

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7845 OF 2024

1. Ajay Suresh Orpe,
Age: 48 yrs., Occ. Agriculturist,
2. Ganesh Suryakant Pharate,
Age : 40 yrs., Occ. Agriculturist,
Both R/o. At Post Daund, Taluka Daund,
District Pune. ... Petitioners

Versus

1. The State of Maharashtra
Through its Revenue and Forest Department,
Government of Maharashtra, Mantralaya,
Mumbai.
2. The Collector, Pune.
3. The District Mining Officer,
And Additional Collector, Pune, Pune – 1.
4. The Tahasildar,
Taluka Daund, District Pune.
5. The Sub-Divisional Officer,
Taluka Daund, District Pune.
6. Shri Arun Shelar,
At present working as
Tahasildar, Taluka Daund, District Pune. ... Respondents

Mr. Suresh Sabrad a/w Mr. Amey Sawant, Neha Zanje i/b. Pratik Sabrad,
for the Petitioners.

Ms. P.J. Gavhane, AGP for the Respondents-State.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE: 6 JANUARY 2025

ORAL JUDGMENT (Per Advait M. Sethna, J.) :

1. Rule, made returnable forthwith. The respondents waive service.
By consent of the parties, heard finally.
2. The petitioners have filed the present petition under Article 226 of the Constitution of India, 1950 (“**Constitution of India**” for short) . The petitioners have approached this Court being aggrieved by the inaction on the part of the respondent nos. 1 to 5 pursuant to and despite non-compliance of the directions passed vide letter dated 30 January 2024 addressed by the respondent nos. 2/3 to Respondent no. 5.
3. Briefly, by such letter the respondent no. 5 directed to investigate into illegal sale of around 780 brass of excavated sand and sludge from Bhima riverbed, which was confiscated by respondent no. 6. The respondent no.5 was directed to file its report on such investigation within 7 days with respondent nos. 2/3.

4. By a report respondent no. 4 dated 2 November 2023 and order of respondent no. 2 dated 3 November 2023 on such report, directions were issued to distribute such confiscated sand and sludge to the household beneficiaries under the 'Pradhan Mantri Awas Yojana' (Prime Minister Housing Scheme) ("**the said Housing Scheme**" for short). It is in such backdrop that the present petition is filed. The substantive prayer in the petition is reproduced thus:-

"(b) by an appropriate writ, order or direction, this Hon'ble Court be pleased to direct the Respondent No.2 to take appropriate action against Respondent No.6 Shri Arun Shelar, Tahasildar, Daund, Pune, and initiate appropriate civil, criminal and disciplinary proceedings against him for illegally selling around 780 brass of sand and sludge which was confiscated pursuant to report dated 02.11.2023 and 03.11.2023 and which directed to be distributed to household beneficiaries of 'Pradhan Mantri Awas Yojana (Prime Minister Housing Scheme)'.

5. The relevant facts necessary for adjudication of this petition are as under:-

6. A tender was awarded to one Mr. Bhujangrao Nagwade for the purpose of excavation of sand and sludge from Bhima riverbed, in Daund, Pune and thereafter for the purpose of transportation and sale of the same from

the depo. The petitioners claim that the said Shri Nagwade was carrying out illegal excavation in violation of the tender terms.

7. The petitioners would contend that on 1 November 2023, respondent no. 4 along with Inspection Squad and Naib Tahasildar inspected the riverbed of the Bhima river and certain illegalities in the excavation work were detected. On the said date, a report was filed by respondent no. 4 to the effect that part of such sand and sludge which was excavated and stockpiled at the Bhima riverbed for transportation and sale violated the tender.

8. On 3 November 2023 respondent no.2 by an order of the said date, cancelled tender awarded to Mr. Nagwade vide order dated 10 July 2023, directing confiscation of 780 brass of sand and sludge. As per said order dated 3 November 2023, such confiscated sand and sludge was directed to be distributed to the beneficiaries of the said Housing Scheme and the remaining sand and sludge was directed to be sold for Government purposes. It is the petitioners' case that respondent no. 6, i.e., the concerned Tahasildar, Daund, District Pune illegally sold the entire 780 brass of sand and sludge in contravention of the order dated 3 November 2023 passed by respondent no. 2.

9. In the above backdrop, it was on 1 January 2024 that the petitioners made a representation to respondent nos. 1 to 5 pointing out the

facts as narrated above and calling upon the respondent authorities to take appropriate steps with regard to the appointment of an independent officer for the purposes of carrying out an independent inquiry into alleged illegal acts/omissions of respondent no. 6 and to take further appropriate action including suspension of respondent no. 6. The petitioners would contend that such illegal acts of the said respondent no. 6 caused huge loss to the State to the extent of Rs. 1,95,00,000/-. The petitioners also filed an application dated 1 January 2024 under the Right to Information Act, 2005 seeking information as to the list of beneficiaries to whom the confiscated brass of sand and sludge was distributed, pursuant to the order dated 3 November 2023 passed by respondent no. 2.

10. The petitioners received a reply dated 25 January 2024 to its RTI application dated 1 January 2024. The petitioners were so informed that such confiscated sand and sludge was not distributed to the beneficiaries of the said housing scheme and also that the list of beneficiaries was not available.

11. In view of the above, respondent no. 2/3 by its communication dated 30 January 2024 directed the respondent no.5 to inquire and investigate into the actions of respondent no. 6 and file its report with respondent no.2/3, within a period of 7 days from the said date.

12. The petitioners through its advocate addressed legal notice/representation dated 4 March 2024 of respondent no. 2 once again calling upon the said respondent, i.e., the Collector to take appropriate action against respondent no. 6 in terms of the aforementioned facts and circumstances.

13. We have heard the learned counsel for the parties and with their assistance perused the record.

14. We find that in the facts of the present case, the petitioners are primarily aggrieved by the inaction of the respondent nos. 1 to 5, in so far as the inquiry/ investigation to be conducted against respondent no. 6 in terms of the allegations concerning the illegal excavation and sale of confiscated 780 brass of sand and sludge, and the involvement of respondent no. 6 in this regard who, according to the petitioners is guilty of gross misconduct.

15. We find that by letter dated 30 January 2024 respondent nos. 2/3 directed the respondent no. 5 to inquire, investigate into the action of respondent no. 6 and file its report with respondent no. 5 within 7 days. The english translation of the said letter is reproduced as under :-

*“COLLECTOR OFFICE, PUNE
(Mining Branch)
B Wing, fourth floor, Pune
/Mining/W.S./191/2023*

Date: 30.01.2024

Immediate

To,
The Sub-Divisional Officer, Daund.

Subject :- Complaint of serious nature regarding directly disposing of the sand i.e. silt and silt mixed sand excavated from Bhima river bed at village Daund, Tal. Daund, District Pune, seized from the depot where the same was kept.

Reference:-

Application dated 01.01.2024 of Shri Ganesh Suryakant Farate, residing at Daund. District Pune (Received on the date 23.01.2023)

Shri Ganesh Suryakant Farate, residing at Daund, District Pune has submitted application to this Office and has made a complaint of serious nature therein regarding directly disposing of the sand i.e. silt and silt mixed sand excavated from Bhima river bed al village Daund, Tal. Daund, District Pune, seized from the depot where the same was kept and in pursuance of the said complaint, the Collector has given directions to immediately submit report in respect thereof.

The original application of Shri Farate is enclosed herewith. The said application should be perused and detailed enquiry in respect of the points mentioned in the said complaint application should be made as per the Rules. Moreover, the explanation of the Tahasildar concerned about the same should be obtained and self-explanatory and factual report on the points mentioned in the complaint application, together with the application and necessary record, should be submitted to this Office within 7 days under any circumstances.

Encl. Original application containing page no. 01 to 13

Sd/-

(Jyoti Kadam)

Resident Deputy

Outward Number – 865/7/2/2024.”

16. A plain reading of the above makes it clear that respondent no. 2/3 categorically directed respondent no. 5 to conduct inquiry and file its report on the allegations against respondent no. 6, with the office of respondent nos. 2/3 within 7 days of the said date, i.e., 30 January 2024. It appears from the record that no such inquiry was conducted and or reports submitted by respondent no.5, despite specific directions issued by respondent nos. 2/3 to respondent no. 5, to submit such report. The respondents would not dispute such factual position.

17. In exercise of the jurisdiction of this court under Article 226 of the Constitution of India, we do not intend to delve into the merits, correctness or otherwise of the allegations made by the petitioners against the respondent no. 6, which falls within the domain of concerned authorities. Suffice it to say, in the interest of justice, we deem it fit and appropriate to direct the respondent no. 5 to make the necessary inquiry in accordance with law and submit a detailed report to respondent no. 2/3, no later than 4 weeks from the date of this order being presented to the said respondents. In carrying out such exercise, the respondent no. 5 shall consider the letters/representation of the petitioners. The respondent nos. 2/3 shall thereafter take appropriate

steps/actions in accordance with law, no later than 4 weeks from date of receiving the aforesaid report. The petitioners then are at liberty to adopt appropriate proceedings.

18. We make it clear that we have not expressed any opinion on merits of the matter. All contentions of all the parties are expressly kept open. The petition is accordingly disposed of. No costs.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)