



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

WRIT PETITION NO.2660 OF 2021

Balasaheb S/o Dashrath Solankar	... Petitioner
V/s.	
State of Maharashtra & Ors.	... Respondents

**WITH
WRIT PETITION NO. 2797 OF 2021**

Subodh s/o. Ravsaheb Taral	... Petitioner
V/s.	
The State of Maharashtra through Principal Secretary & Ors.	... Respondents

Mr. Shermale for Petitioners in both Petitions.
Mr. Girish Godbole, Sr. Advocate and Mr. Amit Gharte as Amicus Curiae.
Mr. A. I. Patel, Addl. G. P a/w. Mr. K. S. Thorat, AGP for Respondent-State.
Mr. Sadanand Mohite, Section Officer, Revenue and Forest, Mantralaya.

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

DATE : 17TH AUGUST 2023

P. C.:-

WRIT PETITION NO.2660 OF 2021

1. This Petition was filed impugning the order passed by the Tahsildar. It is the case of the State that Petitioner's vehicle was being used to illegally carry sand whereas, it is Petitioner's case that Petitioner did not commit any illegality. It is Petitioner's case that the order impugned has been

passed without considering Petitioner's submissions and the documents that Petitioner had relied upon and therefore, Respondent has committed a breach of principles of natural justice.

2. Mr. Sharmale submitted to an objection raised by Mr. Patel to the Petition of availability of alternative remedy of statutory Appeal that the same will not make any sense because Respondent No.3 has not considered any of the documents and submissions made by Petitioner while passing the impugned order.

3. Considering various reports on the menace of sand mining, we are informed, the Court in its wisdom, by an order dated 10th August 2021 decided to appoint Mr. Godbole and Mr. Gharte as Amicus Curiae, so that government would come out with a policy on the activities in sand extraction such as allotment of the lease, collection of revenue, monitoring sand transportation etc.

4. Mr. Patel submitted that the Government has issued a Government Resolution dated 19th April 2023 bearing No.GoKhaNi-10/1222/PK.82/Kha-1, read with a Corrigendum dated 21st April 2023, laying down the new sand policy.

Copy of the Government Resolution dated 19th April 2023 with Corrigendum dated 21st April 2023 are taken on record and marked 'X' and 'X-1' respectively for identification.

Mr. Patel states the English translation of these Government Resolutions are almost done and will be filed on or before 21st August 2023. Statement accepted.

5. Mr. Godbole submitted a note on the policy. He also submitted that the policy in fact is to monitor the movement of the sand from the spot of excavation to the Depot. He submitted that though there is a weighbridge at Depot there is no mechanism identified to determine the quantity of sand extracted from the riverbeds at its source.

6. Mr. Patel, on instructions from Mr. Sadanand Mohite, Section Officer, Revenue and Forest, Mantralaya, stated that the Government will look into this aspect and come up with a workable solution. Mr. Patel requested that on the issue of this policy, the Petition be stood over to 14th September 2023.

7. As regards the merits of these two Petitions, in view of the arguments raised by Mr. Sharmale that the vehicles were seized and order

passed without considering the submissions of Petitioner, Mr. Patel on instructions suggested that the impugned orders in the Petition could be quashed and set aside and the matter be remanded to the Tahsildar for *de-novo* hearing. Mr. Sharmale requested the matter be kept back to enable him to take instructions.

8. When the matter was called out again Mr. Sharmale was agreeable with this suggestion of Mr. Patel. Therefore, the order impugned in the Petition dated 29.06.2021 (in WP No.2660/2021) is quashed and set aside.

9. The matter is remanded to the Tahsildar for *de-novo* consideration. Tahsildar shall give a personal hearing to Petitioner, notice whereof shall be communicated at least three working days in advance and pass a reasoned order dealing with all submissions of Petitioner.

10. All rights and contentions are kept open.

11. We have not made any observation on the merits of the matter.

12. Mr. Sharmale states that if the order passed is prejudicial to Petitioner's interest, Petitioner will take such steps at the appropriate stage.

13. Tahsildar shall dispose the matter and pass final order within six weeks from the date this order is uploaded. After the disposal of the matter Petitioner may apply for return of the amount deposited by Petitioner.

14. We have to note that Mr. Sharmale at the outset stated that he was not pressing prayer Clause (d).

Stand over to 14th September 2023 to consider the new sand policy only.

WRIT PETITION NO. 2797 OF 2021

15. In this case there is no show cause notice issued but a notice dated 24th June 2021 has been issued. Mr. Sharmale states that reply has not been filed to this notice but Petitioner moved the Court impugning this notice. Mr. Sharmale states that within two weeks from today he shall file a reply to this notice and the concerned Tahsildar can dispose the notice within four weeks of the reply being filed in accordance with law.

16. Before passing any order personal hearing shall be given to Petitioner, notice whereof shall be communicated at least three working days in advance. Tahsildar shall dispose the matter and pass a final order within

six weeks from the date this order is uploaded.

17. Mr. Sharmale states that if the order passed is prejudicial to Petitioner's interest Petitioner will take such steps at the appropriate stage.

18. After the disposal of the matter Petitioner may apply for return of the amount deposited by Petitioner.

19. Petition disposed.

20. We clarify that we have not made any observation on the merits of the matter.

(FIRDOSH P. POONTIWALLA, J.)

(K. R. SHRIRAM, J.)