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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 4096 OF 2016
WITH
CIVIL APPLICATION No. 1105 OF 2016

M/s. Swastik Infra Logic & Gorur Infra Project (JV)	...	Petitioners
Vs.		
The State of Maharashtra & Ors.	...	Respondents
AND		
Vishal Madhukar Jadhav	...	Intervenor

Mr. A. V. Chatuphale, R. W. Correia, for the Petitioners.
Mr. P. P. Kakade, AGP for Respondent Nos. 1 to 6.
Mr. Mahindra Agwekar i/b Mandar Limaye, for Respondent No. 7.
Mr. M. P. Panchakshari, for the Intervenor in CAW. 1105/2016.

CORAM : V. M. KANADE, &
M. S. KARNIK, JJ.

DATE : MAY 3 , 2016

PC.

1. Heard the learned counsel appearing for the Petitioners and the learned AGP appearing for Respondent Nos. 1 to 6. The grievance of the Petitioners is that their JCB machine has been seized

by the State. Their appeal is pending before the Collector. It is submitted that the Petitioners are contractor and own JCB machine, which can be used for excavation of earth other materials for the purpose of construction like digging of the road for the purpose of laying pipe line, refilling it with the road material and / or transporting the road material / debris, etc.

2. It is case of the Petitioners that the Thane Municipal Corporation has invited a tender for the work, viz. providing, laying and commissioning of gravity sewers alongwith construction of manholes for sewerage network under PS 4 and PS 9 sewerage zone in the Thane city. A complaint was filed by a political leader that the Petitioners have not paid royalty for excavation of minor minerals, and it was alleged that the said work of excavation attracted the provisions of Section 48(7) of the Maharashtra Revenue Code, 1966. The Tahsildar passed an exparte order and directed the Petitioner to pay royalty. The Petitioners have preferred an appeal against the said order before the Collector and during pendency of the appeal, the Respondents have sealed machinery of the Petitioners.

3. It is not in dispute that Petitioners were carrying on work of laying pipeline for the benefit of Thane Municipal Corporation, after they were awarded tender for the said work. Prima-facie it appears that provisions of Section 48(7) of the said Code will not apply to the present case. Moreover, since the appeal filed by the Petitioners before the Collector is pending, the Respondents could not have seized the said JCB machine. We, therefore, direct the Respondent – Talsidar to hand over the said machinery to the Petitioners. The Collector may decide the Petitioners' appeal expeditiously. The interim protection given to the machine of the Petitioners shall not be ceased, if any adverse order is passed by the Collector in the appeal, for a period of 4 weeks thereafter. Writ petition is accordingly disposed of in the aforesaid terms.

4. In view of disposal of the petition, intervention application viz. Civil Application No. 1105 of 2016 filed therein does not survive and is accordingly disposed of.

Sd/-
[M. S. KARNIK, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemath