

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

CIVIL APPLICATION NO. 1065 OF 2015
IN
WRIT PETITION NO. 10127 OF 2010

Murlidhar S/o Gajananrao Deshmukh ... Applicant

Versus

The Additional Commissioner,
Aurangabad Division, Aurangabad
& others ... Respondents

.....
Mr. M.S. Shaikh, Advocate, holding for
Mr. Sachin S. Deshmukh, Advocate for applicant
Mr. K.M. Suryawanshi, A.G.P. for respondent Nos. 1 to 4

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CORAM : RAVINDRA V. GHUGE, J.
DATED : 27th FEBRUARY , 2015

PER COURT :

1. The applicant indicates that Writ Petition No. 10127 of 2010 filed by the applicant has been disposed off by this Court by order dated 20-12-2010. Paragraph No. 4 of the said order reads as under :-

“4. After hearing counsel for the parties, these petitions stand disposed off with direction to the Additional Divisional Commissioner, Aurangabad to finally dispose of the appeal Nos. ROR/APPEAL/119/2010 and ROR/APPEAL/120/2010 within six months from today. The parties will be at liberty to argue the appeals on merits. This Court has not expressed any opinion on merits of the matters. This Court has not expressed any opinion on merits of the matters. Till the appeals are disposed of, interim order dated 26-10-2010 will remain in operation. Depending upon the outcome of the appeals, liberty to the parties to take appropriate proceedings in respect of amount of Rs. 2,00,000/- deposited in this Court by filing applications in disposed of

Writ Petitions. At this stage, as agreed by counsel for the petitioners, Registry is directed to deposit the said amount of Rs. 2,00,000/- in a fixed deposit initially for a period of three months and if necessary for further period of three months i.e. till disposal of the appeals.”

2. Pursuant to the said orders by this Court, the Additional Commissioner by judgment dated 04-09-2012 has considered the penalty amount to be imposed upon the applicant. Conclusions to that effect have been drawn in the two paragraphs on internal page 4 of the said order which are as under :-

“ During the inspection conducted by Additional Collector, Nanded it was held that the quantity to the extent of 387 brass sand was excavated illegally by the appellant and due to which the Collector vide his order dated 26-05-2010 under Section 48 (7) of the said Act imposed penalty of an amount of Rs. 6,93,218/-.

The Penalty not exceeding three times of the market value of royalty can be imposed under the provisions of Section 48 (7) of the said Act. Considering the aspect and by following principle of natural justice the penalty to the extent of one time the market value can also be imposed. Therefore in the present case the penalty by imposing one time on the royalty amount which comes to Rs. 3,18,501/- and by deducting of Rs. 2,62,285/- which was recovered from the appellant previously as a penalty from same sand spot which comes to Rs. 56,216/-.”

3. In the result, the Additional Commissioner, Aurangabad directed the applicant to pay an amount of Rs. 56,216, as remainder amount of penalty to be paid to the Collector, Nanded. The applicant states that the said amount is paid, which is evident by the chalan dated 12-08-2014 placed on record in the Civil Application.

4. The applicant, therefore, submits that the amount of Rs. 2,00,000/- (Rs. Two lakhs only) which were deposited in this Court pursuant to the orders passed passed by this Court on 26-11-2010, need to be returned to the applicant along with accrued interest.

5. The learned A.G.P. appearing on behalf of the respondents confirms the statement made by the applicant.

6. In the light of the above, this Civil Application is allowed.

7. The applicant – Murlidhar S/o Gajanrao Deshmukh is permitted to withdraw the said amount of Rs. 2,00,000/- (Rs. Two lakhs) deposited in this Court along with accrued interest.

(**RAVINDRA V. GHUGE, J.**)