



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2104/2024

**Khadakpurna Matsya Vyavasaya Sahakari Sanstha Maryadit,
Chinchkhed**

Vs.

**The State of Maharashtra, through its Secretary, Department of
Fisheries and others**

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. A.M. Ghare, Advocate for Petitioner
Mr. Alap Palshikar, AGP for Respondents / State
Mr. S.D.Chande, Advocate for Respondent No.4

CORAM: N.R. BORKAR, J.

DATED : 5th JULY, 2024

This petition takes exception to the order dated 13.03.2024 passed by respondent No.1 / State in Appeal No.6/2023.

2. On 09.09.2010, the lease of fishing rights in respect of Khadakpurna Tank for a period of five years with yearly lease amount of Rs.51,00,786/- was granted in favour of respondent No.4. The lease period was from 01.07.2010 to 30.06.2015. Respondent No.4 was allowed to make the payment of lease amount in three installments. On 28.01.2011, one of the cheques issued by respondent No.4 towards lease amount was dishonoured for the reason "insufficient funds". Due to non-payment of the

lease amount, by order dated 29.08.2011, the lease was cancelled and the respondent No.4 was black listed. The said order was challenged in appeal. By order dated 03.05.2013, the appeal filed by the respondent No.4 was dismissed. The revision before the respondent No. 1 was filed and the said revision was allowed by the order dated 04.07.2016. The respondent No.2 was directed to consider whether the tank in question can be re-allotted to the respondent No.4 in accordance with relevant Rules. In the interregnum, after cancellation of lease, respondent No.3 conducted open auction of the tank in question and allotted it to one Jai Bhawani Matsyavyavasay Sahakari Sanstha for the period of five years from 2011-12 to 2015-16.

3. It appears that Writ Petition No. 5936/2017 was filed before this Court by respondent No.4 alleging non-compliance of order passed by respondent No.1 dated 04.07.2016. In the said Writ Petition, this Court on 19.01.2018 passed the following order :

“The only prayer made by the petitioner in this writ petition is for a direction against the Commissioner of Fisheries, Maharashtra State, Mumbai to comply with the order of the State Government, dated 4/7/2016 directing him to decide the claim of the

petitioner for allotment of the fishing rights in Khadakpurna tank.

The learned Assistant Government Pleader states by referring to the affidavit-in-reply filed on behalf of the respondent no.4 Assistant Commissioner of Fisheries that the representation - claim of the petitioner would be decided within two months.

Shri Ghare, the learned Counsel for the proposed intervenor - Jai Bawani Matsyavyasaya Sahkari Sanstha, Singaon (Jahangir), Tq. Deulgaon Raja, District: Buldhana states that since the appeal filed by the said Society is pending before the State Government for grant of extension of the fishing rights for five years, the said Society may also be heard before taking a decision.

We find that when this writ petition was filed, a fresh tender was floated by the respondent no.4 for grant of fishing rights in Khadakpurna tank. In pursuance of the said tender, certain bids were received by the respondent no.4. If that is so, it would be necessary for the Authority to hear not only the petitioner and Jai Bhawani Matsyavyasaya Sahkari Sanstha but also the other parties and the societies that had tendered their bids for grant of fishing rights in Khadakpurna tank.

The learned Counsel for the petitioner does not have any serious objection if Jai Bhawani Matsyavyasaya Sahkari Sanstha and the other bidders are heard.

It is stated that Jai Bhawani Matsyavyasaya Sahkari Sanstha has

filed the appeal against the order of the Commissioner before the State Government and the same is pending. Since the appeal of Jai Bhawani Matsyavyasaya Sahkari Sanstha is pending before the State Government, it would not be proper for the Commissioner to hear this matter.

Hence, we dispose of the writ petition with a direction to the State Government to hear together and to decide the respective claims of the petitioner, Jai Bhawani Matsyavyasaya Sahkari Sanstha and the other societies that had submitted their bids in the fresh auction process within two months from the date of service of the notice on all the parties concerned. The petitioner and Jai Bhawani Matsyavyasaya Sahkari Sanstha undertake to appear before the Hon'ble Minister, Department of Animal Husbandry, Agricultural and Fisheries, Mantralaya, Mumbai on 05/02/2018 so that the issuance of notice to them could be dispensed of.

Order accordingly. No costs.”

4. Pursuant to the above order passed by this Court, the matter was heard by respondent No.1 and by order dated 21.05.2018, the revision filed by the respondent No.4 was dismissed. In view of the order dated 21.05.2018, the authorities conducted fresh auction of the tank in question and it was allotted to M/s Dheeraj Construction, Buldhana for the period from 01.7.2018 to 30.06.2023.

5. According to the petitioner, when the respondent No.3 was taking steps to conduct auction for the period 2023-24 to 2027-28 the respondent No.4 on 26.05.2023 had suddenly filed an application before respondent No.1 and demanded that the order dated 04.07.2016 be implemented and process of auction be stayed. Initially, the auction was stayed. According to the petitioner pursuant to the order passed by the respondent No.1, the meeting of the Allotment Committee was called on 20.10.2023 and it was decided that it not would be appropriate to consider the request of respondent No.4 for re-allotment of the tank after the period of 12 years. Against the said decision appeal was filed before the respondent No.1. By the order impugned the respondent No.1 has allowed the appeal and directed that the respondent No.4 shall deposit balance consideration of 73 days as referred to in the minutes dated 06.11.2023 and after such deposit lease of fishing rights in favour of the respondent No.4 for the balance period shall be granted.

6. I have heard the learned counsel for the petitioner, learned counsel for the contesting respondent and learned Assistant Government Pleader.

7. The learned counsel for the petitioner submits that the order passed by the respondent No.1 dated 21.05.2018 was not challenged. After the said order, auction was conducted of the tank in question and was allotted in favour of M/s Dheeraj Construction and the said allotment was not challenged. It is submitted that on 17.5.2023, the respondent No.4 had made an application and request was made to respondent No.2 for participating in auction process for the period 2023-24 to 2027-28. It is submitted that considering the overall facts and circumstances the impugned order cannot be allowed to stand.

8. On the other hand, the learned counsel for the contesting respondent No.4 submits that the order dated 29.08.2011 cancelling the lease was set aside by order dated 04.07.2016 passed by the respondent No.1. It is submitted that pursuant to the order dated 04.07.2016, the authorities ought to have granted the lease rights in favour of respondent No.4 for the balance period, however, as the same was not done the petitioner was required to file Writ Petition before this Court for implementation of the said order dated 04.07.2016. It is submitted that considering the overall facts and circumstances no interference is called for in the impugned order. It is accordingly

submitted that the petition be dismissed.

9. It is not in dispute that alleging non-compliance of the order dated 04.07.2016, Writ Petition No. 5936/2017 was filed before this Court. Pursuant to the directions issued by this Court, fresh order dismissing the revision of respondent No.4 was passed on 21.05.2018. The said order was not challenged. After the said order, fresh auction was conducted and the tank in question was allotted to M/s Dheeraj Constructions for the period from 2018 to 2023. The allotment in favour of M/s Dheeraj Constructions was not challenged. On the contrary, when auction process from 2023-24 to 2027-28 was started request was made by respondent No.4 to respondent No.2 that for participating in auction process. The respondent No.1 therefore ought not to have entertained appeal filed by the respondent No.4. The order impugned, therefore, cannot be allowed to be stand and the same is set aside. The petition is allowed. No costs.

10. The learned counsel for the respondent No.4 submits that respondent No. 7 be directed to refund the amount of respondent No.4 lying with them. The petitioner is permitted to file an application for refund of amount and if such

application is filed, the respondent No.7 shall pass appropriate order within a period of four weeks from the date of filing of such application.

(N.R. BORKAR, J.)

MP Deshpande