

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**CIVIL APPLICATION (FOR ORDERS) NO. 10457 of 2015**  
**In CIVIL APPLICATION NO. 8815 of 2015**  
**In SPECIAL CIVIL APPLICATION NO. 2948 of 2013**

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STATE OF GUJARAT THRO PRINCIPAL SECRETARY & 3....Applicant(s)

Versus

MANJULABEN RAMNIKLAL THANKI & 1....Respondent(s)

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Appearance:

MR MANAN MEHTA, AGP for the Applicant(s) No. 1 - 4

MR AS VAKIL, ADVOCATE for the Respondent(s) No. 1

MR MG NAGARKAR, ADVOCATE for the Respondent(s) No. 2

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**CORAM: HONOURABLE MR.JUSTICE R.M.CHHAYA**

**Date : 22/09/2015**

**ORAL ORDER**

1. Heard Mr. Manan Mehta, learned Assistant Government Pleader for the applicants.
2. By way of this application, the applicants-original respondents have prayed for the following reliefs:

“9A. This Hon'ble Court may be pleased to admit and allow the present application.

9B. This Hon'ble Court may be pleased to recall order dated 03.09.2015 passed in Civil Application (For Direction) No.8815 of 2015.

9C. This Hon'ble Court may be pleased to pass such other and further order as this Hon'ble Court deems fit

and proper in the facts and circumstances of the case.”

3. At the outset, it may be noted that opponent no.1 herein has preferred Civil Application No.8815 of 2015 for direction wherein opponent no.1 herein, inter alia, prayed as under:

“16. The Applicant – Original Petitioner therefore prays that this Hon'ble Court be pleased:

A. to direct the Respondents/Opponents to reopen the e-royalty account of the Applicant – Original Petitioner and issue to the Applicant – Original Petitioner e-royalty passbooks to enable the Applicant – Original Petitioner to remove/sell/sell for export/transport 1,67,163.656 MT of mined bauxite, mined prior to 20.07.2013 and for 60,000 MT of mined bauxite, mined after 05.01.2015;

B. To pass such and further orders as this Hon'ble Court deems fit and proper in the facts of the present case.

C. To provide for the costs of the present Civil Application.”

4. On the basis of written communication dated 03/09/2015, this Court passed following order on 03/09/2015 in Civil Application No.8815 of 2015:

“1. Heard Mr.A.S.Vakil, learned counsel for the applicant and Mr.Manan Mehta, learned Assistant Government Pleader for the respondents.

2. Learned AGP has produced a copy (computer generated) of the Communication dated 03.09.2015 made by respondent No.3-Geologist of Geology and Mining Department, Devbhumi Dwarka.

3. In light of the said Communication, the applicant-original petitioner be permitted to deal with 1,67,163.656 metric ton of Mined Bauxite and the respondents are hereby directed to reopen the E-Royalty

Account of the applicant-original petitioner to the extent of said stock latest by **07<sup>th</sup> September, 2015**. It goes without saying that considering the Communication dated 03.09.2015, the respondents authorities shall permit the applicant to remove sell/sell for export/transport the aforesaid quantity of Mined Bauxite prior to 20.07.2013 pending the hearing of this application as well as the main writ petition.

4. It deserves to be noted that the quantity which is mentioned in the Communication dated 03.09.2015 is based on the Panchnama prepared as per the earlier order passed by this Court.

**S.O to 21<sup>st</sup> September, 2015.”**

5. Mr. Manan Mehta, learned Assistant Government Pleader has relied upon the fact that on 15/09/2015, Geologist has verified the stock and on 19/09/2015, Flying Squared has also verified and it was found that there is stock of 1,55,189.400 MT of bauxite and, therefore, present application is filed for recall of order dated 03/09/2015.

6. It also pertinent to note that as initially order dated 03/09/2015 was not complied with, opponent no.1 herein originally has filed contempt application being Misc. Civil Application No.2617 of 2015 which is pending before this Court wherein the Hon'ble Division Bench of this Court has passed following order on 15/09/2015.

“Heard learned advocate for the petitioner. Learned counsel for the petitioner invited this Court's attention to the order passed by the Court on 3.7.2014 and submitted that as could be seen the observations and directions contained in this order in paragraph No. 6, the authorities were to act in accordance therewith. Learned counsel thereafter invited the Court's attention to the communication dated 3.9.2015 produced at page

No. 22 – annexure-F and submitted that first paragraph thereof is also unequivocally clear gau bauxite stock quantity mentioned therein. In juxtaposition of these two facts, he submitted that the order dated 3.9.2015 needs to be perused which would persuade this Court to hold that there exists prima facie contempt committed by the concerned person as there was occasion to throw spanner in the wheels of justice which has been put into motion. This Court is, therefore, of the view that the communication which is sought to be indicated flowing from the office of the respondents calling upon the petitioner to remain present appears to be unfortunate as there was no such direction or it goes without saying that while complying with the direction contained in the order dated 3.9.2015 the authorities were to act in accordance with law. Therefore, there appears to be a case for issuance of notice under the Contempt of Courts Act. Hence let there be notice issued to respondent Nos. 2 and 3 returnable on 23.9.2015. In case by the returnable date, the respondent have not complied with the order dated 3.9.2015 then respondent Nos. 2 and 3 shall file separate affidavits explaining the action or omission on their part and shall also remain personally present before this Court for answering the allegations and averments made in the application. In case there is failure in compliance with the order, this Court shall be constrained to take a serious view of the matter without further adjournment and time being granted. Direct service to respondent Nos. 2 and 3 today is granted.”

7. Opponent no.1 herein has filed detailed affidavit-in-reply in this application more particularly in para-6 and 7 of the affidavit-in-reply has narrated chronology of events which has taken place even after passing of order dated 03/09/2015.

8. In opinion of this Court, in para-3 of the order dated 03/09/2015, relying upon instructions dated 03/09/3015 written by Geologist of Devbhoomi Dwarka, this Court has provided that the stock which was excavated prior to 20/07/2015 only is to be lifted. It may further be noted that

even as per the written instructions dated 03/09/2015, the Geologist has mentioned that as per the communication dated 20/07/2013, stock of 2,44,616.38 MT of bauxite was excavated by opponent no.1 herein. It further requires to be noted that this Court has specifically not permitted opponent no.1 to lift and/or to deal with 60,000 MT bauxite which was excavated without permission and, therefore, has clearly mentioned in the order dated 03/09/2015 that the stock which was excavated prior to 20/07/2015 only is to be lifted. It may further be noted that order dated 03/09/2015 is an interim order passed in the Civil Application No.8815 of 2015 which is filed by the opponent no.1 herein which is still pending for its further orders.

7. Cumulatively considering all the aspects and what is stated in the affidavit-in-reply filed by opponent no.1 herein, present application deserves to be dismissed.

8. Accordingly, present application stands dismissed. No order as to costs.

**(R.M.CHHAYA, J.)**

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