

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

WRIT PETITION NO.11608 OF 2018

Kisan Sudam TambePetitioner

V/s.

State of Maharashtra and Ors.Respondents

Mr. Nikhil P. Mallelwar i/b. Mr. Sachin Pawar for petitioner.

Mr. K.S. Thorat, AGP for respondent – State.

**CORAM : K. R. SHRIRAM &
FIRDOSH P. POONIWALLA, JJ.**

DATED : 6th JULY 2023

P.C. :

1 Petitioner is impugning a communication dated 16th January 2018 by Under Secretary of Revenue Department to the Collector, Pune bearing no.Gaukhani-34/0814/case no.435/kha.

2 Petitioner had participated in the auction of sand excavation for the year 2010-2011 of Mouje Tulapur, Taluka Haveli, District Pune and won the auction bid for amount of Rs.30,00,000/-. Petitioner deposited the amount of Rs.30,00,000/- with the District Collector who issued an order dated 19th December 2010. By this order, petitioner was permitted to excavate the sand from the said plot.

3 Petitioner started excavating. It is petitioner's case that the local villagers started opposing and did not permit petitioner to excavate sand. The villagers of Village Tulapur also passed resolution in the Gramsabha restraining excavation of sand from the said plot. Petitioner,

therefore, could not excavate the sand.

4 It is stated in the petition that though petitioner was permitted to excavate 1100 brass sand, petitioner was able to excavate only 410 brass before the protest started and petitioner was unable to excavate 690 brass sand. Petitioner, therefore, applied to the State Government for return of an amount of Rs.18,81,819/- which is the proportionate amount for 690 brass. The application was made to the Minister for Revenue for the State of Maharashtra. By an order dated 9th September 2014 the Hon'ble Minister, after hearing petitioner and the Collector, passed a detailed order directing the Revenue Department to return to petitioner the amount of Rs.18,81,819/- for the unexcavated 690 brass of sand. Thereafter, petitioner has been running from pillar to post to get back this amount of Rs.18,81,819/-.

5 Since the order of the Hon'ble Minister passed on 9th September 2014 was not being acted upon, petitioner filed a Writ Petition bearing No.11505 of 2016. The said petition came to be disposed vide an order dated 5th October 2016, which reads as under :

. Matter is not on board. In view of urgency, taken up in the production board.

2. Parties through their Counsel.

3. The grievance of the petitioners is that inspite of there being an order – Exhibit 'A' passed by respondent No.1, the amount which is payable to the petitioners in terms of the said order has not been paid to the petitioners yet. Having regard to the

aforesaid limited grievance, we direct the respondent to calculate the amount which is payable to the petitioners and release the amount which may be payable to the petitioners within a period of 2 months from the date of receipt of copy of this order. It is open for the petitioners to give details of the amount which according to the petitioners is payable in pursuance to the order Exhibit 'A'.

4. With the aforesaid directions, Petitions are disposed of.

6 Despite specific directions of this Court to respondents to calculate the amount which is payable to petitioner and release the amount that will be payable within a period of two months, respondents did not comply with the order of this Court. Petitioner was again made to run from pillar to post. As petitioner was hitting a dead end, another petitioner, who was similarly situated, filed a contempt petition. When the contempt petition came up for hearing on 23rd February 2017, a statement was made that respondents would give effect to the order passed by this Court earlier within a period of six weeks. Paragraph 2 of the said order reads as under :

2. We have perused the copy of the Writ Petition No.11874 of 2016 which is produced for perusal of the Court by the learned counsel appearing for the Petitioner. The order dated 17th October 2017 of which a breach is alleged is based on the order dated 9th September 2014 passed by the Hon'ble Minister for State of the Revenue Department. The said order has attained finality and, therefore, there is no choice but to implement the said order.

The order dated 9th September 2014 referred therein, though in the petition of another party, Mr. Mallelwar states, is identical to the order passed in petitioner's case on 9th September 2014 by the Hon'ble Minister. It

is petitioner's case that despite petitioner following up with the State, the order dated 9th September 2014 passed by the Hon'ble Minister for Revenue and the order dated 5th October 2016 was not acted upon.

7 Thereafter, petitioner received a communication dated 16th January 2018, which is impugned in this petition, by which the Under Secretary of Revenue Department has advised to Pune Collector to reject petitioner's claim. In the affidavit in reply the stand taken is that petitioner had suppressed material facts in as much as there was no protest by villagers, petitioner was not in a position to excavate the sand and because petitioner's request to allot another sand spot due to non availability of enough sand in the river was rejected, petitioner has taken up the excuse of villagers' protest.

8 In our view, this approach of the Under Secretary of Revenue Department is totally unacceptable in as much as all these points, which are raised in the affidavit in reply, should have been raised before the Hon'ble Minister passed his order dated 9th September 2014. The Hon'ble Minister has passed the order on 9th September 2014 after hearing the Collector, Pune. In the order, the Hon'ble Minister has expressly recorded "the representations of the Collector". Therefore, the Revenue Department has no choice but to comply with the order passed by the Hon'ble Minister because that order has attained finality. If the State was unhappy, it should

have challenged the order of the Hon'ble Minister which it never did and, therefore, there was no choice but to implement the said order. Infact the same view we would say had been taken by this Court when it passed the order dated 5th October 2016 because respondents were directed by the Court to calculate the amount which is payable to petitioner and release the amount which may be payable to petitioner.

9 In the circumstances, we hereby quash and set aside the communication dated 16th January 2018 and direct respondents to calculate the amount payable to petitioner and release the amount on or before 31st August 2023 together with interest thereon at 9% p.a. Respondents shall also pay costs of Rs.25,000/- for this petition to petitioner by way of cheque drawn in favour of advocate on record for petitioner and this amount shall be paid alongwith compensation as directed by the Hon'ble Minister in its order dated 9th September 2014 read with this Court's order dated 5th October 2016. The State may recover the costs from the concerned officer who refused to follow the directions of the Hon'ble Minister and of this Court.

10 Petition disposed.

(FIRDOSH P POONIWALLA, J.)

(K. R. SHRIRAM, J.)