



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 5170 OF 2024

(M/s. K.B. Enterprises Vs. The State of Maharashtra and anr)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. V.S. Kukday, Advocate for petitioner.
Mr. J.Y. Ghurde, AGP for respondent/State.

**CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.**

DATED : 27-03-2025

The petition question the order 26.7.2024 passed by respondent No. 2 whereby the claim of the petitioner for refund of proportionate contract amount on account of the fact that though the petitioner by the order dtd 20.4.15 (p88) was permitted to use mechanical machines for the purpose of extraction of sand, was prevented from doing, so as a result of which the same was required to be challenged in Writ Petition No. 3591/2015 which came to be allowed on 14.7.2015.

2. It is submitted that during the span of 8.5.2015 till 14.7.2015 the petitioner has been prevented by the respondents from carrying out operations under the lease dtd 9.4.2015 (p72). It is also contended that the application has been rejected on an incorrect premise by relying upon term no. 23 of the lease, what is applicable is term no. 8.

3. Though the learned AGP supports the impugned order, we find that the factual position as narrated above is not disputed. Term no. 23 of the lease, indicates, that it is the

responsibility of the lessee, to observe that extraction of sand is carried out by using permitted means of extraction and the period shall not be extended for any reason. Since permission came to be granted by the communication dated 20.4.2015 (p88) to the petitioner to use mechanical means for extraction of sand which was stalled for the duration 8.5.2015 to 14.7.2015, in our consider opinion, what would be attracted would be the clause 8 of the lease dtd 9.4.2015 which mandates, that in a case, the lessee is prevented from extraction of sand, he would be entitled for refund of proportionate contract amount. The method of calculation of this proportionate contract amount is also indicated therein.

4. Since clause 8 has not been considered by respondent No. 2 while passing the impugned order, we do hereby quash and set aside impugned order 26.7.2024 and allow the petition by directing the respondents, to refund the proportionate contract amount for the aforesaid duration by calculating the same, in the manner as provided in clause 8 of the lease dated 9.4.2015. The same shall be done within a period of four week from today.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)