

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

Writ Petition No.5314 of 2015

(M/s. Atlanta Limited

vs.

The State of Maharashtra, thr. its Secretqry, Dept. of Revenue, Mumbai and others)

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

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Court's or Judge's Orders

Shri A.A. Naik, Advocate for the Petitioner.

Mrs. Kalyani Deshpande, A.G.P. for the Respondents.

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.

DATE : OCTOBER 23, 2015.

Heard Shri Naik, learned Advocate for petitioner and
Mrs. Deshpande, learned A.G.P. for respondents.

Advocate Shri Naik submits that royalty for using
hard-soil and boulders for construction of a public road has been
paid by petitioner. There is no question of paying any penalty.
He further adds that merely because the appeal is dismissed by
the Additional Commissioner, it does not mean that coercive
steps to recover the amount can be initiated by ignoring
provisions contained in the Maharashtra Land Revenue Code. He
argues that for effecting recovery, a bill and a notice of demand
must be served before hand and the petitioner needs to be given
time to clear it, and if the petitioner fails to clear the same,
thereafter only property can be attached. Hear though in
revision, the State Government granted stay on 12/02/2015

ignoring that fact the properties have been attached. He makes the grievance that the revision is still pending and though the registered office of the petitioner is at Mumbai, notice of hearing scheduled on 05/10/2015 was tendered at toll-booth at Nagpur on 02/10/2015. The petitioner, therefore, could not make necessary arrangement and attended hearing on 05/10/2015.

The learned A.G.P. submits that if petitioner is in Mumbai, receipt of notice of hearing on 02/10/2015 at Nagpur is sufficient and petitioner could have participated in hearing on 05/10/2015.

It is further stated that certain properties like plant etc. were already attached on 06/02/2015 and the remaining properties have been attached on 12/02/2015 i.e. the day on which the State Government granted stay. Thus, before the order could be served upon the respondents, attachment was already effected. She further adds that as user of excavated material and payment of royalty upon it are not in dispute, the demand as made is justified. The action taken is in public interest. Without prejudice to the fact that revision is still pending, the same can be decided immediately.

We have perused the records. We find that the petitioner *prima facie* was not given any opportunity to meet the demand by serving upon it a bill or a notice in terms of provision of Section 178 of the Maharashtra Lands Revenue Code.

However, the properties are with respondents since 06/02/2015 or 12/02/2015.

In this situation, interest of justice can be met by directing the petitioner to appear before respondent No.2 on 28th of October, 2015.

The said authority shall hear the petition on that day and pass appropriate order disposing of revision or about handing over of the possession of properties attached within next two weeks. If such order are not passed, as per interim order in force on 12/02/2015, the properties attached shall be released to the petitioners immediately thereafter.

With these directions and observations, keeping all the rival contentions open, we dispose of the writ petition. No costs. Certified copy is expedited.

JUDGE

JUDGE

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