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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**905 CIVIL APPLICATION NO. 10169 OF 2024
IN PIL/34/2022**

GVPR ENGINEERS LTD THR THE SENIOR MANAGER PROJECTS G.
MAHENDER SRI. G. SOMLA

VERSUS

SHRIHARI ANANT SHIDORE AND OTHERS

WITH

PUBLIC INTEREST LITIGATION NO. 20 OF 2021

SURAJ PRADIP KUMAR AJMERA

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

WITH

PUBLIC INTEREST LITIGATION NO. 34 OF 2022

SHRIHARI ANANT SHIDORE AND OTHERS

VERSUS

THE COMMISSIONER /ADMINISTRATOR AND OTHERS

Mr.R.N.Dhorde, Sr.Advocate i/b Mr.S.N.Suryawanshi, Advocate fr the Applicant.

Mr.S.S.Tope, Advocate for Respondent Nos. 1 to 4 in PIL.

Mr.A.B.Girase, Government Pleader for Respondent Nos. 5, 8 to 10.

Mr.S.B.Deshpande, Sr.Advocate a/w Mr.D.P.Madkar h/f

Mr.D.S.Manorkar, Advocate for Respondent No.11.

Mr.R.S.Deshmukh, Sr.Advocate i/b Mr.Vinod Patil a/w

Mr.A.G.Vasmatkar, Advocate for the Respondent/M.J.P.

Mr.A.S.Bajaj, Advocate for Respondent No.10 in PIL.

Mr.A.A.Mukhedkar, Party in Person a/w Mr.Sachin Deshmukh, Amicus Curiae.

Mr.A.G.Talhar, D.S.G.I. for Union of India.

**(CORAM : RAVINDRA V. GHUGE AND
Y.G.KHOBRADE, JJ.)**

DATE : OCTOBER 3, 2024

PER COURT :

1. The Project Contractor/Applicant has put forth prayer clause 'A' as under :-

“A. Grant the applicants the permission to withdraw the amount of Rs.48,01,720/- alongwith Rs.86,42,400/- deposited with the Respondent No.6 M.J.P and the District Mining Officer, Ch.Sambhajinagar respectively and for that purpose issue necessary orders.”

2. We have perused the order passed by the District Collector dated 18.04.2023. The relevant portion of the order reads as under :-

“कार्यकारी अभियंता, महाराष्ट्र जीवन प्राधिकरण, औरंगाबाद यांचे संदर्भीय क्रमांक 06 पत्र दि.02.09.2022 अन्वये मौजे हिरडपुरी ता.पैठण या वाळू घाटात मातीचे प्रमाण खुप जास्त असल्याने ती वाळू पाणी पुरवठा योजनेच्या कामासाठी वापरणे योग्य नसल्यामुळे मौजे हिरडपुरी ता. पैठण 25106 ब्रास वाळू घाटापैकी 477 ब्रास वाळू उचल करण्यात आलेली असल्याचे कळवून गोदावरी नदीपत्रावरील नव्याने पुन्हा सर्वेक्षण झाल्यानंतर व ज्या ठिकाणच्या वाळूमध्ये मातीचे प्रमाण कमी असेल त्या ठिकाण चा वाळू घाट मिळणेबाबत विनंती केली होती.

या कार्यालयाचे संदर्भीय क्रमांक 07 पत्रान्वये कार्यकारी अभियंता, महाराष्ट्र जीवन प्राधिकरण औरंगाबाद यांना मौजे हिरडपुरी ता. पैठण या वाळू घाटाऐवजी त्यांचे मार्फत

उचल करणे बाकी असलेले 24629 ब्रास वाळू गोदावरी नदीपात्रातील नव्याने सर्वेक्षण होणा-या वाळू घाट बदलून देण्याबाबत शासनास विनंती करण्यात आली होती.

संदर्भीय क्रमांक 08 शासन पत्रान्वये कार्यकारी अभियंता, महाराष्ट्र जीवन प्राधिकरण औरंगाबाद तर्फे कंत्राटदार जी.व्ही.पी.आर इंजिनीअर्स प्रा.लि. हैद्राबाद यांना मौजे हिरडपुरी ता. पैठण जि. औरंगाबाद या वाळू घाटातील मंजूर 25106 ब्रास वाळू घाटाबाबत उत्खनन व वाहतूक करणे कामी या कार्यालयाचे आदेश दि. 31/03/2022 च्या करारनाम्या मध्ये नमुद अटी व शर्ती क्र. 14 मध्ये सुट देण्यात येवून सन 2022-2023 साठी नव्याने प्रस्तावित गोदावरी नदीतील घाटातून नव्याने पुन्हा सर्वेक्षण झाल्यानंतर व ज्या ठिकाणी वाळू सदर कामासाठी योग्य आहे असा वाळूघाट बदलून देण्यास मान्यता देण्यात येत असल्याचे कळविले आहे.

कार्यकारी अभियंता, महाराष्ट्र जीवन प्राधिकरण, औरंगाबाद यांनी मौजे हिरडपुरी ता. पैठण या वाळू घाटासाठी शासकीय रकमा भरणा केलेल्या आहेत. मौजे हिरडपुरी ता. पैठण या वाळू घाटाऐवजी इतर वाळू घाट बदलून देण्यास शासनाने मान्यता दिलेली असल्यामुळे शासकीय रकमा भरणा करण्याची आवश्यकता नाही.”

3. The issue raised by the Applicant is found in paragraph Nos. 4, 5, 6 and 7 of the Civil Application, which read as under :-

“4. The applicant states that, the applicant was required to pay Royalty to the Inspector General of Registration against allotment of 25106 brass of sand quarry at Hiradpuri village, Tq.Paithan. Therefore, the applicant paid the requisite amounts towards the Royalties. Annexed

herewith and marked collectively as **"EXHIBIT X-3 COLLY"** are the copies of the Challans for the amounts paid towards Royalties dtd. 17.02.2022 and 24.03.2022.

5. The applicant states that, out of the allotted 25106 brass of sand only 10702 brass of sand has been excavated. Hence the present applicant has submitted an application dtd. 08.05.2024 to the District Mining Officer through Respondent No. 6 M. J. P. to refund the Royalty amount paid towards the remaining allotted sand i.e. 14,404 brass. Annexed herewith and marked collectively as **"EXHIBIT X-4"** are the copies of the application preferred by the applicant to the Respondent No. 6 M. J. P. and M.J. P. communication dtd. 10.5.2024, 14.05.2024 and Learned Collector order dtd. 07.05.2024.

6. The applicant states that, the applicant contractor made an application to the District Mining Officer, Ch. Sambhajinagar requesting them to return the Bank Guarantee for Security Deposit vide letter dtd. 18.06.2024 in view of the fact that the period of the bank guarantee & its extension lapsed on 01.01.2024 & 30.06.2024 and as per the contract has been completed and all conditions have been met. Annexed herewith and marked collectively as **"EXHIBIT X-5"** is the copy of the letter dtd. 18.06.2024.

7. The applicant states that, the applicant is seeking the permission of this Hon'ble Court to withdraw the amount of Rs.86,42,400/- paid in Royalty deposited with the District Mining Officer through Respondent No. 6 M.J.P. as well as the amount of Rs.48,01,720/- deposited as bank guarantee with the District Mining Officer, Ch. Sambhajinagar. In view of the same, the applicant humbly submits that the granting of permission for withdrawing the amounts of Rs. 86,42,400/- &

48,01,720/- will not cause any prejudice to the respondents.”

4. The learned Government Pleader relies on the affidavit in reply filed by the Mining Officer, Collector's Office, dated 30.09.2024, more particularly, paragraph No.5.

5. In view of the above, we deem it appropriate to let the Project Contractor raise this issue with the High Court Constituted Committee for re-conciliation of the quantum of sand lifted from the Hiradpuri, Nagamthan, Wanjargaon and Poorangaon sand ghats / spots. We have recorded in paragraph No.10 in our order dated 16.04.2024 that the M.J.P. restrained the Project Contractor from lifting the sand from the Hiradpuri, Aapegaon and stockyard of Brahmangaon, for the reason that the said sand was not worthy of being used in the project due to mixture of soil.

6. In view of the above, we conclude that if the contractor has not lifted the full portion of the sand from Hiradpuri, Nagamthan, Wanjargaon and since royalty is being paid for the Poorangaon sand ghat, the State Government shall return the royalty amount to the

Project Contractor pertaining to the unlifted stock of sand keeping in view this peculiar project. After the High Court constituted Committee draws its conclusion on these aspects and if it is found that the Project Contractor has deposited royalty for the entire sand quantity, for the Hiradpuri, Nagamthan, Wanjargaon sand ghats and if any of the portion of the approved quantity of sand having not been lifted, the said royalty amount shall be returned on prorata basis.

7. We make it clear that this is a dream project for the residents of Chhatrapati Sambhajnagar City. The State Government, by completing this Project, desires to quench the thirst of the residents of this city by supplying water once in 2 days as against supplying once in 9 days and to ensure that this project is taken to fruition. Without laying down any precedent, we are directing the State Government to deviate from its general policy of not returning the royalty amount to the successful bidder, more so for the reason that it was the M.J.P. who found sand from certain ghats to be not worthy of being used in the project and this was beyond the control of the Project Contractor. Let this issue be raised before the Committee in its next meeting on 09.10.2024. The decision of the Committee shall be placed before this

Court in this Civil Application, on 17.10.2024.

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8. The learned Government Pleader has placed on record the copy of the report generated by the High Court Constituted Committee dated 18.09.2024 (1 + 28 pages). The same is marked as 'X-47' for identification.

9. During the course of the hearing today, the learned Senior Advocates representing the Project Contractor, the M.J.P, and the N.H.A.I., and the Government Pleader and the learned Advocate for the Corporation, suggested that an Advocate be additionally appointed as amicus-curiae alongwith the learned Advocate Shri Sachin Deshmukh. They unanimously suggested the name of the learned Advocate Mr.Shambhuraje V .Deshmukh. In view of the said suggestion, we called for the view of the learned Advocate Mr.S. V. Deshmukh, who has consented to assist the Court. Hence, Mr. Shambhuraje V. Deshmukh is appointed as amicus-curiae alongwith the learned Advocate Mr.Sachin Deshmukh.

10. List this PIL on 17.10.2024 for further consideration. We

make it clear that if the Model Code of Conduct is introduced on account of the probable State Assembly Elections to be held by the end of the year, there shall be no impediment for disbursement of funds and grants for this Project and the Code of Conduct shall not be a ground for withholding the grants.

(Y.G.KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)