

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

10 WRIT PETITION NO. 2927 OF 2024
WITH
CIVIL APPLICATION NO. 3021 OF 2024
IN WP/2927/2024

SURESH DEEPCHAND SABHADRA
VERSUS
THE DIVISIONAL REVENUE COMMISSIONER AND OTHERS

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Advocate for the Petitioner : Mr. Kishorkumar Bharatrao Borde.
AGP for Respondent/s-State : Mr. S. N. Kendre.

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CORAM : S. G. MEHARE, J.
DATE : 18.03.2024

PER COURT :-

1. Heard the learned counsel for the petitioner.
2. The petitioner excavated the murum. Therefore, the Tahsildar drew panchnama in 2017. Thereafter, he imposed the royalty and penalty for illegal excavation of the murum from the plot and passed the order imposing the penalty of Rs.51,82,800/- (Rupees Fifty One Lac Eighty Two Thousand and Eight Hundred) on 08.03.2018. The petitioner had impugned the said order before the Sub Divisional Officer, Jalgaon, on 22.03.2018. The Sub Divisional Officer dismissed the appeal on 11.05.2018. Against the said order, the petitioner preferred a revision before the Additional Collector, Jalgaon.

On 31.12.2020, he quashed and set aside the order of the Tahsildar as well as the Sub Divisional Officer and remitted the matter to the Tahsildar granting him an opportunity of hearing. The petitioner dissatisfied with the order of remittance, again impugned that order before the Additional Commissioner, Nashik. He has passed order on 16.06.2023 and dismissed the revision by confirming the order of the Additional Collector, Jalgaon. Against the said order, the petitioner approached this Court.

3. The material fact was that next day of the order of the Tahsildar, the petitioner sold the land to one Alkesh Zumbarlal Lalwani from which the *murum* was excavated. However, he never made him as a party in any of the proceedings. He is barely making a statement before the Courts that he had intimated the Tahsildar that he has sold the land to Lalwani. Subsequent thereto, said Lalwani transferred the land to one Jay Surendra Lodha. He was also not party to the proceeding before the court. Now, the said Lodha has filed civil application for the first time to add him as a party before this Court.

4. A question for determination is whether the amended Rule 46 of the Maharashtra Minor Mineral Extraction

(Development and Regulation) (Amendment) Rules, 2015 would apply to the case at hand. In fact, this is a question of fact. This provision was not brought to the notice of the Tahsildar nor the facts were proved that the excavation was done while developing the plot and used on the same plot. Therefore, no royalty could have been imposed and ultimately there shall be no penalty. The best opportunity to the petitioner was to approach the Tahsildar and prove the fact that the excavation was done while developing the plot on the land and it was utilized for the very same plot for levelling plot in the process of development of said plot. Unless such facts findings are there, neither the Appellate Court, Revisional Court nor this Court can ascertain whether really the excavation was done while developing the plot.

5. A simple argument have been advanced for the petitioner that he transferred the land to one Lalwani. The grievance of the subsequent second purchaser is that now the Tahsildar started proceeding for recovery of penalty and in addition there to his property has been attached and it is now kept for auction. The subsequent purchaser has also no voice to say at this juncture in the absence of facts findings. The petitioner was seeking stay to the order of the Tahsildar as well

as the Collector and the Additional Commissioner. Since the penalty was imposed in 2018 and there were two consecutive orders against the petitioner, the Court expressed opinion that if petitioner seeks stay he should at least deposit 50% of the amount of penalty for securing the interest of the subsequent purchaser. He took the instructions and made a statement that the petitioner is not in a position to deposit half the penalty with interest. This Court observed that the best remedy is to approach the Tahsildar to prove the facts has not been availed. The petitioner has unnecessary killed the time in unwanted proceedings since 2018. Therefore, this Court is not inclined to grant the stay to the impugned orders of the Tahsildar and the Collector. However, to protect the interest of subsequent purchaser, namely Jay Surendra Lodha subject to test whether he can be added as a party, the Tahsildar is directed not to auction the same property till the next date.

6. It is clarified that protecting the interest of subsequent purchaser Jay Surendra Lodha does not mean that action against the petitioner is stayed. The Tahsildar may proceed for recovery of the money from the petitioner by adopting another mode, if any.

7. Issue notice to the respondents.

8. Learned AGP waives service of notice for all respondents/State Authorities.

9. Stand over to 10.04.2024.

(S. G. MEHARE, J.)

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vmk/-