

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

WRIT PETITION NO. 7607 OF 2015

Anand s/o Venkatrao Padile
Age 41 years, occup. Business,
R/o Nath Nagar, Latur,
Tq. and Dist. Latur Petitioner

versus

01. The State of Maharashtra,
Through its Directorate of
Geology and Mining, Nagpur
02. The District Collector,
Latur, Tq. and Dist. Latur
03. The Sub Divisional Officer,
Latur, Tq. and Dist. Latur
04. The Tahsildar, Latur,
Tq. and Dist. Latur
05. The District Mining Officer,
Collectorate, Latur
06. The Circle Inspector,
Gategaon, Tq. and Dist. Latur Respondents

Mr. Suhas P. Urgunde, Advocate for petitioner

Mr. S.P. Daund, Asstt. Govt. Pleader for respondents

CORAM : SUNIL P. DESHMUKH, J.
20th August, 2015

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, by consent.

2. The petition has been moved under an exigency according to petitioner since, only source of his livelihood i.e. stone crusher has been sealed under arbitrary action by the authorities on 17-06-2015 as, according to respondents, petitioner had not deposited royalty of Rs. 19,18,800/- towards excavation of stones, as fixed by Respondent No.4-Tahsildar, Latur under order dated 22-10-2014 which is impugned in the petition.

3. Learned counsel for the petitioner submits that since 1997, petitioner has been in the business of stone crushing and has been regularly paying royalty required under the rules. He contends that an order came to be passed on 22-10-2014 by Respondent no. 4 considering that according to measurements which have been carried out by the authorities, about 21,316/- brass stone had been excavated and royalty has been paid by petitioner only of Rs.10,30,735/- which is for 11,722 brass stone

crushed/excavated, thus leaving deficit of Rs.19,18,800/- for remaining 9,594 brass stone crushing. Accordingly, by said order dated 22-10-2014, petitioner had been directed to pay Rs.19,18,800/- towards differential amount of royalty within a period of fifteen days from the date of receipt of said order.

4. Against order dated 22-04-2014, petitioner purported to have approached Sub Divisional Officer–Respondent No. 3 under application/proceedings dated 04-12-2014. According to him, rate at which royalty is claimed is not proper having regard to the fact that he has been in the business since 1997, whereas Respondent no.4-Tahsildar has considered the date of petitioner's licence to be of 2009 which is not proper.

5. It appears that Respondent no.3-Sub Divisional Officer without calling upon the petitioner and seeking his explanation had on 17-12-2014 issued letter to petitioner directing him to pay royalty for the current year with respondent no.4-Tahsildar. The letter refers to that application given by petitioner on 04-12-2014 was not accompanied by requisite evidence and that petitioner has been informed about deposit of royalty from time to time, however, he has not deposited the same.

6. Learned counsel for petitioner submits that in stead of considering petitioner's request under application dated 04-12-

2014, Respondent no.3-Sub Divisional Officer appears to have prejudged the issue and under communication dated 06-02-2015 directed Tahsildar to give hearing to the petitioner. It appears that pursuant to the same, Respondent no.4-Tahsildar on 12-03-2015 (page 67 of paperbook of writ petition) directed petitioner to remain present in his office on 17-03-2015. Petitioner appears to have responded to the same under reply through his advocate dated 15-04-2015 (Exhibit-E, page 68) requesting tahsildar to recall his order dated 22-10-2014, however, no further orders appear to have been passed after 12-03-2015, or for that matter, 15-04-2015.

7. Learned counsel for petitioner submits, straight-away on 17-06-2015, his machinery has been sealed by respondents. He submits, stone crusher is the only source of livelihood of the petitioner and many families and even the labourers are dependent on the same. He submits, action of sealing the machinery is arbitrary and high handed. Petitioner has been passing through hard days and he is to face these agonies day in and day out. According to petitioner, many families are on the verge of starvation because of sealing of machinery. He, therefore, requests that the authorities be directed to de-seal machinery and give appropriate hearing to petitioner in the matter of order dated 22-10-2014 passed by Tahsildar. Learned

counsel submits, the application/proceedings filed by petitioner on 04-12-2014 before Respondent no.3-Sub Divisional Officer be treated as appeal from Tahsildar's order dated 22-10-2014. He makes further various submissions with regard to calculation of royalty, exact quantity of stone excavated and the amount which he has paid from time to time towards royalty.

8. Learned Assistant Government Pleader, however, has a different version. He submits that the petitioner has not paid entire amount of royalty due pursuant to the calculations as are appearing in annexure R-1 to affidavit in reply on behalf of respondents no. 2, 4 and 5. He submits that an amount of Rs.19,18,800/- is due from petitioner to the revenue as shown in annexure R-1. He submits that the authorities may consider de-sealing of the machinery, if the petitioner deposits said amount.

9. Learned Assistant Government Pleader, however, is not in a position to explain as to whether any order pursuant to the letter issued to petitioner by Tahsildar on 12-03-2015 has been passed. According to learned counsel for petitioner no further orders have been passed after 12-03-2015 and straight-away machinery has been sealed.

10. Learned counsel for the petitioner, on instructions, submits that the situation can be resolved if the machinery is de-sealed so that income can be generated and dues can be satisfied if at all those are found to be correct.

11. Taking into account aforesaid, it appears that the controversy with regard to application of rate as well as the amount of excavation of stones and calculations made on either side will have to be resolved by appropriate authority. In the circumstances, I deem it appropriate to pass following order.

12. Petitioner shall deposit a sum of Rs.7,50,000/- with revenue within a period of six weeks from today. As soon as the amount is deposited, authorities shall de-seal the machinery and allow the petitioner to carry on the business. Respondent No.3-Sub Divisional Officer shall proceed with application dated 04-12-2014 filed by petitioner, by treating the same as proceedings pursuant to the relevant rules by further affording opportunity of hearing to the petitioner to adduce evidence and amend the claim, if any. The Sub Divisional Officer shall then proceed to pass proper order, taking into account the facts and the rules. If, upon decision, it is found that the amount as has been claimed under Respondent No. 4-Tahsildar's order dated 22-10-2014 is due, balance so remained after appropriation of

aforesaid amount of Rs.7,50,000/-, shall be recovered from the petitioner. However, in case it is found that certain amount from deposit of Rs.7,50,000/- is paid in excess of the amount due from the petitioner, the amount found in excess be refunded by revenue to petitioner or appropriated towards further dues, if any. It is open for the petitioner, if he is aggrieved by order that would be passed by Sub Divisional Officer on application dated 04-12-2014, to make an appropriate approach in the matter.

13. With directions as above, writ petition stands disposed of. Rule made absolute in aforesaid terms.

SUNIL P. DESHMUKH, J.

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