SQP

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10064 OF 2014

Yog Chaitanya Seva Pratishthan Trust ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

Mr. S. G. Deshmukh i/b Mr. Ramdas A. Shelke for the Petitioner

Mrs. M. P. Thakur, A.G.P for the Respondent Nos. 1 to 4

Mr. R. S. Apte, Sr. Advocate I/b Mr. Aniruddha Arun Garge for the Respondent No. 5

CORAM : A. S. OKA &
REVATI MOHITE DERE, JJ.
THURSDAY, 2ND JULY, 2015

P.C. :

1. Heard learned Counsel appearing for the petitioner, learned A.G.P for first to fourth respondents and the learned Senior Counsel for the fifth respondent.

2. By consent, petition is taken up forthwith for final disposal. Rule. Respondents waive service through respective Counsel.

3. The contention of the learned Senior Counsel representing the fifth respondent is that the fifth respondent is using the land in question for

Bio-gas project (waste disposal) which is a bonafide industrial user within the meaning of Section 44A of the Maharashtra Land Revenue Code, 1966.

4. Perusal of the impugned order dated 18th June, 2014 passed by the Hon'ble Minister of the Revenue Department shows that in paragraph 44 of the impugned order, he has recorded a finding that the alleged user by the fifth respondent, by no stretch of imagination, can be held to be industrial use. However, in the operative part of the impugned order, he has held that in view of sub-section (5) of Section 44A of the said Code, a Sanad shall be issued to the fifth respondent as the land is being used for bonafide industrial use. Thus, the operative order appears to be in conflict with the finding recorded in paragraph 44. Faced with this situation, learned Counsel appearing for the fifth respondent submits that by setting aside the order of the Hon'ble Minister, the revision application may be ordered to be reheard. He states that the stand of the fifth respondent is that the purpose for which they are using the said land is covered by bonafide industrial use within the meaning of Section 44A of the said Code.

5. The request made by the learned Senior Counsel appearing for

the fifth respondent is reasonable. We may note that in the revision application filed by the petitioner, the Divisional Commissioner in his order dated 16th September, 2013 held that the fifth respondent is using the said plot, which falls within the Regional Park for industrial user.

6. It is obvious that after remand, the State Government, while deciding the revision application, will have to deal with the said finding recorded by the Divisional Commissioner and record finding one way or the other. Hence, we dispose of the petition by passing the following order :

ORDER

(i) The impugned order dated 18th June, 2015 is quashed and set-aside.

(ii) The revision application preferred by the fifth respondent under Section 257 of the Maharashtra Land Revenue Code is remanded for fresh hearing;

(iii) We direct the petitioner and the fifth respondent or their authorised representative to remain present in the Office of the Hon'ble Minister of the Revenue Department of the Government of Maharashtra on 20th August, 2015 at 3.00 p.m. for fixing the schedule of the hearing.

(iv) The revision application preferred by the fifth respondent shall be heard and decided by the Government in the light and observations made in this order.

(v) The Revision Application shall be decided in accordance with law as expeditiously as possible and preferably within a period of two months from 20th August, 2015.

(vi) Rule is partly made absolute on the above terms.

(vii) All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.) **(A. S. OKA, J.)**