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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2614 OF 2013.

M/s Amit Enterprises Pvt. Ltd Petitioner.

V/s.

The State of Maharashtra and ors Respondents

Mr. D.S. Patil, for the petitioner.

Mrs. M. P. Thakur, A.P.P., for the Respondent-State.

CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, JJ.
DATE : 14th MARCH 2016

P.C. :

1. Heard learned counsel Mr. Patil for the petitioner and learned AGP for the State.
2. The challenge in this Writ Petition filed under Article 226 of the Constitution of India, is to the two orders dated 20.11.2012, made by the Tahsildar, Haveli, District: Pune, in exercise of powers under Section 48(7) of the Maharashtra Land Revenue Code, 1966. By these orders, the petitioner was called upon to pay a sum of Rs.2,20,35,395/- and Rs.3,29,62,300/-, respectively as and by way of penalty.
3. The learned counsel for the petitioner relies upon the

Apex Court decision in **Promoters and Builders Association of Pune -vs- The State of Maharashtra & ors, [2015 (2) All M.R. 426 (SC)]**. In this case, the Apex Court has set aside the judgment of this Court in Writ Petition No.785 of 2008 and other connected matters, dated 8/10/2010. The submission of the learned counsel for the petitioner is that in the light of what is held by the Apex Court, blanket determination of the liability only on the ground that ordinary earth was dug up would not be justified and it is necessary to make precise determination of the end use of the excavated earth. Learned counsel for the petitioner invited our attention to the finding recorded by the Apex Court in paragraph No.16 thereof.

4. We have perused the show cause notices as well as the impugned orders. After having perused the orders dated 20.11.2012, we find that adjudication as contemplated by the decision of the Apex Court has not been made. In fact, the said adjudication could not have been made as the date of decision of the Apex Court is 3/12/2014.

5. In any case, fresh adjudication will have to be made by the Tahasildar in the light of the law laid down by the Apex Court.

6. Hence, we dispose of the petition by passing the following order:

Order

- i. The impugned orders namely the orders dated 20.11.2012, made by Tahsildar, Haveli, are hereby

quashed and set aside.

- ii. We direct the petitioner to appear before the Tahasildar, Haveli, on 28.3.2016 at 11.15 a.m. The Tahasildar shall serve a fresh show cause notice to the petitioner on that date or even before the aforesaid date;
- iii. The Tahasildar shall grant reasonable time to the petitioner to file a reply to the fresh show cause notice;
- iv. The Tahasildar shall make adjudication as contemplated by the decision of Apex Court in Promoters and Builders Association of Pune (supra). An opportunity of hearing shall be granted to the petitioner;
- v. An appropriate order shall be passed by the Tahasildar on the fresh show cause notice on or before 02/05/2016. The order passed by the Tahasildar shall be served to the petitioner;
- vi. In the event, the order passed by the Tahasildar be adverse to the petitioner, to enable the petitioner to adopt a remedy under the Maharashtra Land Revenue Code, 1966, the order shall not be enforced for a period for two weeks from the date of the service of the intimation of the said order to the petitioner.
- vii. All contentions of the parties on merits are kept open;

- viii. The petition is partly allowed in above terms;
- ix. All the parties to act upon the authenticated copy of this order.

(DR. SHALINI PHANSALKAR-JOSHI, J.)

(RANJIT MORE, J.)