

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
PUBLIC INTEREST LITIGATION NO.79 OF 2014  
WITH  
CIVIL APPLICATION NO.97 OF 2017  
AND  
CIVIL APPLICATION NO.75 OF 2015

Julie Kharbhumi Labharthi  
Sehkari Sanstha Maryadit ...Petitioner

vs.

The Collector, Thane & Ors. ...Respondents

Ms Gayatri Singh, Senior Advocate with Kranti  
L.C.for the Petitioner and for applicant in  
C.A.No.77 of 2017

Mr.Manish M.Pabale, AGP for the respondent Nos.1 3  
Mr.Birendra Saraf a/w Mr.Rupesh Geete i/b Legasis  
Partner for the respondent No.4

Mr.Rajiv Chavan, Senior Advocate a/w Mr.D.P.Singh  
for the respondent No.5

Mr.Chetan Chandulal Agrawal a/w Pravin Mengane for  
the respondent No.7.

M/s.Nankani and Associates for the Applicant in  
C.A.NOo.75 of 2015

CORAM : A.S.OKA, &

RIYAZ.I.CHAGLA, JJ.

DATE : APRIL 3,4,6,10,12, 2018

P.C.:

1 Rule has been issued in this Public Interest Litigation on 14th October 2014. On the earlier dates, we have heard the parties on interim directions which are sought by the petitioners. This PIL concerns large scale illegal excavation of sand around the island known as Julie island (for

short "the said island") within the limits of revenue village Naringi, Post Virar, Taluka Vasai, District Palghar. The said island is in Vaitarna creek.

2 The case made out in the Public Interest Litigation is that for last several years, on the said island, villagers have been taking paddy crop. It is claimed that the cultivable area on the island is about 98 hectares and the livelihood of more than 100 families depends on the paddy crop. The case made out in the petition is that for the protection of paddy fields, a bund around the boundary of the island was constructed. Earlier, the said bund used to be maintained by the Kharland Department of the State Government.

3 The case made out in the petition in brief is that continuously for last few years, there has been illegal excavation of sand on the north east side of the said island by various methods including the use of suction pumps from the bed of Vaitarna Creek. It is alleged that as a result of the large scale illegal excavation of sand from the bed of Vaitarna creek (for short "the said Creek"), the bund protecting the paddy fields on the said island has been severely affected. Moreover, it is pointed out that as a result of large scale illegal sand excavation, the shore along the island has deepened and mangroves and other trees preserved by the farmers have been destroyed. It is further stated that due to the use of suction pumps for sand mining, there is a soil erosion and loss of top

soil. It is pointed out that due to continuous illegal sand mining, entire ecosystem is likely undergo a change. Various effects of illegal sand mining around the said island have been set out in the petition. It is stated that as a result of reduction of sand holding, water has started entering the said island and ultimately if the said illegal activity continues, there is every danger that the said island may disappear. Various legal contentions have been raised on the basis of Government Resolution (for short 'GR') dated 25th October 2010 which was amended on 12th March 2013 which prohibits the use of suction pumps for sand mining. It is urged that there is a complete prohibition on the use of suction pumps for sand excavation.

4 By amending the petition, a reference is made to the GR dated 21st May 2015 issued by the State Government as a part of an effort to prevent illegal excavation and transportation of sand. Various interim reliefs have been claimed in the petition.

5 We must note here that during the pendency of the petition, the District Collector of Palghar took initiative and convened various meetings of various stakeholders including the meeting held on 11th December 2017. Various measures for stopping the illegal excavation of sand were discussed in the meeting and several decisions were taken in the meeting (minutes of the meeting are at Exhibit-M). One of the issues which is discussed is a

possibility erecting barricades below the Railway bridges Nos.88, 90, 91, 92 and 93 (for short 'the Railway bridges'). Apart from the District Collector and other Revenue Officers, the representatives of the Police, the officers of the Maharashtra Maritime Board, the District Mining Officer, the Officers of the Western Railway and the Officers of Forest Department were present. The minutes of the meeting will show that a comprehensive scheme was evolved. There were decisions taken under the different heads and the minutes record the agencies which are responsible for the implementation of the respective decisions. One of the main interim reliefs which is sought by way of an amendment is of issuing direction to implement the decisions taken in the meeting held on 11th December 2017.

6 Before we turn to the decisions taken, we must make a brief reference to the affidavits filed on record earlier by Dr.Dadarao Sahadeorao Datkar, Sub Divisional Officer, Vasai and Mr.Abhijit Sudhakar Bangar, the then District Collector, District Palghar. If both the affidavits are perused, it can be safely concluded that even the district administration headed by the District Collector has accepted the fact that there are instances of large scale illegal excavation of sand from the said Creek. In fact, in the affidavit of Shri Bangar which is of 15th December 2016, it is claimed that steps have been taken to prevent the illegal mining of sand. It records the details of the action taken

in terms of registration of the First Information Reports and various meetings held.

7 Therefore, today we can proceed on the basis of the admitted position that there are repeated instances of large scale illegal mining of sand in the concerned area and in fact that is the reason why the District Collector took initiative and convened a meeting of all stakeholders on 11<sup>th</sup> December 2017 and has taken several decisions with a view to prevent illegal dredging or mining of sand.

8 As far as the effect of dredging or mining of sand is concerned, we cannot resist the temptation of quoting the relevant portion of the decision of a Division Bench of the High Court of Judicature of Madras in the case of M. Palanisamy vs. State of Tamilnadu and others<sup>1</sup>. In paragraphs 21 to 26 of the said decision, the Division Bench of the Madras High Court has discussed and noted the ill effects of the indiscriminate quarrying of sand. Paragraphs 21 to 26 of the said decision read thus:

“21 In order to appreciate the issue involved in these Writ Petitions, we may have to look at the larger picture the impact of indiscriminate, uninterrupted sand quarrying on the already brittle ecological set up of ours. According to expert reports, for thousands of years, sand and gravel have been used in the construction of roads and

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1 2012 SCC online Mad 2125

buildings. Today, demand for sand and gravel continues to increase. Mining operators, instead of working in conjunction with cognizant resource agencies to ensure that sand mining is conducted in a responsible manner, are engaged in fulltime profiteering. Excessive in-stream sand and gravel mining from river beds and like resources causes the degradation of rivers. In-stream mining lowers the stream bottom, which leads to bank erosion. Depletion of sand in the stream-bed and along coastal areas causes the deepening of rivers and estuaries and enlargement of river mouths and coastal inlets. It also leads to saline-water intrusion from the nearby sea. The effect of mining is compounded by the effect of sea level rise. Any volume of sand exported from stream-beds and coastal areas is a loss to the system. Excessive in-stream sand mining is a threat to bridges, river banks and nearby structures. Sand mining also affects the adjoining groundwater system and the uses that local people make of the river. Further, according to researches, in-stream sand mining results in the destruction of aquatic and riparian habitat through wholesale changes in the channel morphology. The ill effects include bed degradation, bed coarsening, lowered water tables near the stream-bed, and channel instability. These

**physical impacts cause degradation of riparian and aquatic biota and may lead to the undermining of bridges and other structures. Continued extraction of sand from river beds may also cause the entire stream-bed to degrade to the depth of excavation.**

22 The decisions on where to mine, how much and how often require the definition of a reference state, i.e., a minimally acceptable or agreed upon physical and biological condition of the channel. The present understanding of alluvial systems is generally not sufficient to enable the prediction of channel responses quantitatively and with confidence; therefore, reference states are difficult to determine. Still a general knowledge of fluvial processes can provide guidelines to minimize the detrimental effects of mining. Well-documented cases and related field data are required to properly assess physical, biological, and economic tradeoffs.

23 **The most important effects of in-stream sand mining on aquatic habitats are bed degradation and sedimentation, which can have substantial negative effects on aquatic life.** The stability of sand-bed and gravel-bed streams depends on a delicate balance between stream flow, the sediments supplied

from the watershed and the channel form. Mining-induced changes in sediment supply and channel form disrupt the channel and the habitat development processes. Furthermore, movement of unstable substrates results in downstream sedimentation of habitats. The affected distance depends on the intensity of mining, particles sizes, stream flows, and channel morphology.

24 Apart from threatening bridges, sand mining transforms the riverbeds into large and deep pits; as a result, the groundwater table drops leaving the drinking water wells on the embankments of these rivers dry. Bed degradation from in-stream mining lowers the elevation of stream flow and the floodplain water table, which in turn, can eliminate water table-dependent woody vegetation in riparian areas and decrease wetted periods in riparian wetlands. So far as locations close to the sea are concerned, saline water may intrude into the fresh waterbody.

25 It may sound disheartening, but the bitter truth is that such scenarios are evident in almost every State of the Indian territory, irrespective of its climactic and ecological background. Experts, activists and many a politicians realized the environmental problems posed by unchecked



sand mining, which resulted in bringing about various legislations to curb mining. But despite legal barriers on exploitative sand mining, institutional framework and enforcement mechanisms are insufficient and mining does persist, unabated. In the southern States, especially in Tamil Nadu, the Government and the media vigorously attack illegal miners. According to the Chennai India Times, a state-run inspection revealed a complex, organized, and efficient network, enacting mining in the States of Kerala and Tamil Nadu. This network operates so far outside the legal boundaries that in the last ten years, there have been numerous reports of the blatant murders of Revenue officials. This type of organized, indiscriminate mining could sound the death-knell not just for Revenue officials, but also for the ecological system, the natural habitat and livelihood of many inhabitants. In the State of Karnataka, upright Government Officers, who had come down heavily on the sand mining had been shunted out.

26 There cannot be any two opinions that natural resources are the assets of the nation and its citizens. It is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste such valuable resources. Article 48-A of the Constitution

**requires that the State shall endeavour to protect and improve the environment and safeguard the forests and wild life of the country.** Similarly, Article 51-A enjoins a duty upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for all the living creatures."

(emphasis added)

In the case of Fomento Resorts and Hotels Limited and another vs. Minguel Martins and others<sup>2</sup> in paragraphs 55 and 65, the Apex Court held thus:

"55 The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today, every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long-term interest in that property or resource, including down slope lands,

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2 (2009) 3 SCC 571

waters and resources.

"65 We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems."

(emphasis added)

9 Apart from the case made out in this Public Interest Litigation that continuous illegal sand mining will adversely affect more than 100 families which are earning their livelihood by taking paddy crop on the said island, this Court will have to consider of issuing interim directions considering the wider impact of illegal mining of sand on the eco systems and environment in general.

10 As far as the obligation of the State Government of protecting environment is concerned,

the law has been repeatedly laid down by the Apex Court. In the case of Virender Gaur and others vs. State of Haryana and others<sup>3</sup>, the Apex Court considered Articles 21 and 48-A along with Articles 47 and 51-A(g) of the Constitution of India and held that it is the constitutional obligation of the State Government not only to ensure and safeguard the proper environment, but it is the imperative duty of the State Government to take adequate measures to promote, protect and improve both the man-made and natural environment.

11 On this aspect, we may also make a useful reference to the decision of the Apex Court in the case of M.C.Mehta vs. Union of India and others<sup>4</sup> wherein the Apex Court in paragraph 45 held thus:

**"45 Environment and ecology are national assets. They are subject to intergenerational equity. Time has now come to suspend all mining in the above area on sustainable development principle which is part of Article 21, 48-A and 51-A (g) of the Constitution of India. In fact, these articles have been extensively discussed in the judgment of M.C.Mehta case which keeps the option of imposing a ban in future open."**

(emphasis added)

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3 (1995) 2 SCC 577

4 2009 (6) SCC 142

12 In this case the Apex Court was dealing with the case of illegal mining. There is another decision of the Apex Court in the case of Association for Environment Protection vs. State of Kerala and others<sup>5</sup>. Paragraphs 1 to 5 of the said decision read thus:

“Leave granted. Since time immemorial, people across the world have always made efforts to preserve and protect the natural resources like air, water, plants, flora and fauna. Ancient scriptures of different countries are full of stories of man's zeal to protect the environment and ecology. Our sages and saints always preached and also taught the people to worship earth, sky, rivers, sea, plants, trees and every form of life. Majority of people still consider it as their sacred duty to protect the plants, trees, rivers, wells, etc. because it is believed that they belong to all living creatures.

2. The ancient Roman Empire developed a legal theory known as the “doctrine of the public trust”. It was founded on the premise that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of a few.

3. Although the Constitution of India, which was enforced on 26-1-1950 did not contain any express provision for protection of environment and ecology, the people continued to treat it as their social duty to respect the nature, natural resources and protect environment and ecology. After 26 years, Article 48-A was inserted in Part IV of the Constitution and the State was burdened with the responsibility of making an endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. By the same amendment, fundamental duties of the citizens were enumerated in the form of Article 51-A (Part IV-A). These include the duty to

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5 (2013) 7 SCC 226

protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures [Article 51-A(g)].

4. The courts in different jurisdictions have, time and again, invoked the public trust doctrine for giving judicial protection to environment, ecology and natural resources. This Court also recognised the importance of the public trust doctrine and applied the same in several cases for protecting natural resources which have been treated as public properties and are held by the Government as trustee of the people.

5. The judgment in *M.C. Mehta v. Kamal Nath* [*M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388] is an important milestone in the development of new jurisprudence by the courts in this country for the protection of environment. In that judgment, the Court considered the question whether a private company running tourists resort in Kullu-Manali Valley could block the flow of Beas River and create a new channel to divert the river to at least one kilometre downstream. After adverting to the theoretical and philosophical basis of the public trust doctrine and the judgments in *Illinois Central Railroad Co. v. Illinois* [36 L Ed 1018 : 146 US 387 (1892)] , *Gould v. Greylock Reservation Commission* 350 Mass 410 (1966)] , *Sacco v. Deptt. of Public Works* [352 Mass 670 (1967)] , *Robbins v. Deptt. of Public Works* [355 Mass 328 : 244 NE 2d 577 (1969)] and *National Audubon Society v. Superior Court* [*National Audubon Society v. Superior Court*, 658 P 2d 709 : 33 Cal 3d 419 (1983)] , this Court observed: (*M.C. Mehta case* [*M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388] , SCC p. 413, paras 34-35)

“34. Our legal system—based on English common law—includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the

pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. **The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."**

(emphasis supplied)

13 In the light of the law laid down, now we turn to the extent and the nature of interim directions to be issued. We must also note that there is an application being Civil Application No.75 of 2015 for intervention in which several suggestions have been incorporated for the purpose of assisting the Court. One of the important suggestions made in the said application is that illegally mined sand which is seized by the Authorities should not be allowed to be used or sold and instead of that, it should be put back into the creek from which it was illegally mined. Another suggestion made is that there should not be any kind of regularization of illegal mining of sand at any stage.

14 Now we turn to the minutes of the meeting dated 11<sup>th</sup> December 2017 convened by the District Collector

and the decisions recorded therein. As noted in the minutes, one issue which is dealt with is of protecting the Railway bridges. A decision was taken to provide floating barricades below the Railway bridges so as to prevent the entry of boats carrying illegally excavated sand. Another decision taken was that close circuit video Cameras should be installed by the Railways near the Railway bridges. As far as this decision is concerned, there are Affidavits filed on record. For the sake of convenience, we are making a reference only to the last Affidavit filed by Shri Tushar Mishra, Senior Divisional Engineer, North – Central on behalf of the Western Railway. It records that tenders have been invited for providing the barricading below the said Railway bridges to restrict the illegal movement of sand carrying boats from West side to East side of the Railway bridges. The date fixed for opening of the tenders is 24th April 2018. In paragraph 7 of the said Affidavit, it is stated that close circuit cameras have been installed and that Railways are providing links thereof to the Railway Protection Force. It is further assured that work of providing the footage of CCTV cameras to nearby GRP office will be completed by 30th May 2018. In paragraph 8, it is further stated that Railway administration is in the process of installing flood lights on the Railway bridges as stated in the said paragraph. It is provided that in case of two bridges, there is no electricity supply available and therefore, solar panels will be installed for which an order has been placed.



15 On the earlier date, there was some doubt expressed whether the the nature of work mentioned in the tenders floated by Western Railway was in conformity with the decision taken in the meeting held on 11th December 2017. Therefore, on 26th March 2018, as per the suggestion of this Court, a meeting was convened by the District Collector. Minutes of the meeting have been produced on record by the learned AGP who on instructions stated that the work specified in the tender notices in respect of all the five bridges will be in conformity with the decision taken in the meeting held on 11th December 2017.

16 Thus, the said Affidavit of Shri Tushar Mishra shows that Western Railway has taken steps to implement the decisions taken in the meeting held on 11th December 2017 which were to be implemented by Western Railways.

17 Before we proceed further, we must note here that at the commencement of hearing, we had indicated to the parties that we propose to suggest the State Government to appoint a senior Government officer who will head a committee to supervise the implementation of the decisions taken on 11th December 2017. However, it was brought to our notice that the subsequent GR provides for establishing Vigilance Committees at District

Levels. Hence, we are not ordering constitution of any Committee.

18 The earlier discussion takes care of the compliances which are required to be made for the time being by the Western Railway As regards the other decisions taken in the said meeting, we find that there is no dispute between the parties that the said decisions will have to be implemented in its true letter and spirit. However, there are additional directions which are required to be issued in addition to the decisions taken in the aid meeting. Certain issues were canvassed before this Court as regards implementation of the decisions taken in the meeting such as the responsibility of the Maharashtra Maritime Board. We are discussing those issues in subsequent part of this order.

19 As narrated earlier, there is no controversy between the parties that there are frequent instances of large scale illegal excavation of sand in the area. There is a consensus amongst the parties that stringent measures are required to be taken when it comes to preventing the incidents of illegal sand mining. Firstly, we may make a reference to Section 48 of the Maharashtra Land Revenue Code, 1966 (for short "the said Code"). Section 48 reads thus:-

SECTION 48: GOVERNMENT TITLE TO MINES AND MINERALS:-

(1) **1[The right to all minerals] at whatever place found, whether on surface or underground, including all derelict or working mines and quarries, old dumps, pits, fields, bandhas, nallas, creeks, river beds and such other places, is and is hereby declared to be expressly reserved and shall vest in the State Government which shall have all powers necessary for the proper enjoyment of such rights.**

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(2) The right to all mines and quarries includes the right of access to land for the purpose of mining and quarrying and the right to occupy such other land as may be necessary for purposes subsidiary thereto, including the erection of officers, workmen's dwellings and machinery, the stacking of minerals and deposit of refuse, the construction of roads, railways or tram-lines, and any other purposes which the State Government may declare to be subsidiary to mining and quarrying.

(3) If the State Government has assigned to any person its right over any minerals, mines or quarries, and if for the proper enjoyment of such right, it is necessary that all or any of the powers specified in sub-sections (1) and (2) should be exercised, the Collector may, by an order in writing, subject to such conditions and reservation as he may specify, delegate such powers to the person to whom the right has been assigned:

Provided that, no such delegation shall be made until notice has been duly served on all persons having rights in the land affected, and their objections have been heard and considered.

(4) If, in the exercise of the right herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the State Government or its assignee shall pay to such persons compensation for, such infringement and the amount of such compensation shall, in the absence of agreements, be determined by the Collector or, if his award is not accepted, by the Civil Court, in accordance with the provisions of the Land Acquisition Act, 1894.

(5) No assignee of the State Government shall enter on or occupy the surface of any land without the previous sanction of the Collector unless -compensation has been determined

and tendered to the persons whose rights are infringed.

(6) If an assignee of the State Government fails to pay compensation as provided in sub-section (4), the Collector may recover such compensation from him on behalf of the persons entitled to it, as if it were an arrear of land revenue.

(7) Any person who without lawful authority extracts, removes, collects, replaces, picks up or disposes of any mineral from working or derelict mines, quarries, old dumps, fields, bandhas (whether on the plea of repairing or constructions of bund of the fields or any other plea), nallas, creeks, river-beds, or such other places wherever situate, the right to which vests in, and has not been assigned by the State Government, shall, without prejudice to any other mode of action that may be taken against him, be liable, on the order in writing of the Collector, to pay penalty not exceeding a sum determined, at three times the market value of the minerals so extracted, removed, collected, replaced, picked up or disposed of, as the case may be : Provided that, if the sum so determined is less than one thousand rupees the penalty may be such larger sum not exceeding one thousand rupees as the Collector may impose.

**(8) Without prejudice to the provision in sub-section (7), the Collector may seize and confiscate any mineral extracted, removed, collected, replaced, picked up or disposed of from any mine, quarry or other place referred to in sub-section (7) the right to which vests in, and has not been assigned by, the State Government.**

(9) The State Government may make rules to regulate the extraction and removal of minor minerals required by the inhabitants of a village, town or city for their domestic, agricultural or professional use on payment of fees or free of charge as may be specified in the rules. Explanation.—For the purposes of this section, “minor minerals” means the minor minerals in respect of which the State Government is empowered to make rules under section 15 of the Mines and Minerals (Regulation and Development) Act, 1957.

(emphasis added)

20 In unequivocal terms, sub section 1 of section 48 lays down that right to all minerals found in the places mentioned therein vests in the State Government. Therefore, there are consequential provisions made which enable the Collector to grant

permission for excavation of minerals. As far as illegal excavation is concerned, sub sections 7 to 9 of Section 48 are material. Sub sections 7 of Section 48 provides that any person who without lawful authority extracts, removes, collects, replaces, picks up or disposes of any mineral wherever it is situated which has not been assigned by the State Government, shall be liable, on an order in writing of the Collector, to pay penalty not exceeding a sum determined, at three times the market value of the minerals so extracted, removed, collected, replaced, picked up or disposed of. Sub section 8 confers a power on the Collector to seize and confiscate any mineral extracted, removed, collected, replaced, picked up or disposed of from any mine, quarry or other place referred in sub-section (7), the right to which vests in, and has not been assigned by the State Government.

21 It is in this context that the suggestion made by the Petitioner as well as intervenor regarding the use of such confiscated sand will have to be seriously considered. We have already restated the legal principles laid down regarding the obligation of the State to protect the environment. Therefore, the State Government will have to consider the suggestion of putting back that the seized sand from the place from which it has been illegally excavated. If sand is illegally excavated, considering the constitutional obligation of the State, the said obligation may be more appropriately

discharged by putting back the excavated sand at the place from which it has been extracted provided it is technically and scientifically possible to do so. If the State Government can do that, to some extent, it will restore the damage to the eco system and environment caused by excavation of the sand. In the light of this discussion, the State Government must take a policy decision on this aspect especially when even under the said Code, there is no prohibition on adopting the said strategy.

22 After having considered submissions canvassed across the bar, we must note here that the authorities will have to adopt additional preventive measures for preventing the activity of illegal sand mining in addition to what is decided in the meeting held on 11<sup>th</sup> December 2017. One suggestion made across the bar which deserves acceptance is that the authorities of the Revenue Department must keep a constant vigil and ensure that the places/platforms where the sand is offloaded or the sand is stored are immediately destroyed.

23 Now coming back to the decisions taken in the meeting held on 11th December 2017, the perusal of the decisions will show that the authorities will have to procure boats of various sizes and various categories along with necessary equipment for taking various preventive measures and also for the purposes of taking action. In item No.11 of the

minutes it is provided that the Maharashtra Maritime Board (in short "the Maritime Board") will take action against the boats which are illegally used without permission or without registration. In fact it is decided that the such illegal boats should be confiscated. As far as this decision is concerned, the learned counsel appearing for the Maritime Board had expressed certain reservations. Before we deal with the submissions made by the learned counsel appearing for the Maritime Board, we must note here that one conclusion which can be drawn from the decisions taken in the meeting is that for implementing the decisions, availability of requisite number of boats and equipment is a must. As regards the boats, in the order dated 21st December 2017 in paragraph 7, we have noted the statement made by the learned AGP that the Maritime Board does not have requisite number of boats available for taking effective action. In the light of what is observed in the decision taken in the meeting that this Court observed therein that the Maritime Board will have to procure boats for taking effective action. The said direction was in the nature of an ad interim direction, which will require modification to a certain extent. The question is whether the Maritime Board is under an obligation to acquire boats.

24 On this aspect, there is an affidavit filed by Maritime Board. The affidavit is of Mrs. Vaishali Mulik of 18th January 2018. She is the Assistant

Secretary/Law Officer of the Maritime Board. The stand taken by the Maritime Board, in brief, can be summarized as under:

(a) The Maritime Board is established and constituted under the Maharashtra Maritime Board Act, 1996 wherein the functions of the Maritime Board have been set out;

(b) The Maritime Board has been appointed as the Registrar of Vessels in terms of the Inland Vessels Act, 1917 (for short "the said Act of 1917").

(c) It is stated that by virtue of section 55 of the said Act of 1917, the Maritime Board can only impose penalty on unregistered vessels.

25 The gist of functions which are required to be performed by the Maritime Board under the GR dated 21<sup>st</sup> May 2015 have been set out in the affidavit. Apart from other functions, the Maritime Board is a part of Flying Squad to be created by the Collector to monitor and take action against the illegal dredging. It is claimed that the role of Maritime Board as far as illegal dredging is concerned, is confined to what is provided in the GR dated 21<sup>st</sup> May 2015.

26 We may note that the submission of the learned counsel appearing for the Maritime Board is that the Maritime Board is not in a position to acquire boats and the said arrangement will have to be made by the State Government. We propose to accept the said submission as we see no such legal obligation on the



part of the Maritime Board and, therefore, we propose to direct the District Collector to take steps to acquire required number of boats and equipment.

27 There are affidavits filed on behalf of the State Government and the petitioners. The affidavits are filed by either the District Collector or the Sub-Divisional Officer regarding several steps taken by the State Government and other agencies to stop illegal dredging and sand mining. There is an affidavit of 27th November 2017 of the District Collector setting out the steps taken by him which include passing of orders under section 144 of the Code of Criminal Procedure, 1973 and sections 30 and 34 of the National Disaster Management Act, 2005. The affidavit deals with measures taken by him by conducting the awareness programs.

28 There is an affidavit filed by the petitioners of Shri Ravi Kamalakar Patil of 29th November 2017 which brings on record certain disturbing events. In paragraphs-3 and 4 of the said affidavit, he has stated thus:

“3. On 21 November 2017, at the request of the Tehsildar, representatives of the Petitioner- society including (a) Ravi Patil (b) Hareshwar Mhatre and (c) Kishore Patil, accompanied the Tehsildar and other officers to assess the situation at Shirgaon Railway Bridge No.88 and Tembi Khodave Bundar. On arrival at Shirgaon Railway Bridge No.88, the contingent saw that there were a lot of boats with suction pumps, huddled together, and that a mob of nearly 20 men were standing on top of these boats. Hereto annexed

and marked at EXHIBIT A is copy of the photographs to show the same.

4. Immediately thereafter, the contingent of the Tehsildar was attacked and numerous members of the Petitioner-Society were injured. The Petitioners are rattled not so much by the attack as much as conduct of the Respondents thereafter in an incident where an attempt to the life of the Petitioner's representative was made, where Kishore Patil was tied up and sought to be drowned, Hareshwar Mhatre was sought to be bludgeoned with iron rods and another's stomach was sought to be gored by broken bottle.”

(emphasis added)

29 In paragraph-5 of the said affidavit, a reference is made to the First Information Report registered at the instance of the office of the Tahsildar. The affidavit has been responded by a personal affidavit of the District Collector which is dated 7<sup>th</sup> December 2017. He has annexed to the said affidavit, an order made by the Additional Collector, Palghar District on 4<sup>th</sup> September 2017 by which Flying Squads have been established at Taluka level. There is a direction to the Flying Squads to prevent illegal sand excavation and its transport. In paragraph-5 of the affidavit, the Collector has accepted what is set out in the said affidavit of the petitioner about the incident involving violence. It is brought on record by way of this affidavit the fact that there are two police stations which have the jurisdiction over the said creek. The said police stations are Arnala Police Station and Kelva-Sagari Police Station. It was pointed out by the Collector that, in fact, two

different First Information Reports were lodged at the aforesaid two police stations. We are really not on the allegations and counter allegations made by the petitioners and the District Collector. We are really on the compliance with the obligation of the State to prevent such illegal mining. When an attempt was made to carry out an inspection for the purposes of preventing illegal sand excavation, such kind of attack has taken place. At this stage, we may note that in the said GR of 2015, there is a provision made for creating a Grievance Redress Mechanism by which the citizens can complain about the incidents of the illegal sand dredging. Therefore, the officers and agencies which will be involved in the activity of prevention and taking action including the members of the Flying Squad as well as those who complain about illegal dredging will have to be given adequate police protection, if necessary.

30 It will be also necessary for the District Superintendent of Police (Rural), Palghar to consider whether entire area could be brought within the jurisdiction of only one police station, as even the Government officers will find it difficult to understand whether a particular offence regarding illegal mining has taken place within the jurisdiction of one police station or the other. The District Superintendent of Police (Rural), District Palghar will have to be consider these aspects and take appropriate decision. We may note here that even the Police Officers are the members of the

Flying Squad constituted by the Collector. If, for any reason, the District Superintendent of Police is not in a position to bring the entire area under the jurisdiction of one police station, a mechanism should be devised so that complaints lodged at any one of the two police stations are promptly attended to.

31 Our attention is invited to the provisions of the said Act of 1917. Section 19A provides that inland mechanically propelled vessels shall not proceed with any voyage or used for any service unless it has a certificate of registration in force in respect thereof granted under the provisions of said Act of 1917. Under section 19B, the State Government is empowered to appoint the registering authorities by publication of a notification in official Gazette. In the present case, the stand taken by the Maritime Board on oath is that the said Board has been appointed as an Authority under clause (b) of section 19B. Chapter 2A of the said Act of 1917 contains elaborate provision for grant of registration certificates. The contention of the learned counsel for the Maritime Board was that the Board has a very limited role in respect of such vessels. His submission is that at highest, penalty can be imposed if an Inland propelled vessel acts in contravention of section 19A and no other action can be taken by the Maritime Board. It will be necessary to refer the GR dated 3<sup>rd</sup> January 2018. The said GR has been issued by which the earlier GRs including the GR dated 21<sup>st</sup> May 2015 have been

modified. Clause 17 of the said GR of 3<sup>rd</sup> January 2018 provides for creating vigilance Committees at the State level, at Districts level, at the level of Sub Divisional Officers, at the level of Tahsildars and lastly at the level of villages. Sub-clause (b) of clause 17 provides that if a truck or tempo or such other vehicle is used for transport of illegally excavated sand, the Regional Transport Authority shall suspend the registration of such vehicle. There is a further clause that if the boats/vessels which are not registered with the Maritime Board are used for transport of sand, the same shall be seized/confiscated and that the same shall be sold by auction. The responsibility of taking this action has been entrusted to the District Level Vigilance Committees. As of today, the provisions of the said GR have not been challenged by anybody. Thus, if the Maritime Board finds that an inland mechanically propelled vessel which does not have registration under section 19A is used for transport of sand, Vigilance Committee at the District Level will have to seize the said vessel and to sell the same. So long as sub-clause (b) of clause 17 of the GR dated 3<sup>rd</sup> January 2018 continues to operate, this procedure will have to be followed. We cannot accept the contention that the Authorities of the State are powerless to seize the boats which do not possess the registration under section 19A which are used for transporting or carrying sand. We, therefore, propose to direct the District Level Vigilance Committee of Palghar District and the Collector who is the Chairperson of

the said Committee to ensure that action against the inland mechanically propelled vessels which are unregistered and which are used for carrying sand is taken in terms of sub-clause (b) of clause 17 of the GR dated 3<sup>rd</sup> January 2018.

32 Only if such a drastic action is taken, it will have some impact on the persons who have been indulging in illegal dredging of sand mining. Sub-clause (d) itself has a provision for return of such vessels subject to certain conditions, but that comes only after there is a seizure of the vessel. After having perused the various affidavits on record, we find that such action of seizure has not been taken against any such unregistered vessels which are used for transport of sand.

33 There is one more aspect which can be seen from the said GR dated 3<sup>rd</sup> January 2018. Apart from the fact that it contains elaborate provisions regarding auction of right to extract sand, sub-clause (d) of clause 15 thereof provides for setting up a grievance redress mechanism for receiving online complaints as regards illegal excavation of sand. It also provides for accepting anonymous complaints. Apart from that, there is a provision that toll free number should be made available and the record of the complaints should be maintained in a register which should also contain the details of action taken on the basis of the complaints. It is further provided that the information regarding such complaints shall be made available online. We find

from none of the affidavits on record that such grievance redress mechanism has not been effectively provided. In fact, such a provision was also a part of the order dated 16<sup>th</sup> February 2016. We propose to direct the State Government implement the said clause 4 of the GR with a rider that the Authorities which receive complaints wherein the name of the complainant is disclosed, his name should not be divulged to anyone and should not be published in any manner whatsoever.

35 We have already referred to the provisions of the said Code which confer power on the State to seize illegally extracted mineral including sand. Section 48 of the said Code also confers a power on the State to sell the seized minerals. As indicated earlier, the provisions of said Code permitting auction of the sand is an enabling provision which is not mandatory. For the reasons we have recorded earlier, considering the impact on the environment and eco-system due to illegal sand mining, it will be appropriate if the State Government ensures that the said sand is put back into the creek or at the place from where it is illegally excavated.

35 We have already referred to the GR dated 3<sup>rd</sup> January 2018 which contain a policy of the State Government regarding permitting the sand excavation. Even for identification of the spots from which the sand can be excavated, certain exercise is required to be undertaken such as preparation of mining plan.

36 In the affidavits which have been filed by the Collector and other Officers, it is stated that FIRs have been registered alleging commission of offences including offence punishable under section 15 of the Environment Protection Act, 1986 (for short 'the said Act of 1986'). All the affidavits completely ignore the requirement of section 19 which provides for taking cognizance of any offence under section 15 of the said Act of 1986 only on a complaint made by the the prescribed Authorities. We may note here that the Police Officers are not authorised Officers under sub-clause (a) of clause 19. Therefore, even when the Police Officers are required to file complaints, they are required to serve 60 days notice in advance. It is true that the registration of FIR by police does not become per se bad in law inasmuch as the material collected during the investigation can be always relied upon in a complaint filed under the said Act of 1986. No attempt has been made by calling upon the Authority or the Officer authorised by the Central Government to file the complaints. Registration of FIR will serve only a limited purpose enabling the police to carry out investigation. Even if the police complete investigation and try to file charge sheet for the offence punishable under section 15 of the said Act of 1986, concerned criminal Court may have no power or jurisdiction to take cognizance of the offence on the basis of such charge sheet.

37 The Collector and the Committee of stakeholders



will have to evolve a procedure to ensure that whenever there is any violation attracting section 15 of the said Act of 1986 criminal law is properly set in motion and is taken to a logical conclusion.

38 We have already referred to the affidavit filed by the SDO which refer to constitution of Flying Squad. The actions of the Flying Squad will have to co-ordinated properly. As the District Collector is the head of the Vigilance Committees at district level, we propose to direct the said Committee at Palghar District to monitor implementation of the decision taken in the meeting and the directions issued by this Court and submit periodical reports to this Court. It is always open for the Collector to invite all the stakeholders such as the Officers of the Maritime Board, the Officers of the State Government and other statutory Authorities so that the Collector and the Vigilance Committees can seek co-operation of all stakeholders.

39 Lastly, we must advert to a very important issue canvassed across the bar which is already considered earlier. The issue is that those who are involved in dredging of sand create platforms at various places on which illegally excavated sand is kept from which it is transported. The Flying squad has been already established as stated in one of the affidavits filed on behalf of the State Government. The Vigilance Committees at various levels are in place. By use of modern equipment, a vigil can be kept on such landing sites or storage sites. An

action can be immediately taken to destroy such sites in such manner that it becomes impossible to store the sand at the site. Unless this exercise is done, no preventive measures can achieve desired success. Taking such action will not have any legal impediment in as much as there is already a power conferred on the Collector to seize illegally excavated sand.

40 We have already referred to the decision of Madras High Court in the case of M. Palanisamy (supra) wherein the Division Bench of Madras High Court has discussed the effects of illegal mining. The Judgment accepts the contention that excessive sand mining is a threat to the bridges. In this case, we are concerned not only one but five bridges of the Railways. In fact, ill effects of such sand mining have been precisely set out by the Madras High Court in its decision from paragraphs 21 to 25. What is held by the Madras High Court has to be borne in mind by the Collector and all other Authorities who have statutory powers to take action and to prevent illegal sand mining as well as to stop illegal sand mining. As can be seen from this Order that there are elaborate provisions of law already in place which confer sufficient powers on all the concerned Authorities. These issues in the present PIL have been arisen mainly due to default on the part of all concerned Authorities to make concentrated efforts and to take action to prevent illegal mining of sand. We have already noted that it is not as if no action has been taken. Suffice

it to say that the actions which are already taken are not sufficient to make an impact.

41 While we have already referred to the Vigilance Committees established under the GR dated 3<sup>rd</sup> January 2018, Clause 17 provides for creation of Vigilance and Inspection Squad. There is nothing placed on record to show that the said squad has taken any action which is contemplated by sub-clause (A) of paragraph 17 of the said GR.

42 We may note that the State will have to ensure that all the Vigilance Committees as well as Inspection Squads are constituted at all levels including village level. The said island is situated in a revenue village for which there is a Gram Panchayat. Even a Village Vigilance Committee will have to be formed by the Collector for the said village. In a petition, there are averments that there was a bund which was erected along with the boundary of the said island by the kharland department of the State Government. There are averments that as a consequence of the illegal excavation of the sand from the said creek, the high tide has destroyed the bund at various places. If this statement is true and if the bund is not restored, there is every possibility that paddy crop which is taken on the island will be destroyed or it may create a situation whether no such crop can be taken. The district level Vigilance Committee headed by the District Collector will have to look into it

by calling for a report either from the Vigilance Committee headed by the Tahsildar or any other Revenue Authority on the present status of the said bund. If there is a destruction of the bund, the Collector will have to take steps to move the concerned department of the State Government for ensuring that the said bund is restored.

43 Considering the above discussion, we issue following interim directions:

(I) The State Government shall ensure that all Committees which are provided in clause 17 to the GR dated 3<sup>rd</sup> January 2018 are constituted within a period of one month from the date on which the order is uploaded;

(II) Once the Committees are constituted, the meetings shall be convened of the said Committees as specified in sub-clause (b) of clause 17 of the said resolution;

(III) As observed in this Order, at this stage, we are not suggesting the State Government to constitute a Committee headed by the Divisional Commissioner inasmuch as we find from the record that the District Collector has taken certain steps and that he himself is the Chairman of the District Level Vigilance Committee. We may note that what exactly is to be done by the Vigilance Committees at five different levels is also disclosed in sub-clause (b) of Clause 17 of the GR;

(IV) The District Vigilance Committee of Palghar District shall be constituted immediately, if not constituted till date. The Committee shall meet at least once in a month. Not only that the District Level Vigilance Committee will have to perform the tasks assigned to it under the GR dated 3<sup>rd</sup> January 2018 but the said Committee shall monitor the implementation of the decisions taken on 11<sup>th</sup> December 2017 and the directions issued under this order. In the meeting of the District Level Vigilance Committee, the compliance as aforesaid shall be discussed;

(V) Periodical reports on compliance shall be submitted by the District Level Vigilance Committee to this Court. We direct the District Level Vigilance Committee at Palghar to submit the first report on or before 8<sup>th</sup> June 2018. The District Level Vigilance Committee shall ensure that the copies of the reports are provided to the Advocates for the parties;

(VI) We make it clear that it will be open for the District Level Vigilance Committee to invite all the stakeholders including the Officers who were present in the meeting dated 11<sup>th</sup> December 2017;

(VII) We direct that the District Level Vigilance Committee of District Palghar shall ensure that all the decisions taken in the meeting dated 11<sup>th</sup> December 2017 are effectively implemented in its

true letter and spirit. in the event, the Collector is of the view that further directions are required to be issued by this Court for facilitating the implementation of the said decisions and the interim directions issued by this Court, the Collector is free to move this Court through the learned AGP.

(VIII) As we have already held that unless sufficient number of boats of requisite type and necessary equipment is procured, the implementation of this order as well as the decisions taken in the meeting dated 11th December 2017 cannot be made, the Collector after holding discussions with all the stakeholders such as the Maritime Board, the Police and Western Railways will decide how many boats of different types are necessary along with requisite equipment. This exercise shall be completed at the earliest and preferably within a period of two weeks from the date on which this order is uploaded. Thereafter, the Collector shall move the State Government for sanction of requisite funds to acquire boats and necessary equipment. He is also free to apply to the State Government for creating posts of personnel required for running the boats. The State Government on receipt of the proposal by the Collector shall take appropriate decision thereon as expeditiously as possible and in any event within a period of one month from the date on which the proposal is submitted. We are sure that the State Government will take into consideration the seriousness of the issue in the light of the observations made in the judgment and shall

endeavour to grant sanction at the earliest.

(IX) After getting the sanction, the Collector shall take immediate steps for acquiring the boats. In the meanwhile, the Collector shall endeavour to ascertain whether boats can be temporarily acquired from Police Department or coast guard or any other Authorities use for a temporary period till the Government permits him to acquire the boats and till he acquires the boats.

(X) The District Level Vigilance Committee shall ensure that available boats are entrusted to Flying Squads and other members of the staff. The District Level Vigilance Committee shall provide all the facilities and infrastructure to the Flying Squads;

(XI) The District Level Vigilance Committee shall monitor the use of boats for the purposes of prevention of illegal sand mining in the creek, for stopping illegal sand mining, for seizing the boats which do not have registration as per Section 19A of the said Act of 1917 and generally for implementing the directions issued by this Court.

(XII) The District Level Vigilance Committee shall ensure that the action of seizure of unregistered boats is taken at the earliest on receiving information from the Maritime Board or otherwise.

(XIII) The District Level Vigilance Committee shall ensure that Grievance Redress Mechanism is created as provided in Government Resolution dated 3<sup>rd</sup> January, 2018. The District Level Vigilance Committee shall also consider of creating a mechanism for allowing complaints to be lodged along with the photographs, if any, by use of various mobile applications on cell phone. We also make it clear that the Grievance Redress Mechanism shall be for receiving complaints on all aspects including the complaints made by a citizen for informing that somebody has made preparation for illegal excavation of sand as well as the complaints alleging that illegally excavated sand is found to have been stored at particular place. The District Level Vigilance Committee headed by the Collector will ensure that all complaints submitted by various modes are attended to immediately and necessary preventive or coercive action is initiated. The Committee shall maintain record of the actions taken on the basis of the complaints. The Committee shall ensure that identity of the complainant such as his name, cell phone/landline number etc., remains confidential and such details are not disclosed to anyone.

(XIV) The District Level Vigilance Committee shall take assistance of satellite imaging for monitoring illegal activities of sand mining, creation of mining sites and sites for storage of sand. The District Level Vigilance Committee shall ensure that these aspects are regularly monitored by



use of satellite imaging.

(XV) For the reasons which we have recorded, it will be the responsibility of the revenue officers under the Land Revenue Code, 1966 to ensure that the mining sites created on public properties for offloading the illegal sand and for storage of the illegally excavated sand are destroyed on regular basis and preventive measures are taken. This aspect shall be also monitored by the District Level Vigilance Committee.

(XVI) We direct the Collector to depute an officer of the Revenue Department not below the rank of Tahsildar to ascertain the extent of damage caused to bund erected around the boundary of the said island. He shall ensure that the officer appointed by him submits a report within a period of one month from the date on which this order is uploaded. Thereafter, the Collector shall ensure that necessary steps are taken for reconstruction and/or for carrying out repairs to the bund and for protection of the bund.

(XVII) As held earlier, illegally excavated sand is the property of the State Government and therefore, the State Government, in stead of selling the illegally excavated sand by public auction, shall consider of putting back the sand into the creek or at the place from which it is excavated. We are of the view that the said action may not contrary to the provisions of the Maharashtra Land

Revenue Code, 1966. Appropriate policy decision shall be taken by the State Government on this aspect within a period of one month from the date on which this order is uploaded. As observed in the body of this judgment, the action of putting confiscated sand at the place from which it is collected will be consistent with the constitutional obligations of the State Government.

(XVIII) The District Superintendent of Police shall provide adequate police protection to the Officers and staff while taking preventive and coercive action, if necessary by providing armed constables;

(XIX) The District Level Vigilance Committee shall submit compliance reports at regular intervals to this Court. First of such compliance report shall be submitted on or before 15<sup>th</sup> June, 2018. Compliance report will record steps taken to implement each and every direction issued by this Court as well as the decisions taken in the meeting held on 11<sup>th</sup> December, 2017. Thereafter, the compliance report shall be filed after regular intervals of two months.

(XX) If the petitioner needs any information about the steps taken by the District Level Vigilance Committee for the implementation of the directions issued by this Court, on an application made by the petitioner, necessary information shall be furnished by the Secretary of the District Level Vigilance Committee to the petitioner.

(XXI) Place the Petition under the caption of "Directions" on 20<sup>th</sup> June 2018 for considering its compliance report which may be submitted by the Committee.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)

