

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8635 OF 2015**

M/s. Powar & Sons .. Petitioner
versus
State of Maharashtra & Anr. .. Respondents

Mr. M. J. Patil for petitioner.
Mr. A. I. Patel – AGP for respondents – State.

**CORAM: D. H. WAGHELA, C. J. AND
M. S. SONAK, J.
DATE : 16 APRIL 2016**

P.C.:

1] The challenge in this petition is to the order dated 14 August 2015 made by the Minister (Revenue) in proceedings no. Gounkhanij 38/1114/P.K. 511/K cancelling the earlier order dated 12 July 2011 permitting the petitioner to undertake excavation activity in or upon the subject mining property referred to in paragraph 1 of the petition.

2] Mr. Patil, learned counsel for the petitioner has submitted that the State Government by its earlier order dated 19 October 2012 had directed restoration of permission of excavation and further, the Division Bench of this Court in writ petition no. 2012 of 2014, by its order dated 15 December 2014, had directed the State Government time limit of only four months to take appropriate steps to modify order dated 19 October 2012 failing which, the State was directed to implement the order dated 19 October 2012. Mr. Patil submitted that since the order dated 19 October 2012 was not recalled or modified within the prescribed period of four months, the Minister (Revenue) has exceeded jurisdiction in now modifying the order dated 19 October

2012 by the impugned order dated 14 August 2015. Mr. Patil submitted that the impugned order, virtually has the effect of recalling the permission / lease earlier granted for the purposes of excavation in the subject mining property. For this reason, Mr. Patil submitted that the impugned order is liable to be quashed and set aside.

3] We have heard learned counsel for the parties, In our judgment, the impugned order warrants no interference under Articles 226 and 227 of the Constitution of India. In fact, grant of relief to the petitioner in the present case would run counter to the legal position clarified by the Hon'ble Supreme Court in **Jagpal Singh & Ors. vs. State of Punjab & Ors.**¹ This is because the petitioner, is virtually seeking permission / lease to excavate in the subject mining property, which is, without doubt, common village property reserved for the purposes of grazing of cattle and other such activities.

4] We are satisfied that the very grant of lease / permission to the petitioner to undertake excavation in the subject mining property was contrary to law. The Division Bench of this Court, in its order dated 15 December 2014, to which reference has been made by learned counsel for the petitioner took cognizance of the decision of the Hon'ble Supreme Court in **Jagpal Singh** (supra) and thereafter proceeded to make the following observations / order :

“4. As of today, the order dated 19th October 2012 continues to operate. If the State Government or any other Authorities are of the view that the said order cannot be implemented in the light of the Government Resolution dated 12th July 2011 which is based on the decision of the Apex Court in the case of Jagpal Singh, appropriate proceedings will have to be initiated for recalling of the said order and/or modification of the said order. So long as the order dated 19th October 2012 continues to operate, no Authorities of the

1 (2011) 11 SCC 396

State Government can decline to implement of the same. We, therefore, propose to grant a reasonable time to the concerned Authorities to take out proceedings for recall of the said order dated 19th October 2012. We, however, make it clear that this Court has not suggested that the proceedings for recall of the order deserve to be initiated. If the order dated 19th October 2012 is neither recalled nor modified, the same will have to be implemented. We propose to grant time of four months to the State Government to take appropriate steps.

5. Accordingly, we dispose of this petition by passing the following order:

- (i) We grant time of four months to the State Government to take appropriate steps;
- (ii) If the said order is neither recalled nor modified within a period of four months from today, the District Collector shall forthwith take steps to implement the order dated 19th October 2012 by placing the Petitioner in possession of the land subject matter of the order dated 19th October 2012;
- (iii) We make it clear that in the event any proceedings are initiated for recall or modification of the order dated 19th October 2012, notice thereof shall be served to the Petitioner and he shall be given an opportunity of being heard;
- (iv) We make it clear that we have made no adjudication as regards the legality and validity of the order dated 19th October 2012;
- (v) Subject to above directions, the Writ Petition is disposed of;
- (vi) All concerned to act on the authenticated copy of this order;
- (vii) We direct the Petitioner to serve the authenticated copy of this order to the Secretary of the relevant Department of the State."

5] Consistent with the directions of this Court, by order dated 31 March 2015, the Additional Collector, Kolhapur did take decision to

recall the lease / permission granted to the petitioner. However, the petitioner, challenged the said decision on the ground that action in terms of this Court's order was required to be taken by the State Government and not the Additional Collector. The matter was therefore considered by the Minister (Revenue) who has made the impugned order recalling the permission / lease, *inter alia* on the ground that such permission / lease would be contrary to the law laid down by the Hon'ble Supreme Court in case of **Jagpal Singh** (supra).

6] Merely because the final decision of the State Government may have been taken beyond the period of four months which was the time stipulated in order dated 15 December 2014, that by itself, does not render the decision of the State Government to be in excess of jurisdiction. In fact, as noted earlier, grant of any relief to the petitioner in the present case would virtually amount to breach of the law laid down by the Hon'ble Supreme Court in case of **Jagpal Singh** (supra). In paragraph 23, the Hon'ble Supreme Court has observed thus :

"23. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/poramboke/shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under

some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

7] There is no legal infirmity whatsoever in the impugned order. The very grant of permission / lease in favour of the petitioner for undertaking excavations in common village property reserved for the purposes of grazing of cattle and other common activities, was void. Jurisdiction under Articles 226 and 227 of the Constitution of India is required to be exercised for promotion of justice and equity. If the relief as prayed for by the petitioner is to be granted, then the same will result in revival of grant which was illegal and void. The extraordinary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India cannot be invoked for such purposes. In fact, in paragraph 14 of the decision in **Jagpal Singh** (supra), the Hon'ble Supreme Court has held that even regularization of such unauthorised occupation upon common village lands is wholly illegal and without jurisdiction. Such letters / orders of regularization cannot be permitted to operate, as the same will have the effect of allowing the common interest of the villagers to suffer merely because the unauthorised occupation may have subsisted for many years.

8] Accordingly, there is no merit in this petition and the same is hereby dismissed. There shall be no order as to costs.

CHIEF JUSTICE

(M. S. SONAK, J.)