

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8646 OF 2013

Prime Centre & Developers Pvt. Ltd. ...Petitioner.

V/s.

The State of Maharashtra & Ors. ...Respondents.

Mr. Drupal S. Patil for the Petitioner.

Mrs. M. P. Thakur, AGP for Respondent Nos.1 to 5.

**CORAM : A.S.OKA &
VL. ACHLIYA,JJ.**

DATE : 8th SEPTEMBER, 2015

P.C.:

. Heard the learned counsel appearing for the petitioner and the learned AGP for the respondent.

The challenge in this petition under Article 226 of the Constitution of India is to the order dated 9/7/2013 made by the Tahsildar in exercise of powers under section 48(7) of the Maharashtra Land Revenue Code, 1966. By the said order, the petitioner was called upon to pay a sum of Rs.68,97,852/-.

2. The Learned Counsel for the petitioner relies upon the judgment and order dated 3/12/2014 passed by the Apex Court in Civil Appeal No.10717/2014. By the said judgment and order, the Apex Court proceeded to set aside the judgment dated 8/10/2010 in Writ Petition

No.785/2008 and other connected matters. The submission of the learned Counsel appearing for the petitioner is that in the light of what is held by the Apex Court, blanket determination of liability only on the ground that ordinary earth was dug up would not be justified and it is necessary to make precise determination of the end use of the excavated earth. Learned counsel for the petitioner invited our attention to the finding recorded by the Apex Court in paragraph 16 thereof.

3. We have perused the show cause notice as well as the impugned order. After having perused the order dated 9/7/2013, we find that adjudication as contemplated by the decision of the Apex Court has not been made. In fact, the said adjudication could not have been made as the date of decision of the Apex Court is 3/12/2014.

4. The Learned AGP contends that the petitioner did not remain present though show cause notice was issued by the Tahsildar.

5. Now in any case, fresh adjudication will have to be made by the Tahsildar in light of the law laid down by the Apex Court.

6. Hence, we dispose of the petition by passing the following order:

ORDER

i) The impugned order dated 9/7/2013 and impugned

show cause notice dated 30/1/2013 are hereby set aside;

ii) We direct the petitioner to appear before the Tahsildar, Pune on 12/10/2015 at 11.00 a.m. The Tahsildar shall serve a fresh show cause notice to the petitioner on that date or even before the aforesaid date;

iii) The Tahsildar shall grant reasonable time to the petitioner to file a reply to the fresh show cause notice;

iv) The Tahsildar shall make adjudication as contemplated by the judgment and order dated 3/12/2014 of the Apex Court in the case of Promoters and Builders Association of Pune V/s. State of Maharashtra & Ors., Civil Appeal No.10717 of 2014 and in light of the paragraph Nos.16 and 18 of the said decision, an opportunity of being heard shall be granted to the petitioner;

v) An appropriate order shall be passed by the Tahsildar on the fresh show cause notice on or before 31/12/2015. The order passed by the Tahsildar shall be served to the petitioner;

vi) In the event, the order passed by the Tahsildar be adverse to the petitioner, to enable the petitioner to adopt a remedy under the Maharashtra Land Revenue Code, 1966, the order shall not be enforced for a period of four weeks from the date of the service of the intimation of the said order to the petitioners;

- vii) All contentions of the parties on merits are kept open;
- viii) The petition is partly allowed in above terms.
- ix) All the parties to act upon the authenticated copy of this order.

(V. L. ACHLIYA, J.)

(A. S. OKA, J.)

C E R T I F I C A T E

“ Certified to be true and correct copy of the original signed Judgment/Order.”