

--Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4717 OF 2021
WITH
INTERIM APPLICATION NO. 1253 OF 2022
IN
WRIT PETITION NO. 4717 OF 2021
WITH
INTERIM APPLICATION NO. 2580 OF 2023
IN
WRIT PETITION NO. 4717 OF 2021

Shankar Laxman Pawar

...Petitioner

Versus

State of Maharashtra through Principal Secretary
Revenue and Forest Department & Ors

...Respondents

AMOL
PREMNATH
JADHAV

Digitally signed by
AMOL PREMNATH
JADHAV
Date: 2023.07.18
10:43:57 +0530

Mr Chaitanya B Nikte, *with Prajit S Sahane, i/b Prasad Sarvankar,*
for the Petitioner.

Mr NC Walimbe, AGP, *for State.*

Mr Balasaheb G Ligade, *for the Applicant in IA/1253/2022.*

CORAM G.S. Patel &
Neela Gokhale, JJ.

DATED: 17th July 2023

PC:-

1. In our view, this Petition is entirely misconceived. It is an attempt to gain an unfair advantage.

2. The Petitioner complains that land bearing Gut No. 351/A at Village Padli, Taluka Karad, District Satara of 1 Hector 2 R was shown in an e-auction notice. The submission is that the land is “reserved” for the Vadar community, to which the Petitioner belongs, for the purpose of stone quarrying or excavation. It is submitted that there is an exemption for such lands. They are not liable to be put to auction. They are ‘required’ to be allotted to the members of the Vadar community for carrying out “traditional business” or “traditional activities”.

3. What is not disclosed is that in the name of this “traditional business” of quarrying or stone excavation the Petitioner proposes to use non-traditional modern mechanised methods including blasting. The submission before us is that it is the activity of excavation and quarrying that is traditional and not the method by which this is done. In other words, a person from the Vadar community may use the most modern methods of quarrying or excavation but that land can nonetheless not ever be put to e-auction or given to any other competitor.

4. Prima facie this submission is difficult to accept. We have cases where traditional rights, for example those of fishermen, are protected in various water bodies throughout the State to enable them to carry out their “traditional” fishing activities meaning fishing activities in the traditional manner without using mechanised

means such as trawlers. The same principle must apply to excavation and quarrying also. It is only because the Petitioner proposed to use a non-traditional method that the reservation was denied to him.

5. Mr Walimbe points out there was precisely the same mischief on the part of the Petitioner even earlier, and page 89, part of the Affidavit in Reply, paragraph 8 says:

“8) I say that, the Respondents had permitted to petitioner for extracting the stones by way of only traditional way. As per panchanama dated 13/3/2019 made by Nair Tahsildar, Karad showing that the petitioner extracted 20 to 22 Brass stones by use of machinery and blasting. Hence Respondent No. 3 had immediately stopped said mining operations of petitioner and said quarry was directed to be closed. Hereto annexed and marked as **Exhibit “2”** is a copy of panchanama, dated 13/3/2019. I further say that, thereafter panchanama dated 4/12/2019 showing that 167 Brass stone is illegally and without permission excavated by the petitioner. Hereto, annexed and marked as **Exhibit “3”** is a copy of panchanama, dated 4/12/2019.”

6. In the meantime, an intervention application has been filed by one Kuldeep Ajitrao Patil (“**Patil**”) who claims in Interim Application No. 2580 of 2023 to be the person who submitted an e-auction bid for stone excavation/quarrying but using modern contemporary methods including blasting. Apparently, no work order has not been issued to Patil. He came to Court because there was an order of 17th November 2022 passed in the Writ Petition to which Patil was not joined by which this court not only issued notice but said that if no work order had been issued it would not be issued

in respect of the land in question. At that time, it was pointed out to the Court that similar auctions had been stayed in Writ Petitions filed earlier.

7. Today the submission is that the Petitioner will make a representation to the Collector and until that representation is decided the work order may not be issued to Patil. It is also submitted that there are other matters where some general stay has been obtained in respect of some lands but without particularising whether this land is comprised in those plots.

8. We are unable to see why at the instance of a person who seeks to gain an unfair advantage of a reservation for a community, i.e., by claiming membership of the community and yet claiming to carry on what is said to be traditional mining activity in a decidedly non-traditional way, the interest of both the State Government and other bidders should be adversely affected.

9. It is always open to the Petitioner to make an appropriate representation to the Collector or to whatever competent authority, the Petitioner desires. But this does not mean that we are required to continue a stay on the issuance of the work order indefinitely. That is clearly not in the interest of either the Government or affected third parties (notably not joined to the Petition itself).

10. Accordingly, the application for intervention is allowed. The amendment is to be carried out immediately without need of reverification and if the Petitioner does not do this by Friday, 21st

July 2023, the intervenor will be at liberty to make the necessary amendment to the Petition joining the intervenor Patil as the Respondent to the Petition.

11. We are not inclined to continue the previous stay order of 17th November 2022 and it stands vacated. The Government will take the necessary steps. We are not directing the Government necessarily to issue a work order in favour of Patil. It will proceed in accordance with law.

12. Granting liberty to the Petitioner to make an appropriate representation to the Collector, we reject the Petition.

13. In the facts and circumstances of the case there will be no order as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)