was measured, and thereafter, E-tendering was conducted. By the impugned communication dated 08/06/2023, addressed by the Tahsildar, Majalgaon to the District Collector, Beed, it is set out that the measurement of the accumulated stock would have to be carried out through Electronic Total Station Machine (ETS) method. For the said purposes, he has advised the District Collector, not to accept the remaining 75% amount, which the Petitioner is waiting to deposit.

5. The learned A.G.P. has vehemently opposed this petition on the ground that, though the Petitioner is the highest bidder and is legally entitled to take the said sand stock in view of he having agreed to deposit Rs. 2,72,100/-, which includes other components as well, for the 380 brass of sand, unless the sand is measured, the Petitioner cannot be permitted to lift the said stock.

6. We are not in agreement with the submissions made on behalf of the State, for the reason that, once the E-auction has been conducted on the basis of the measurement of the stock, which is approximated at 380 brass, there cannot be a further measurement. However, we would agree with the argument of the learned A.G.P. that, if there is excess stock, the Petitioner

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would virtually get the said stock over and above 380 brass without any charges.

7. In view of the above, this petition is disposed off, with the following directions :-

(a) The District Collector Beed would permit the Petitioner to deposit the entire 75% amount by 21/06/2023.

(b) The Petitioner undertakes to lift only 380 brass of the sand from the said stock.

(c) The measuring equipment for measuring the sand that is being lifted, shall be pressed into the service by the District Collector, in order to ensure that the Petitioner can lift only 380 brass of sand.

(d) If there is any excess sand, an option could be given to the Petitioner to pay the excess amount at the same rate, being the highest bidder and lift the excess stock.

(e) If the stock is less than 380 brass, we grant liberty to the Petitioner to move an application for refund of the excess amount deposited.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)