

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2395 OF 2023

MAYURESH ENTERPRISES,
Through its proprietor Shri Sushant
Tarachandra Jagtap, Age 31 years, Occ.
Business, Residing at Malegaon, Taluka
Baramati, District Pune

...Petitioner

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
Through Hon'ble Revenue Minister,
Government of Maharashtra,
Mantralaya, Mumbai
- 2. THE DISTRICT COLLECTOR,**
PUNE
- 3. THE ADDITIONAL COLLECTOR,**
PUNE
- 4. THE TAHSILDAR, SHIRUR,**
Taluka Shirur, District Pune.

...Respondents

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APPEARANCES

FOR THE PETITIONER	Mr Suresh Sabrad, <i>with Amey Sawant.</i>
FOR RESPONDENTS	Mr SB Kalel, AGP.

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

DATED : 28th March 2023

ORAL JUDGMENT (Per GS Patel J):-

1. Rule. Returnable forthwith.

2. The Petition seeks an order of payment of interest against the Respondent for an unjustified delay in refunding an amount admittedly due. The principal amount of Rs. 30,40,140/- has been returned.

3. A brief background runs like this. The Petitioner is a proprietorship firm. It participated in an auction in respect of an immovable property at Bhagulsa, Taluka Shirur, District Pune with a bid of Rs. 1,21,60,460/-. This was the winning bid. Respondent No. 3, the Additional Collector, Pune, wrote to the Petitioner on 2nd February 2015 asking for a deposit of Rs.30,40,140/- being 25% of the auction bid. This was to be deposited by 9th February 2015. The Petitioner made that deposit and there is no dispute about this.

4. It was only thereafter that the Petitioner learnt that one Bharat Malhari Khaire had filed an appeal before the State Government for allotment of this very site for excavation of sand in lieu of another site. By an order of 9th September 2014, i.e., well prior to the auction purchase of 30th December 2014, the State Government had allowed Khaire's appeal and allotted the very site to him. On 23rd April 2015, the Petitioner learnt that the Additional

Collector had himself on 23rd April 2015 granted sand excavation rights to Khaire on this very plot.

5. On 29th May 2015, the Petitioner applied to the Additional Collector for a refund of Rs. 30,40,140/-. A reminder followed on 15th June 2015. There was no response. On 7th July 2015, the Petitioner filed an appeal under Section 32 and 37 of the Bombay Minor Mineral Extraction Rules 1955 and demanded a refund along with interest.

6. Nothing happened for the next five years and then came the lockdown. On 5th January 2021, the Petitioner wrote to the 1st Respondent asking for a hearing of the appeal, refund and interest.

7. As noted, in 2015, the Petitioner had filed an Appeal before the 1st Respondent. On 17th February 2021, this Court passed an order in the Petitioner's Writ Petition No. 215 of 2021 directing that the Petitioner's appeal be heard before 23rd April 2021. The appeal was listed thereafter but was not heard or disposed of. The Petitioner had to file a second Writ Petition No. 2555 of 2021. As soon as that happened and the Petition was circulated, the Petitioner's appeal was listed on 8th July 2021. On 14th July 2021, the Petitioner's appeal succeeded in part to the extent of the refund but without permitting any interest.

8. Now the Petitioner filed a third Writ Petition No. 1703 of 2022 for the interest component and on 22nd April 2022, this court directed the Petitioner to prefer another appeal to the 1st

Respondent only on the question of interest on Rs. 30,40,140/-. The Petitioner did so, and that appeal was filed on 29th April 2022. It was rejected on 11th November 2022 by the impugned order at page 132.

9. Our attention is drawn by Mr Sabrad to similar orders including one of 5th February 2015 passed by AS Oka J (as he then was) and MS Sonak J, where for a similar delay, and finding that there was no excuse, the Court ordered interest to be paid 9% per annum from the date of the first application for refund. The reasoning in that order constitutes a judgment in our view and is, therefore, binding on us. At best we may alter the rate of interest but 9% today is by no means unreasonable.

10. The Petition is disposed of and Rule is made absolute by ordering and directing Respondent No. 1 to pay to the Petitioner interest at the rate of 9% per annum on the amount of Rs. 30,40,140/- from 7th July 2015, the date of the first application for interest. The amount is to be paid in full by 21st April 2023. This order is executable as an order of this Court.

11. No costs.

(Neela Gokhale, J)

(G. S. Patel, J)