IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12066 OF 2015

Sayed Jaker s/o Sayyed Shahabuddin,
Age: 37 years, Occ: Business,
R/o. Samta Colony, Majalgaon,
Through Prop. Of Diamond Building
Material Suppliers, Majalgaon,
Tq. Majalgaon, Dist. Beed ...Petitioner

versus

1. Sub Divisional Magistrate,
Pathri, Tq. Pathri,
Dist. Parbhani

2. Tahsildar, Pathri,
Tq. Pathri, Dist. Parbhani

3. Additional Collector, Parbhani,
Dist. Parbhani ...Respondents

.....
Mr. N. B. Khandare, Advocate for petitioners
Mr. R. V. Dasalkar, A.G.P. for respondent/State
.....

CORAM : N.W. SAMBRE, J.

DATE : 15th DECEMBER, 2015

ORAL ORDER :

Present petition can conveniently be disposed of at this stage.

2. Heard Mr. Khandare, learned Counsel for petitioner and learned A.G.P. for the respondents.

3. Petitioner has questioned the order dated 14/09/2015 passed by the Sub Divisional Officer, Pathri in Appeal No. 2015/A-2/Minor Minerals/66 and order dated 17/07/2015 and order dated 10/11/2015 passed by the Additional Collector, Parbhani in file No. 2015/A-2/Minor Minerals(MM)/WS-355.

4. It is noted that, the petitioner preferred proceedings under Section 247 of Maharashtra Land Revenue Code before Sub Divisional Officer, Parbhani, which was rejected by learned S.D.O., Parbhani by impugned order intimating the petitioner that his appeal will not be considered till he deposits 50% amount of penalty.

5. Same order was subjected to challenge before the Additional Collector, Parbhani, who has maintained the same by rejecting the appeal and also revision application, as such, present petition.

6. Mr. Khandare, learned Counsel for the petitioner would urge that, in absence of statutory provisions, it is not open for the authorities to impose such condition, as is done in the present case i.e. calling upon the party to deposit 50% amount of penalty, failing which appeal itself will not entertained. He would submit that, the authorities are exceeding their jurisdiction and as such, the orders are not sustainable.

7. Learned A.G.P., while strenuously opposing the claim of the petitioner has relied upon certain administrative instructions issued by Finance Department dated 08/03/2010, 21/04/2010 and 01/11/2012. According to him, it is pursuant to the orders of State Government, who has general power of supervision work on authorities, which were issued directing them to ensure deposit of 50% amount of penalty before entertaining the appeal were issued and binding on them. According to him, orders are just and proper and the petition is liable to be dismissed.

8. Having bestowed my thoughts to the submission, it is to be noted that, there is no express provisions in the statute, particularly Maharashtra Land Revenue Code, which empowers the authorities i.e. Sub Divisional Officer or Additional Collector, who are recognized there under to impose such conditions before exercising the powers under Section 247 of Maharashtra Land Revenue Code. It is to be noted that, the appeal is statutory right and the said statutory right cannot be regulated by administrative instructions, particularly by putting embargo or instructions on parties.

9. In view of above, in my opinion, the orders impugned are not sustainable and are liable to be quashed and set aside. As such,

writ petition is allowed in terms of prayer clause of (A), which reads thus:

> "The Hon'ble Court may pass appropriate orders and may quash and set aside the order dated 14-09-2015 passed by the Sub Divisional Officer, Pathri in Appeal No. 2015/A-2/Minor Minerals/66 and order dated 17-07-2015 and order dated 10-11-2015 passed by the Additional Collector, Parbhani in file No. 2015/A-2/Minor Minerals(MM)/WS-355 respectively."

10. Learned Sub Divisional Officer, Parbhani is directed to hear and decide the appeal preferred by the petitioner within period of ten weeks from the date of communication of this order.

[**N.W. SAMBRE, J.]**

Tupe/15.12.15