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**Office of Principal Chief Conservator of Forests (Head of Forests Force)  
Maharashtra State**

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No:-Desk-17/2/Nodal/ID12638(26)/ **985**

Date:- 05/01/2021

To,  
The Principal Secretary (Forests),  
Revenue and Forests Department,  
Mantralaya, Mumbai-32

**Subject:- Forest Land-Kolhapur**

Proposal for diversion of 49.00 ha. forest land under section 2 (ii) of the Forest (Conservation) Act, 1980 for Laterite Mining & Road in favour of Shri.Bhairavnath Earthmovers & Co., Ghungur, Tal-Shahuwadi, Dist. Kolhapur.

**Reference:-**

1. Government of Maharashtra letter no.FLD-2318/C.R.277/F-10 dtd. 29/05/2019
2. Director, Geology and Mining, Maharashtra letter No.STC/852/Part file/2466 dated 18/10/2019.
3. This office letter No.Desk-17/NC/ID12638(26)/362/2019-20 dtd.25/11/2019
4. Government of Maharashtra letter no.FLD-2318/C.R.277/F-10 dtd. 17/12/2019
5. This office letter No.Desk-17/NC/ID12638(26)/1490/2019-20 dtd.18/12/2019

The above said proposal came up for discussion before the Forest Advisory Committee in its meeting held on 23/04/2019, when the Committee observed as follows-----

*With regards to the area proposed for the diversion vis-a-vis laterite mining, the Committee noted that requirement of area appears to be exaggerated and needs to be rationalized.*

With the above said observations the Forest Advisory Committee decided that

*After detailed deliberations and submissions made by the Nodal Officer (FCA), Maharashtra, the Committee desired that requirement of forest area proposed for diversion may be re-examined by the State Government in light of justification provided by the User Agency and the same be submitted for further consideration of the Committee. Till then FAC decided to defer the proposal.*

2. In this background, the State Government vide the letter under reference 1 has directed this office to submit the report. The then PCCF (HoFF), vide letter under reference 3 (based on communication under reference 3), again recommended the said proposal. Subsequently, as desired by the State Government vide reference 4, the copies of the file-noting have already been submitted vide reference 5.

3. Now in accordance with directions received under reference 1, the proposal was re-examined in light of the Mines and Minerals (Development and Regulation) 1957 (hereinafter referred to as the MMDR Act) and the rules framed thereunder. The User Agency was provided an opportunity vide this Office letter Desk-17/2/Nodal/ID-12638/15-16/494 dated 25/06/2019 to clarify its stand on such observations. The observations made by this office and the clarification submitted by the User Agency are tabulated as under.-----

Noted  
21/1/2021  
(13)

| Sr<br>no | Observation   | Clarification made by the User Agency  |
|----------|---|--|
| 1        | 2   | 3  |
| 1        | <p>The laterite has been classified as minor mineral vide notification dated 10/2/2015 issued by the Central Government. The minor minerals are governed by the Maharashtra Mining Mineral Extraction (Development and Regulation) Rules, 2013, framed under the MMDR Act.</p>  | <p>It is correct and hence no comments.</p>  |
| 2        | <p>The attention of User Agency was invited to Rule 18 of the said rules, which are reproduced as under.</p> <p><i>Rule 18. Period for which lease may be granted or renewed.-</i></p> <p><i>1. The period for which a quarry lease may be granted shall be of five years without approval of the Government and ten years with the prior approval of the Government:</i><br/> <i>Provided that, the maximum period for which any such lease may be granted shall not be more than twenty years.</i></p> <p><i>2. A lease may be renewed at the option of the lessee for a period not exceeding the duration of the original lease.</i></p> | <p>The User Agency has applied for mining lease for 20 years.</p>  |
| 3        | <p>Rule 19 lays down the norms for minimum and maximum area for grant of a quarry lease. The minimum area prescribed is 1 ha. The second proviso of this rule is reproduced as under-</p> <p><i>Provided further that, the Government, if satisfied on the basis of proposed production level, geological or topographical conditions, may, for reasons to be recorded in writing, grant quarry lease not exceeding fifty hectare.</i></p>  | <p>Mining lease has been applied for a period of twenty years, if the Competent Authority grants mining lease for a duration of five years, then User Agency may seek renewal for three times.(i.e. each time after completion of 5 year period)</p> |

|   |   |  |
|---|---|--|
| 4 | <p>From the proposal and the Mining Plan enclosed with the proposal, it appears that about 8.84 Million Tons of ore reserves are available from the forest area proposed to be diverted. The User Agency intends to mine at the rate of about 1.50 Lakh to 2.00 Lakh Metric Ton per annum. The User Agency therefore has proposed that the above said laterite reserves can last for period of twenty years and hence diversion is sought for twenty years.</p> | <p>The User Agency has clarified that the production has been shown as 1.5 Lakh tones for the first year and later on increased production at the rate of 2 Lakh tones per year for the next 4 years in the presently approved mining plan. The User Agency has stated that it proposes to increase production from 6<sup>th</sup> year onwards over 6 Lakh tones per year. In this regard, it has further stated that before completion of 5<sup>th</sup> year, six months in advance it will have to submit a fresh mining scheme/ plan for the next 6<sup>th</sup> to 10<sup>th</sup> year as per Rule 23 (i)(d).</p> <p>Although this mining plan is prepared for 20 years, it is required to furnish production details only for 5 years and on 6<sup>th</sup> year onward up to 20 years fresh Mining Scheme/Plan showing production for 5 years needs to be prepared and get approval from Director/Deputy Director, Directorate of Geology &amp; Mining, Government of Maharashtra. From 6<sup>th</sup> year onwards production is proposed to be increased to 6,00,000 tones per year. Once rated capacity of production of 6,00,000 tones achieved it will be continued and maintained for remaining period of Mining Lease; till mineral reserves of laterite get exhausted. Thus, after considering above proposed rated capacity of production achievement; proposal for diversion of forest land for mining activity is sought for 20 years period. By this way assuming rated capacity of production is achieved then at the end of 19<sup>th</sup> year entire laterite reserves will be exploited/exhausted, and in remaining period of 1 years is sufficient to User Agency to carry out and finish restoration/reclamation of land disturbed within period of 20 years.</p> |
| 5 | <p>As prescribed in Rule 18(1), the Collector on his own is not competent to grant mining lease for a period exceeding five years, without prior approval of the State Government. No such proposal appears to have been moved either by the Collector or the User Agency to the State Government so far.</p>   | <p>After receiving Stage-I forest clearance, Collector may decide either to obtain for grant of mining lease for 20 years or issue grant of mining lease for 5 years and then User Agency may sought renewal for 3 times. User Agency has legal right to obtain renewals at his option. As User Agency has right to get of Mining Lease renewals for number of times.</p>  |

| 6       | <p>Considering the fact that as per Rule 18 (1), the maximum period for which the original lease may be granted is 20 years and as per the Mining Plan enclosed on the proposal, the User Agency can extract upto 2 Lakh tonne per year, the maximum quantity of ore, which can be extracted in 20 years [maximum period for which the lease can be granted as per Rule 18 (1) ] comes out to be about 4 million metric tonnes, which is less than half the estimated quantity of 8.89 million tonnes. This means that at the most only 20 ha. forest land is entitled to be considered for the diversion at this stage. Therefore the observation of the Forest Advisory Committee, that <i>“the area proposed seem to be exaggerated and needs to be rationalised”</i> stands logical.</p> | <p>User Agency intends to mine laterite initially for first year about 1,50,000 tones and for next 4 years of about 2,00,000 tones per year but later on 6<sup>th</sup> year onwards proposes to increase production of about 6,00,000 tones per years and once rated capacity of production is achieved it will be continued till exhaust of laterite mineral. Year wise production as proposed. Above is tabulated as below-</p> <table data-bbox="831 514 1567 1003"> <tr> <th>Sr. No.</th><th>Year wise Production</th><th>Production Quantity in Million Tones</th></tr> <tr> <td>1</td><td>2</td><td>3</td></tr> <tr> <td>1</td><td>1<sup>st</sup> year @ 0.15 million tones</td><td>0.15</td></tr> <tr> <td>2</td><td>2<sup>nd</sup> to 5<sup>th</sup> year @ 0.2 million tones as per year</td><td>0.8</td></tr> <tr> <td>3</td><td>6<sup>th</sup> to 18<sup>th</sup> year @ 0.6 million tones as per year</td><td>7.8</td></tr> <tr> <td>4</td><td>19<sup>th</sup> year @ 0.09 million tones</td><td>0.09</td></tr> <tr> <td>5</td><td>Restoration/Reclamation work</td><td>-</td></tr> <tr> <td></td><td><b>Total</b></td><td><b>8.84</b></td></tr> </table> | Sr. No. | Year wise Production | Production Quantity in Million Tones | 1 | 2 | 3 | 1 | 1 <sup>st</sup> year @ 0.15 million tones | 0.15 | 2 | 2 <sup>nd</sup> to 5 <sup>th</sup> year @ 0.2 million tones as per year | 0.8 | 3 | 6 <sup>th</sup> to 18 <sup>th</sup> year @ 0.6 million tones as per year | 7.8 | 4 | 19 <sup>th</sup> year @ 0.09 million tones | 0.09 | 5 | Restoration/Reclamation work | - |  | <b>Total</b> | <b>8.84</b> |
|---------|--|--|---------|----------------------|--------------------------------------|---|---|---|---|---|------|---|---|-----|---|--|-----|---|--|------|---|------------------------------|---|--|--------------|-------------|
| Sr. No. | Year wise Production   | Production Quantity in Million Tones   |         |                      |                                      |   |   |   |   |   |      |   |   |     |   |  |     |   |  |      |   |                              |   |  |              |             |
| 1       | 2  | 3  |         |                      |                                      |   |   |   |   |   |      |   |   |     |   |  |     |   |  |      |   |                              |   |  |              |             |
| 1       | 1 <sup>st</sup> year @ 0.15 million tones  | 0.15   |         |                      |                                      |   |   |   |   |   |      |   |   |     |   |  |     |   |  |      |   |                              |   |  |              |             |
| 2       | 2 <sup>nd</sup> to 5 <sup>th</sup> year @ 0.2 million tones as per year  | 0.8  |         |                      |                                      |   |   |   |   |   |      |   |   |     |   |  |     |   |  |      |   |                              |   |  |              |             |
| 3       | 6 <sup>th</sup> to 18 <sup>th</sup> year @ 0.6 million tones as per year   | 7.8  |         |                      |                                      |   |   |   |   |   |      |   |   |     |   |  |     |   |  |      |   |                              |   |  |              |             |
| 4       | 19 <sup>th</sup> year @ 0.09 million tones   | 0.09   |         |                      |                                      |   |   |   |   |   |      |   |   |     |   |  |     |   |  |      |   |                              |   |  |              |             |
| 5       | Restoration/Reclamation work   | -  |         |                      |                                      |   |   |   |   |   |      |   |   |     |   |  |     |   |  |      |   |                              |   |  |              |             |
|         | <b>Total</b>   | <b>8.84</b>  |         |                      |                                      |   |   |   |   |   |      |   |   |     |   |  |     |   |  |      |   |                              |   |  |              |             |

- 4.0 Apart from the said clarification the User Agency has also submitted as follows-
- 4.1 The partnership firm Shri.Bhairavnath Earthmovers has been found by the local people for the local development/employment as well as fulfillment of local needs for sustainable development purpose.
- 4.2 The said proposal was recommended by the State Government after due scrutiny.
- 4.3 The User Agency has already obtained the environmental clearance.
- 4.4 The site was personally visited by the Additional Director General, Regional Office, Nagpur, who has reported to the Ministry with his recommendation for further approval. Mining Plan is already approved by the Director, Geology and Mining, the proposed forest land is barren, unused, and unproductive and will not affect any biodiversity. The User Agency shall be paying NPV as well as shall be offering Compensatory Afforestation land equivalent to the forest land proposed to be for diversion.
- 4.5 The proposal is beneficial to the Forest Department due to revenue collection and positive growth in ecology in the form of Compensatory Afforestation land.

## 5. SPECIFIC REMARKS

Based on the clarifications submitted by the User Agency as tabulated above and the relevant provisions of the MMDR Act, 1957 and Maharashtra Mining Mineral Extraction (Development and Regulation) Rules, 2013 and relevant directives given by the Central Government from time to time, following issues arise.-----

- 5.1 Laterite comes under the category of minor mineral and the mode of granting quarry lease in respect of laterite is governed by Rule 9 of the Maharashtra Mining Mineral Extraction (Development and Regulation) Rules, 2013. It is worth to mention that the said Rule 9 was subsequently amended vide notification dated 12 January 2018. For better appreciation the original Rule 9 and the amendment Rule 9 are tabulated as under.

| Original Rule 9   | Amended Rule 9  |
|---|---|
| <p>Mode of granting quarry lease:-</p> <p>(1) Subject to the provisions of these rules, mineral concessions for quarry lease may be granted by the Competent Authority <b>either on receipt of application or by way of public auction.</b></p> | <p>Mode of granting quarry lease:-</p> <p>(1) Subject to the provisions of these rules, <b>mineral concessions for quarry lease on any land vested in the Government or any public authority may be granted by the Competent Authority by way of public auction:</b></p> <p>Provided that, grant of quarry lease on a private land in the name of the occupant or holder of such private land shall be exempted from auction process and may be granted to such occupant or holder upon his application. However where the occupant or holder of a private land is desirous of leasing his land to another person for quarrying, such occupant or holder shall give his written consent in that regard to the Collector who shall then put quarrying rights in such land to auction for specified period in which case, the amount realized in auction shall be credited to the Government and the amount of surface rent as decided by the Government from time to time, will be given to the land holder:</p> <p>Provided further that, the practice of granting quarry lease or permit upon application shall be continued in case of Kumbhar and Vadar families which wish to do such mining for pursuing their traditional business:</p> <p><b>Provided further that, the provisions of this rule, shall not apply to any case where prospecting licence or mining lease had been granted but mining lease deed could not executed before the date of publication of the Government of India Gazette notification No.F.No.5/1/2015-M.M, dated 10<sup>th</sup> February 2015 declaring 31 major minerals as minor minerals.</b></p> |

5.2 A plain reading of the above mentioned provisions will make it clear that before amendment in Rule 9, it was open for the Competent Authority to grant to quarry lease either on the receipt of application or by way of public auction. However, after the amendment, the option of granting the quarry lease through application on the lands vested in the Government has been withdrawn by the State Government.

5.3 It is worth mentioning that the grant of quarry lease on a private land in the name of occupied or holder of such private land is only exempted from the auction process, that too on his own application and if at all such occupied or holder is desirous of leasing his land to another person for quarrying, such occupant or holder shall give his written consent in that regard to the Collector who shall then put quarrying rights in such land to auction. Further, by no stretch of imagination the present case falls under any of the three provisos mentioned below rule 9. It is therefore amply clear that quarrying lease on Government land cannot be granted by-passing the process of auction. However, in the present case, no such process appears to have been started. On the contrary, the User Agency has been claiming to obtain quarrying lease by way of application to the Competent Authority. Under such circumstances, it shall not be appropriate to recommend the diversion of forest land (Government Forests) in the name of User Agency.

5.4 As per Rule 20, no quarrying lease can be granted or renewed unless there is a Mining Plan duly approved by the Government or any authorized person. As per the Mining Plan enclosed by the User Agency the details of production have been shown in para 2.3.3 as under----

Production ROM

| Year   | Overburden | ROM<br>Material | Saleable<br>Ore | Mineral<br>Rejects | Total    |
|--------|------------|-----------------|-----------------|--------------------|----------|
| FIRST  | Nil        | 1,50,000        | 1,50,000        | Nil                | 1,50,000 |
| SECOND | Nil        | 2,00,000        | 2,00,000        | Nil                | 2,00,000 |
| THIRD  | Nil        | 2,00,000        | 2,00,000        | Nil                | 2,00,000 |
| FOURTH | Nil        | 2,00,000        | 2,00,000        | Nil                | 2,00,000 |
| FIFTH  | Nil        | 2,00,000        | 2,00,000        | Nil                | 2,00,000 |

5.5 The User Agency has relied on 23(i) (d) and has taken a stand that before completion of five years, it shall submit a fresh Mining Scheme/Plan for 6<sup>th</sup> to 10<sup>th</sup> years for approval to the Competent Authority. However, Rule 23(i)(d) stipulates that a tentative scheme of mining for the second five year plan period of the lease shall have to be incorporated in the original Mining Plan. No such tentative scheme has been shown in the Mining Plan submitted by the User Agency. In fact it shows the production only for the five year and the Directorate, Geology and Mining while approving the said Mining Plan, has clearly directed that the User Agency is not permitted to excavate the annual production of the material (stone) beyond the prescribed limit. Thus, in absence of production details beyond fifth year in the Mining Plan, the stand taken by the User Agency that it intends to enhance the production to the extent of 6,00,000 tones per year after fifth year is beyond the purview of the of Mining Plan.

5.6 It is worth mentioning that a perusal of the details of chemical analysis results indicated in Annexure 1A to 1D and Annexure 2 indicate the existence of Aluminum and Iron Ores (major minerals) also in the proposed area. The range of Aluminum and Iron Ores has been shown to be in the range of 20% to 40%, which means that the major minerals also co-exist with the minor minerals in the said area. Government of India, in Ministry of Mines vide letter dated 12 July 2017 addressed to all the State Governments has directed that the Indian Bureau of Mines would approve the Mining Plan, wherein minor minerals co-exists with the major minerals. Taking into the consideration co-existence of major minerals as per the Mining Plan enclosed by the User Agency, it is felt that the Mining Plan needs to be approved by the Indian Bureau of Mines only.

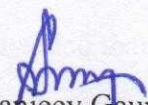
**5.7 Under the circumstances mentioned above, it is clear that in absence of any auction process initiated by the Competent Authority in terms of amended Rule 9, the application for grant of quarry lease by the User Agency in capacity of an individual applicant does not deserve to be entertained at the first place.**

5.8 The matter involves the interpretation and implementation of various statutory provisions under MMDR Act, Rules framed thereunder and directives issued by the Ministry of Mines, Government of India from time to time. It shall therefore be appropriate that the lease-granting Authority under the Mining Rules should first take appropriate decision in consonance with amended Rule 9 and if at all the Competent Authority decides to grant to quarry lease to the present User Agency or any other person following the auction process, it should first seek prior approval of the Central Government u/s 2 (iii) and 2 (ii) of the Forest (Conservation) Act.

5.9 The suo-moto conclusion of the User Agency that the proposed forest land is barren and unproductive is fundamentally incorrect and does not deserve any comments.

6. In light of the above mentioned facts and specifically, the statutory provisions highlighted in para 5.1 and 5.2 above, this office hereby withdraws its recommendations under reference 3 and requests the State Government to withdraw its recommendations made to the Central Government vide letter No.FLD-2318/C.R.277/F-10 dtd. 22/01/2019.

Draft approved by PCCF (HoFF)

  
(Sanjeev Gaur)

Addl. Principal Chief Conservator of Forests &  
Nodal Officer

**Copy to—**

The Chief Conservator of Forests (T), Kolhapur

The Collector, Kolhapur

The Director, Directorate of Geology and Mining, Nagpur

The Deputy Conservator of Forests, Kolhapur