



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16418 OF 2024

Brijesh Satish Dattani.

...Petitioner.

Versus

State of Maharashtra and Others.

...Respondents.

Mr. Rajiv Narula, Tarang Jagtiani and Santosh Jadhav i/b Jhangiani, Narula & Associates for the Petitioner.

Mr. N. C. Walimbe, Addl. GP and Ms. M. S. Bane, AGP for the Respondent No. 1 to 4.

Coram : Sharmila U. Deshmukh, J.

Date : November 12, 2024.

P. C. :

1. By this petition, the challenge is to the order dated 30th August 2024 passed by the Respondent No.2 and the show-cause notice dated 16th January 2020 by which the Respondent No.2 has imposed a penalty of Rs.16,17,19,964/- on the Petitioner in exercise of powers under Section 48(7) of the Maharashtra Land Revenue Code, 1966 for alleged unauthorised soil excavation / filling.

2. Learned counsel appearing for the Petitioner would submit that by order dated 17th February 2023 this Court had remanded the matter to the Tahsildar directing the Tahsildar to hear the Petitioner and pass a reasoned order strictly in accordance with law with liberty to the Petitioner to place the decision of this Court in the case of M/s. Royal

Urbanspace and others v. State of Maharashtra dated 1st March 2022 in Writ Petition No.197 of 2022. He submits that despite remand on specific issues to be decided by Tahsildar, by the impugned order Tahsildar has completely ignored the settled position of law. He would submit that the impugned order is non reasoned / non speaking order and is in clear violation of the directions given by this Court vide order dated 17th February 2023. He draws support from the decision of this Court in ***Royale Urbanspace v. State of Maharashtra***¹ wherein the Division Bench has held that the excavated material in that case was being used for the purpose of filling and levelling and that digging of earth is inbuilt in the course of building operations and the activity so undertaken, therefore, cannot be characterized as one of excavation of minor minerals as contemplated under the Mines and Minerals (Development and Regulation) Act, 1957. He submits that in the present case the activity was carried out in the year 2010 for the purpose of construction of building and it is not the allegation either in the show-cause notice or in the impugned order that there was transportation of excavated material. He submits that the decision in ***Royale Urbanspace*** (supra) being ignored, has vitiated the impugned order.

3. Learned AGP seeks time to take instructions.

1 2022(3) Mh.L.J. 606.

4. Perusal of the impugned order would indicate that though submissions were made by Petitioners relying upon the decision in ***Royale Urbanspace*** (supra), the Tahsildar has not considered the said decision.

5. The issue is no longer *res integra*. The excavation, if any, for the purpose of construction of building would not attract the levy of penalty under Section 48(7) of the MLRC. In the present case, *prima facie* the Tahsildar in clear violation of law has passed the impugned order. It is, therefore, necessary that the impugned order be stayed pending the hearing and final disposal of petition.

6. In the light of above, there shall be ad-interim relief in terms of prayer Clause (b), which reads thus :

“That pending the hearing and final disposal of the petition, operation, implementation and/or enforcement of the impugned order dated 30th August 2024 (Exhibit “W” hereto) passed by the Respondent No. 2 be stayed and direct the Respondent Nos. 1 to 4 to not take any steps in pursuance of the impugned order dated 30th August 2024.”

7. List the petition on **3rd December 2024**.

8. Although not necessary, as the Petitioner has impleaded the Respondent No. 5 who is complainant, issue notice to the Respondent No. 5, returnable on 3rd December 2024.

[Sharmila U. Deshmukh, J.]