FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2622 OF 2014

Shailesh S/o Mukund Ved and another
-vs-
The District Collector, Nagpur and others

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Mr. Firdos Mirza, counsel the petitioners.
Mr. T.H. Udeshi, A.G.P. for the respondent Nos.1 and 2.
Mr. M.R.Joharapurkar, counsel for the respondent No.3.
Mr. M. R. Pillai, counsel for the respondent No.4.

CORAM : SMT.VASANTI A. NAIK & A.M.BADAR, JJ.

DATE : 06.08.2015.

By this petition, the petitioners, challenge the proceedings pending before the Naib Tahsildar, Kamptee in Revenue Case No.33/RRC-70/2012-13 as being illegal and without jurisdiction.

It is not in dispute that according to the respondent-Mathadi Board, M/s Sukesh Associates was liable to pay dues towards wages and levy of the mathadi hamal workers. Since the amount could not be recovered from M/s. Sukesh Associates, the respondent-Mathadi Board proceeded to recover the dues from Shwetal Enterprises of which the petitioner No.1 is one of the partners. Despite the objection raised by the petitioners to the action of the respondent-Board in proceedings against the partnership firm-Shwetal Enterprises, the Board sought the recovery and the Naib Tahsildar, Kamptee sought to recover the dues from Shwetal Enterprises as arrears of land revenue under the provisions of the Maharashtra Land Revenue Code. The aforesaid action has been challenged by the petitioners in the instant petition. In the proceedings initiated by the Naib Tahsildar, Kamptee, the bank account of the partnership firm Shwetal Enterprises has been freezed.

Shri Mirza, the learned counsel for the petitioners, submitted that if M/s. Sukesh Associates, the partnership firm was liable to pay the dues of hamal and workers in pursuance of the orders of the Mathadi Board, the Board could have proceeded only against the said partnership firm. It is stated that Shwetal Enterprises is a different entity and the Mathadi Board could not have proceeded against the said partnership firm for recovering the dues that were liable to be paid by M/s. Sukesh Associates.

Shri Pillai, the learned counsel for the Mathadi Board, submitted that M/s.Sukesh Associates is a partnership firm comprising of four partners and the petitioner No.1 is one of them. It is submitted that Shwetal Enterprises–the petitioner No.2 is formed by two partners and the petitioner No.1 is one of them. It is stated that since the petitioner No.1 is a partner in both M/s. Sukesh Associates and Shwetal Enterprises, the respondent-Board has rightly proceeded to recover the dues payable by M/s. Sukesh Associates from Shwetal Enterprises. It is submitted that it appears that both the partnership firms are the family concerns of the petitioner No.1.

Even assuming that the statements made by the counsel for the respondent-Mathadi Board are correct statements of facts, it cannot be said that the Board can proceed against Shwetal Enterprises for the dues that are liable to be paid by M/s. Sukesh Associates. Even according to the Board, M/s. Sukesh Associates is a partnership firm of four partners and the petitioner No.1 is one of them, whereas Shwetal Enterprises is a partnership firm of two partners and the petitioner No.1 is one of them. Merely because the petitioner No.1 is a partners in both the firms, the respondent-Mathadi Board is not entitled to proceed against one firm for the dues of the other. Even according to the respondent-Board, one of the partnership firm is formed by four partners and the other partnership firm has only two partners, the rights and liabilities of the partners in both the firms are different and the partners in both the firms are also different. In this background, the Mathadi Board was not entitled to proceed against Shwetal Enterprises by assuming that both the partnership firms were the family concerns of the petitioner No.1. The Mathadi Board has other rights and remedies for recovering the dues from M/s. Sukesh Associates, but the dues of M/s. Sukesh Associates could not have been recovered from Shwetal Enterprises.

In view of the aforesaid, the writ petition is allowed. The proceedings pending before the Naib Tahsildar, Kamptee are quashed and set aside, being without jurisdiction. The Mathadi Board is free to avail other remedies for recovery of the dues from M/s. Sukesh Associates and/or its partners, in accordance with law. The petitioners are permitted to withdraw the amount of Rs.3,00,000/-, deposited in this Court in terms of the interim order.

Order accordingly. No costs.

JUDGE **JUDGE**

KHUNTE