

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1658 OF 2016

Durgabai Sudaam Choudhary	..	Petitioner
vs.		
Tahasildar, Vasai	..	Respondent

Mr. K. S. Patil for Petitioner.
Mr. S. D. Rayrikar – AGP for Respondent.

CORAM : M. S. SONAK, J.
DATE : 15 FEBRUARY 2016

P.C :

1] Rule. Rule is made returnable forthwith with the consent and at the request of the learned counsel for the respondent.

2] The challenge in this petition is to the order dated 20 April 2012 made by the Tahasildar, Vasai, directing the petitioner to pay penalty of approximately Rs.1.11 Crores for carrying out unauthorised excavation.

3] At the outset, there is no explanation whatsoever in the petition in the matter of inordinate delay in filing the present petition. That apart, the petitioner, has an alternate remedy by way of instituting an appeal before the Sub Divisional Officer (SDO). It is the case of the petitioner that the petitioner attempted to file such appeal, but the appeal memo was not even accepted by the SDO, until the petitioner agreed to deposit at least part of the penalty imposed.

4] Since, the petitioner has an alternate remedy by way of filing an appeal and applying for condonation of delay in filing the appeal, there is no reason to entertain the present petition. The petitioner is at liberty to avail the alternate remedy. The SDO will no doubt, consider the cause shown by the petitioner for the delay in institution of the appeal and make appropriate orders in that regard. All contentions are therefore kept open.

5] The learned counsel for the petitioner submits that at least some ad interim relief may be granted, so that the petitioner's application for interim relief in the appeal is considered by the SDO. For this purpose, the learned counsel for the petitioner, on the basis of instructions from the petitioner has stated that the petitioner will, without prejudice, pay an amount of Rs.20,00,000/- (Rupees Twenty Lacs) within a period of one week from today towards, part of the penalty imposed by the impugned order. This statement is accepted.

6] In case, the petitioner files appeal within a period of one week from today, accompanied by payment of Rs.20,00,000/- (Rupees Twenty Lacs) in pursuance of the impugned order, the SDO is directed to consider and dispose of within a period of four weeks thereafter the application for any interim relief and application for condonation of delay. Such consideration shall be on its own merits

and in accordance with law. It is made clear that this Court has not examined the merits of the matter and all contentions of all parties are therefore left open.

7] In case, the petitioner indeed prefers an appeal within seven days and also makes payment of Rs.20,00,000/- (Rupees Twenty Lacs), then, until the SDO decides the application for condonation of delay and application for stay, the impugned order may not be enforced.

8] In case, no appeal is filed within seven days from today, and no payment of Rs.20,00,000/- (Rupees Twenty Lacs) is made, without prejudice, the concession granted by this order shall not operate.

9] Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

10] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)