**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.842 OF 2014

Padmashree Dr.Vitthalrao Vikhe
Patil Foundation, at Viladghat
M.I.D.C., Ahmednagar,
District Ahmednagar,
through its Secretary General
Dr.B. Sadanand,
Age 67 years, Occu. Service,
R/o Vidalghat, Ahmednagar,
District Ahmednagar ..Petitioner

Versus

1. The State of Maharashtra
through the Secretary for
Revenue Department,
Mantralaya, Mumbai

2. Accountant General (Audit),
Maharashtra State, Nagpur
Audit Bhavan, Civil Lines,
Nagpur, Dist. Nagpur 440001

3. The Collector, Ahmednagar,
District Ahmednagar

4. The Tahsildar, Nagar,
Taluka Nagar,
District Ahmednagar ..Respondents

Mr V.D. Hon, Senior Counsel h/f Mr A.V. Hon, Advocate for petitioner
Mr S.P. Daund, A.G.P. for respondent No.1
Mr S.B. Deshpande, Assistant Solicitor General for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 28th April 2015

PER COURT

1. This petition is entertained against the notice of recovery dated 18th January 2014, issued by the Tahsildar, Nagar, based on the objections reported by the Auditor to the Collector- respondent No.3

herein. The respondent No.2 Accountant General (Audit), Nagpur while dealing with the issue as regards short levy qua the land allotted to the present petitioner for educational institution purpose, has noticed that an amount of Rs.6.20 Crore should have been recovered, as such there is short fall of Rs.5.01 Crore. The said audit objection is based on the following factual matrix.

2. The petitioner was allotted land ad measuring 30.61 hectare in Ahmednagar district for education purpose to which the government grant was sanctioned in July 2005 upon provisional occupancy charges of Rs.4.09 lacs. The Collector levied final occupancy charges at Rs.32,88,000/- along with interest of Rs.85,64,542/- and issued final allotment order in July 2010.

3. Based on the above audit para, the respondent No.4, Tahsildar, Nagar on 18th January 2014 has called upon the present petitioner to deposit an amount of Rs.5,01,07,458/- towards the cost of the land which was allotted to the petitioner and the petitioner was threatened with recovery by taking recourse to the recovery proceedings under the Maharashtra Land Revenue Code.

4. Learned Senior Counsel for the petitioner has invited attention of this Court to the policy of the government, as was existing at the time of allotment of the land to the petitioner. He submits that though the possession of the land was given way back, however, the allotment is governed by the policy dated 8th July 1972 and according to him, before passing an order of recovery, the petitioner was neither noticed nor any opportunity of hearing was given by the Collector or

any other revenue authorities. He makes categorical statement that amount of levy Rs.60,08,819/- and Rs.5,84,3,723/- was already deposited by the petitioner. According to him, the impugned order issued by the Tahsildar, calling upon the petitioner as such, is not sustainable.

5. Learned A.G.P., while justifying the action has relied upon the audit report extract, copy of which is placed on record along with affidavit of respondent No.3. He would urge that the figure of shortfall of Rs.5.01 Crore is based on the valuation of the property reported by the competent authority. According to him, in view of the audit report of respondent No.3, the levy was initiated.

6. Mr Deshpande, learned Assistant Solicitor General, while inviting attention of this Court to the audit objection would urge that the levy was calculated by the Collector taking into account the agricultural use whereas, the property in question is put to non-agricultural use as such, the audit objection was raised. He would submit that the petition is premature as the objection is not finalised against the present petitioner.

7. According to him, either the petition can be remanded back to the Collector for grant of opportunity of hearing to the petitioner or the petitioner be directed to deposit the said amount before this Court.

8. Upon analysing the submissions made by the respective parties what is noticed is, the impugned order is based on the audit report

and in the audit report, the figure of shortfall is concluded based on the valuation of the property, submitted by the competent authority i.e. Joint District Registrar, Ahmednagar, taking into account the non-agricultural use of the land in question. The fact remains that neither the auditor – respondent No.3 nor the Tahsildar/Collector, before reaching to the figure of recovery of Rs.5.01 Crore have issued any notice to the petitioner nor any opportunity of hearing was offered.

9. The fact remains that the auditor, while drawing the appropriate paras in the audit report is not duty bound to hear the concerned party, however, the said audit report is required to be taken to its logical end as per the procedure prescribed thereto. Apart from above, the fact remains that neither the Collector, Ahmednagar nor the Tahsildar, before issuing the orders impugned have heard the petitioner or even noticed the petitioner.

10. As such, the order impugned is in violation of principles of natural justice which is adverse to the rights of the petitioner.

11. In view of above, in my opinion, the order impugned dated 18th January 2014 passed by the Tahsildar, Nagar, District Ahmednagar in File No.133/2014 is not sustainable and the same is hereby set aside and the Collector, Ahmednagar/Tahsildar, Nagar are directed to reconsider the issue of enhanced levy at its level. It is clarified that before issuing any demand notice in the matter in question pertaining to issue brought before this Court, the authority shall issue notice to the petitioner and also grant opportunity of personal hearing to the petitioner.

12. Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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