

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1)

WP NO.1198/2015

60 WRIT PETITION NO. 1198 OF 2015

Mahadeo s/o Ramchandra Jogdand,
Age 54 years, Occu. Agri. and Business,
r/o Pathri Tq. Pathri, Dist. Parbhani.

...PETITIONER

VERSUS

The State of Maharashtra and
five others.

...RESPONDENTS

...
Advocate for Petitioners : Mr. Londhe Avinash S.
GP for Respondent State: Mr. S.S.Tope

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CORAM : R. M. BORDE & P.R. BORA, JJ.
Dated: March 09, 2015

PER COURT :-

1. The petitioner is challenging notice dated 1/12/2014 issued by the Additional Commissioner, Aurangabad, in Suo Motu Revision No.405/2014.

2. The bid submitted by the petitioner for license to excavate sand from Godavari river belt was accepted and an allotment order was issued on 21.10.2007. The petitioner deposited the auction amount to the tune of Rs.4,57,000/- with the Collector, Beed, in respect of excavation of sand at village Khatgavan Tq. Majalgaon, Dist. Beed. In respect of excavation of

agp/-

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sand at village Kansur Tq.Pathri, Dist. Parbhani a further sum of Rs.4,57,500/- was deposited by the petitioner towards the bid amount. Though the entire amount to the tune of Rs.9,15,000/- was deposited with the respective collectors, the petitioner alleges that he was not permitted to excavate the sand at village Kansur. According to the petitioner, a panchnama was prepared by the Talathi recording therein that the petitioner has excavated sand illegally from the river and forwarded the record to the District Collector, Parbhani, through the Tehsildar. A notice was issued to the petitioner by the Collector on 7.2.2008 and, after considering the contentions raised by the petitioner, the Collector was pleased to direct quashment of the panchnama prepared by the Revenue officers by his order dated 16.9.2008. The petitioner, thereafter, proceeded to present a suit claiming recovery of amount of Rs.9,00,000/- (Rs. nine lacs) with interest at the rate of 18 per cent per annum being Special Civil Suit No.75/2009 in the Court of Civil Judge, Senior Division, Parbhani. The suit presented by the petitioner came to be decreed and for recovery of the amount, petitioner presented Regular Darkhast and the same is stated to be pending. The respondents caused appearance in the proceedings and sought time to deposit the amount, however, the request made by the respondents was rejected by the executing Court on 31.7.2014.

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3. It, thus, appears that thereafter, the Tehsildar, Pathri, made a report to the higher officials on 21.10.2014, pointing out certain deficiencies in the panchnama, and taking cognizance of the said communication, the Divisional Commissioner, Aurangabad, directed the Additional Commissioner to initiate suo motu proceedings for reviewing the order passed by the Collector on 16.9.2008. In pursuance to the directions issued by the Divisional Commissioner, the Additional Commissioner, Aurangabad, re-opened the proceedings and directed the petitioner to record his appearance on 15.12.2014.

4. Prima facie, it does appear that the steps have been taken by the Commissioner for taking review of the order passed by the Collector solely because the civil suit presented by the petitioner came to be decreed and the State has been directed to repay the amount to the petitioner. Even otherwise, no provision has been pointed out, entitling the Commissioner to take review of the order passed by the Collector on the basis of the panchnama drawn by the revenue officials, after lapse of more than six years.

5. As has been recorded above, steps appear to have been initiated with a view to escape from the liability fastened by the Civil Court under the decree which is sought to be executed against the State Government by the petitioner. It is permissible for the State Government to raise all contentions available in law

agp/-

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before the Civil Court in a pending appeal which is stated to have been presented by the State.

6. It is also pointed out that the District Judge-I, Parbhani, has granted stay to the execution of the decree passed by the trial Court on 22.12.2014.

In the facts and circumstances of the case, we deem it proper to dispose of the petition with liberty to the respondent State and its officers to raise appropriate contentions available in law before the Civil Court.

It is clarified that any decision in suo motu revision proceedings shall have no impact on the appeal proceedings pending before the Civil Court.

In view of above, writ petition stands disposed of.

(P.R. BORA, J.)

(R. M. BORDE, J.)

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