

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10159 OF 2014

The Pune Kondhwa Realty
Private Limited ...Petitioner

VS.

The State of Maharashtra
and Others

...Respondents

Mr. S. U. Kamdar, Senior Advocate a/w. Mr. Gaurav Gopal i/b. Wadia Ghandy & Co., for the Petitioner.

Mr. V.P. Malvankar, AGP for Respondent.

CORAM : A.S. OKA & A.P.BHANGALE, JJ

DATE : 24TH MARCH, 2015.

P.C.:

1] Heard the learned senior counsel appearing
for Petitioner and the learned AGP appearing
for the Respondent.

2] Considering the narrow controversy involved, the petition is forthwith taken up for final disposal.

3] The challenge in this petition under Article 226 of the Constitution of India is, essentially to order dated 28th February, 2012 passed by Tahsildar, Haveli, Dist.Pune in purported exercise of power under sub-section 7 of Section 48 of the Maharashtra Land Revenue Code, 1966 (in short "*the said Code*"). He directed the Petitioner to pay a sum of Rs. 10,88,57,538/- on account of alleged illegal mining. There is a challenge to the consequential order of the Tahsildar dated 18th March, 2014.

4] The learned senior counsel appearing for the Petitioner submitted that in view of the averments made in clause (C) of paragraph 4 of the Petition and the decision of the Apex Court dated 3rd December, 2014 in Civil Appeal No. 1017 of 2014 (Promoters & Builders Association of Pune vs. State of Maharashtra and others), the impugned order is illegal.

5] We have perused the impugned order dated 28th February, 2012. It appears from the said order that a complaint was made by a member of the Legislative Assembly on 19th February, 2011 alleging that the Petitioner was carrying on illegal excavation. It appears from the impugned order that the Divisional Commissioner as well as the District Collector directed the Tahsildar, Haveli, Dist. Pune to take appropriate action. Therefore, a notice dated 20th August, 2011 was issued to the Petitioner by the Tahsildar calling upon the Petitioner to remain present for hearing on the basis of the complaint made by the member of the Legislative Assembly Shri Mahadev Ramchandra Babar. On the basis of such notice that proceedings were initiated before the Tahsildar, Haveli in which the impugned order dated 28th February, 2012 has been passed. By the impugned order, in exercise of power

conferred under sub-section (7) of Section 48 of the said Code, the Petitioner was called upon to pay a sum of Rs. 10,88,57,538/- on account of illegal excavation earth and Murum.

6] We have perused the show cause notice dated 20th August, 2012 served to the Petitioner. It merely calls upon the Petitioner to remain present for hearing on 22nd August, 2012 on the basis of the complaint made by Shri Babar about illegal excavation. Thus, it appears that a specific show cause notice was not issued to the Petitioner calling upon the Petitioner to show cause as to why the power under sub Section 7 of Section 48 should not be exercised.

7] In view of the decision of the Apex Court dated 3rd December, 2014 in Civil Appeal No. 10717 of 2014 (Promoters and Builders

Association of Pune vs. The State of Maharashtra and Other), the liability, if any of the Petitioner under sub Section 7 of Section 48 of the said Code will be tested on the basis of principles laid down by the Apex Court in the said decision.

8] In any event, a specific show cause notice was not served to the Petitioner before passing the impugned order dated 28th February, 2012. The proceedings were initiated only on the basis of a complaint filed by a local member of the Legislative Assembly.

9] Therefore, a case is made out for setting aside the impugned order dated 28th February, 2012. However, this order will not preclude the Authorities under the said Code from initiating appropriate proceedings under sub section 7 of the Section 48 of the said Code

against the Petitioner. Needless to state that the Authorities under the said Code will be bound by the aforesaid decision of the Apex Court.

10] Accordingly we pass the following order:

a) The impugned orders dated 28th February, 2012 and 18th March, 2014 (Exhibit N and O respectively) are hereby quashed and set aside;

b) This order will not preclude the concerned authorities under the said Code from initiating an action under sub section 7 of section 48 of the said Code in accordance with law and in the light of the law laid down by the Apex Court in the case of Promoters and Builders Association of Pune vs. The State of Maharashtra

c) The Petition is partly allowed on the above terms.

d) The amount deposited by the Petitioner on the basis of impugned order shall be refunded to the Petitioner within a period of two months from today.

(A.P. BHANGALE, J.)

(A. S. OKA, J.)