
(2015) 07 BOM CK 0360

In the Bombay High Court

Case No : Writ Petition No. 12089 of 2013 and Civil Application No. 1665 of 2015

Shivaji J. Chavan

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 09-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 07 BOM CK 0360

Hon'ble Judges : Abhay Shreeniwas Oka and Revati Mohite Dere, JJ.

Bench : Division Bench

Advocate : Ganesh Gole and Prashant J. Patil, for the Appellant; M.P. Thakur, AGP, for the Respondent

Final Decision : Allowed

Judgement

Abhay Shreeniwas Oka, J.—On the last date, we have heard the learned counsel for the parties. Today, we have kept the Petition for dictation of Judgment.

2. On 1st January 2011, the petitioner participated in the auction for excavation of sand. By a communication dated 11th February 2011, the petitioner was informed that his offer for excavation of sand from a particular spot (Sheware Satha No. 2) in Mhadha Taluka, District Solapur has been accepted and he was called upon to pay the bid amount of Rs. 67,35,000/-. Accordingly, the amount was deposited by the petitioner. A photo copy of the Challan has been annexed to the petition. The letter dated 28th February 2011 addressed by the Tahsildar to the District Collector of Minor Minerals Department records the fact that the petitioner has deposited the entire amount. Therefore, final order was issued by the Collector on 7th March 2011 permitting excavation of quantity of 9600 Brass. On 8th March 2011 the petitioner was placed in possession of the site.

3. By order dated 29th April 2011, the District Collector cancelled the earlier order on the ground that a particular temple was a protected monument and excavation of sand from the river bed and around the temple may cause damage

to the protected monument. Further order was passed by the District Collector on 11th May 2011. By the said order, the petitioner was allotted another spot at village Chandaj in Bhima river being "Satha No. 2" to excavate the sand having quantity of 8760 brass. The petitioner has annexed to the petition monthly returns filed by him for May, June and July 2011 regarding the quantity of sand excavated.

4. Under the said order dated 11th May 2011, time was granted to the petitioner to excavate the sand till 31st July 2011. Under further order dated 4th August 2011, the Collector extended the time for a further period of 38 days.

5. The petitioner is relying upon the Gramsabha Resolution dated 21st January 2011 by which the excavation work at the spot No. 2 in village Chandaj, Taluka Mhadha, District Solapur was objected by the Gramsabha. By a letter dated 20th September 2013 addressed by the petitioner to the Additional Chief Secretary of the Revenue Department, the petitioner has recorded that the villagers did not allow him to excavate the sand, and therefore, he could excavate only a quantity of 704 brass out of the permitted quantity of 8760 brass. A prayer was made by him for refund on pro-rata basis. By order dated 30th September 2013, the Nayab Tahsildar directed the Circle Officer, Ranzani to submit a report.

6. On the prayer made by the petitioner for refund of the amount on pro rata basis, the District Collector submitted a report dated 19th December 2011 to the State Government recommending that no refund be issued to the petitioner.

7. By this petition under Article 226 of the Constitution of India, the petitioner has contended that he could not excavate the quantity of 8056 brass of sand for the reasons beyond his control and therefore, on pro rata basis, he may be granted refund of Rs. 56,51,787.50. The petitioner prayed for interest on the amount of refund.

8. There is a specific averment in the petition that the petitioner could not excavate the quantity equivalent to 8056 brass of sand. On 17th April 2014, this Court passed an order directing that the petition shall be heard finally at the stage of admission. Reply was filed on 1st October 2014 by Shri V.R. Dolas, the Mining Officer, Incharge (Collectorate), Solapur, District Solapur. It will be necessary to make a reference to what is stated in the said reply. In paragraph 8 of the reply, the Officer has stated thus:

"8....I say and submit that the record of this office shows that Petitioner has excavated more than 8056 brass of sand from the spot of Chandaz. This fact has been suppressed by the petitioner from this Hon"ble High Court. I say and submit that Collector, Solapur has passed valid order on 29.12.2011 stating that within stipulated period it is binding upon the petitioner to excavate sand. I say and submit that the prayer of the petitioner in respect of refund of money is not tenable because as per Government Resolution dated 25.10.2010, the period of tender should not be extended from 30th September 2011 any cost."

(emphasis added)

9. Thus, the specific stand taken on oath is that the quantity of more than 8056 brass of sand has been excavated by the petitioner from the second spot allotted to the petitioner at Chandaj and the petitioner has suppressed this material fact from the Court. In view of this stand, on 28th October 2014 instead of hearing the petition finally at admission stage, Rule was issued and the Petition was kept pending for final hearing. The same officer Shri Dolas filed another affidavit dated 20th December 2014 stating that in fact the Petitioner has excavated quantity of 1624 brass and the remaining quantity of 7146 brass was not excavated. It is in the light of this affidavit that the Petition was taken up for final hearing on 2nd July 2015.

10. The submission of the Petitioner is that only because of the opposition of the villagers of village Chandaj that he could not excavate the entire quantity. He urged that though a resolution was already passed by the Gram Sabha of the village on 21st January 2011 objecting to the excavation of sand from the spot, the Collector allotted the same spot in the village to the Petitioner by order dated 29th April 2011. He urged that as the Petitioner could not excavate the sand due to the reasons beyond his control, he is entitled to refund of the royalty on pro-rata basis. He pointed out that a false statement on oath was made by Shri Dolas in the first affidavit and therefore, action be initiated against him. Per contra, the learned AGP urged that as per the terms and conditions of allotment, it was the responsibility of the Petitioner to extract the permitted quantity and that the Petitioner was not entitled to refund under any circumstances. She urged that what was stated in the first affidavit of Shri Dolas is an inadvertent mistake which he on his own corrected by filing the second affidavit. Hence, there was no intention on his part of suppressing any fact.

11. We have given careful consideration to the submissions. As pointed out earlier, bidding was held for the spot which is known as Shevare Spot No. 2 at Taluka Mhadha which is on river Bhima. By accepting the bid of the petitioner in the sum of Rs. 67,35,000/-, he was allowed to excavate sand having quantity of 9600 brass from the said spot from 8th February 2011 to 31st August 2011. It will be necessary to make a reference to further order dated 29th April 2011 passed by the Collector. By the said order, the auction for the Spot No. 2, Shevare was cancelled only on the ground that the excavation of the sand will cause damage to the Laxmi Mandir which was a protected monument. Thus, the spot was put to auction without noticing that the excavation of the sand at the said spot will cause damage to the protected monument.

12. In fact, at that stage, the petitioner was justified in seeking the refund of the amount deposited on pro-rata basis. Nevertheless, by accepting the mistake after cancellation of the earlier auction, instead of refunding the amount paid by the petitioner, under the order dated 11th May, 2011, the District Collector allotted the spot No. 2 at Village Chandaj, Taluka Madha, District Solapur, to enable the petitioner to excavate the balance quantity of sand of 8760 Brass.

Thus from the original spot, he could extract quantity of only 840 brass out of permitted quantity of 9600 brass. As stated earlier, time to excavate the sand was extended by 38 days with effect from 31st July, 2011 for excavation at the subsequently allotted spot at village Chandaj.

13. The petitioner has placed on record an extract of Resolution No. 364 passed by the Special Gramsabha meeting held on 21st January, 2011 of Village Chandaj. It must be noted that in the said meeting, it was specifically resolved that the excavation of sand at spot No. 2 in village Chandaz in Bhima river (which was allotted to the petitioner under order dated 11th May, 2011) should not be permitted for the reasons recorded in the said resolution. Notwithstanding the said Resolution of Gramsabha, the spot was allotted to the Petitioner in lieu of the spot subject matter of auction.

14. It will be necessary to make a reference to the averments made in the petition and in particular paragraph 12, wherein it is specifically averred that the villagers of village Chandaj stopped the excavation work being carried out in violation of the Gram Sabha Resolution dated 21st January, 2011. It is contended that due to repeated obstruction, the petitioner could not excavate quantity of 8056 brass. The petitioner has relied upon application made by him on 20th September, 2013 addressed to Additional Secretary of the Revenue Department which application records that at the second spot offered to the petitioner, he was not able to excavate the sand due to opposition of the villagers.

15. On the basis of the said letter that a report of the Circle Officer, Ranjhani was submitted to the Tahsildar, in which the Circle Officer has accepted the case made out by the petitioner that the villagers opposed and prevented the Petitioner from excavating the sand from the spot No. 2 in village Chandaj and, therefore, he reported that the petitioner could excavate quantity of only 704 brass.

16. What is important to note is that there is no specific denial of the averments made in paragraph 12 of the petition. Shri V.R. Dolas, Mining Officer (Incharge), Collectorate, Solapur, has dealt with the said paragraph in paragraph 8 of the affidavit dated 1st October, 2014. However, there is no specific denial to averments made in paragraph 12. It is vaguely stated that the contents are not correct. However, there is no explanation offered to the report submitted by the Circle Officer. The contents of the said report have not been disputed which records that due to the opposition of the villagers that the Petitioner could not carry out the excavation. The additional affidavit dated 20th December, 2014 was filed after Rule was issued in the petition. Even in the said affidavit, the said fact is not denied.

17. We must also note what is stated by the District Collector in his letter dated 19th December, 2011 addressed to the State Government. He has merely stated that responsibility was of the petitioner to excavate balance quantity of 7146 brass. In the said letter, he has not even dealt with the case made out by the

petitioner regarding the obstruction raised by the villagers.

18. Thus, the scenario which emerges from the aforesaid discussion based on undisputed facts is that there was an error on the part of the Government of conducting an auction of Shevare spot No. 2, as later on, it was realized that excavation of sand at the spot will adversely affect an ancient monument. The auction of the said spot was therefore cancelled by the Collector when the Petitioner had excavated quantity of only 840 brass out of the permitted quantity of 9600. Instead of refunding the amount of royalty paid by the petitioner on pro-rata basis, the Collector allotted another spot to him under order dated 11th May, 2011. In respect of the said spot allotted, the Gram Sabha had already raised an objection in January 2011 by passing a specific Resolution. As stated in the affidavit of Shri Dolas, the petitioner could excavate only 1614 brass of sand from the spot and the quantity of 7146 brass out of the permitted quantity could not be excavated. Shri Dolas has corrected the earlier statement made in the affidavit that the petitioner has excavated more than 8056 brass of sand.

19. It is not even the case made out in both the affidavits or in the order dated 11th May, 2011 that any effort was made to ascertain whether there was likelihood of resistance by the villagers as far as the spot No. 2 in village Chandaj is concerned. It is obvious that as there was no auction of the said spot allotted by the order dated 11th May, 2011, the procedure which is required to be followed under the G.R dated 25th October, 2010 was not followed. It is not the case of the State Government that before passing the order dated 11th May, 2011, any local inquiry was made to ascertain whether the petitioner will be able to excavate sand without any resistance. Perhaps, the allotment was made to avoid refund of the royalty amount.

20. Considering the facts which are admitted, this was a case where the State Government was under an obligation to refund a part of the royalty amount deposited by the petitioner on pro-rata basis. The petitioner had deposited a sum of Rs. 67,35,000/- to enable him to excavate sand having quantity of 9,600 brass. The admitted position is that the petitioner could not excavate quantity of 7146 brass and to the extent of the said quantity, pro-rata refund ought to have been made by the State Government.

21. Considering the fact that we are proceeding on the admitted position, the submission of the learned AGP that disputed questions of fact are involved and, therefore, writ petition should not be entertained, cannot be accepted.

22. Hence, the petition must succeed. Hence, we pass the following order:

"(a) We direct the District Collector of Solapur to determine the amount of pro-rata refund out of the amount of Rs. 67,35,000/- deposited by the petitioner on the basis that the petitioner was prevented from excavating the quantity of 7146 brass. The amount so determined by the Collector shall be paid to the petitioner within a period of four months from today.

(b) The amount so determined shall carry simple interest @ 6% per annum from date of filing of the petition (27th November, 2013) till the actual payment.

(c) Rule is made absolute on the above terms.

(d) Civil Application No. 1665 of 2015 does not survive. The same is disposed of."