

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3837 OF 2016**

Bhadresh Gangaji Shah

..Petitioner

Vs.

The Additional Collector, Thane & Ors.

..Respondents

**Mr. N. V. Walawalkar Senior Advocate i/b Mr. S. M. Sabrad for the
Petitioner**

Mrs. S. S. Bhende AGP for the Respondent Nos.1 to 4

Mr. P. N. Joshi i/b Ms Vrushali Raje for the Respondent Nos.5 to 13

CORAM : R. M. SAVANT, J.

DATE : 28th APRIL, 2016

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 19-3-2016 passed by the Principal Secretary and Officer on Special Duty (Appeals and Revisions) Government of Maharashtra, by which order, the Review Application filed by the Respondent Nos.5 to 13 came to be allowed and resultantly the order dated 9-1-2014 passed by the Principal Secretary and Officer on Special Duty (Appeals and Revisions) Government of Maharashtra, came to be reviewed and consequently came to be set aside.

2 The Petitioner herein has been granted a lease in respect of two blocks of land for quarrying, in old Survey No.12 present Gat No.102 situate at village Virathan Budruk since 1995. One block is admeasuring 4 Hectors and the second block is admeasuring 80 Ares. The Respondent Nos.5 to 13 herein

are members of the Grampanchayat, Virathan Budruk and it seems that they complained to the Additional Collector, Thane at Jawahar in respect of the quarrying activities of the Petitioner herein. It was their case that in the meeting of the Grampanchayat dated 23-10-2011 resolution No.14 was passed whereby the Grampanchayat resolved to take steps to stop the quarrying activities in Gat No.102. The said resolution came to be passed by the Grampanchayat in view of the deleterious effect that the quarrying activities had on the houses in the Village. Taking cognizance of the said complaint dated 24-7-2011, the Additional Collector by his order dated 3-1-2012 directed the Sub Divisional Officer, Dahanu to carry out a spot inquiry and to hear the concerned parties. The Additional Collector further directed that till the said process is carried out the leases granted vide orders dated 18-12-2001 and 24-3-2009 to the Petitioner, would stand stayed.

3 The Petitioner aggrieved by the said order dated 3-1-2012 filed an Appeal before the State Government. The said Appeal was heard by the then Hon'ble Minister for Revenue, Government of Maharashtra. The Appellate Authority set aside the order dated 3-1-2012 passed by the Additional Collector and directed that the Additional Collector should himself carry out the site inquiry and after hearing the concerned parties to take a final decision, and pending the re-inquiry whether to permit the quarrying is a matter which would also be decided by the Additional Collector. The Additional Collector

was directed to pass a speaking order after carrying out the said exercise. The Appellate Authority in the body of the order found fault with the course of action adopted by the Additional Collector, Jawahar. The Appellate Authority observed that it was improper on the part of the Additional Collector to stay the leases without affording opportunity of hearing to the Petitioner. The Appellate Authority also observed that having regard to the entries made in the 7/12 extract prima facie it cannot be said that the land is gurcharan land and that aspect is also required to be gone into by the Additional Collector, Jawahar.

4 On remand by the Appellate Authority, the Additional Collector once again considered the matter. The Additional Collector afforded hearing to the respective parties. The Additional Collector by his order dated 22-7-2013 directed that the leases of the Petitioner in respect of the 4 Hectors of land which has come to an end on 17-12-2011, of which renewal is required, is cancelled, as also in respect of 80 Ares of land. The Additional Collector for the reasons mentioned in the impugned order set aside the order dated 24-3-2009, granting leases of the lands in question to the Petitioner. The Additional Collector went into the aspect as to whether the land in Gat No.102 was gurcharan land, and observed that entry from the year 1955-1956 till 1995 was “gurcharan”, however, thereafter the entry is in the name of the State Government. The Additional Collector also adverted to the fact that there was

resentment amongst the Villagers in respect of quarrying activities in Gat No.102 and that on account of blasting damage is caused to the houses. Aggrieved by the said order dated 22-7-2013 passed by the Additional Collector, on remand the Petitioner filed an Appeal before the State Government. The said Appeal was heard by the Principal Secretary and Officer on Special Duty (Appeals and Revisions) Government of Maharashtra. The Appellate Authority by its order dated 9-1-2014 allowed the Appeals and thereby set aside the order dated 22-7-2013 passed by the Additional Collector, Jawahar. The Appellate Authority also set aside the conditions in the lease dated 24-3-2009 which according to it were beyond the scope of the Act and Rules, and that both the leases, the lease which has expired on 17-12-2011 in respect of 4 Hectors of land and the lease for 80 Ares was renewed for a period of 10 years.

5 The gist of the reasoning of the Appellate Authority as can be seen from the impugned order is principally that the land in question is not gurcharan land but is a land wherein the name of the State Government appears. The Appellate Authority also held that no objection of the Grampanchayat as contemplated by condition 36 of the lease would not be required as the said condition was itself beyond the scope of the Rules as the Grampanchayat Virathan is not a notified Grampanchayat. The Appellate Authority also found fault with the Additional Collector in passing the order

terminating the lease without ascertaining the damage that is caused to the houses of the villagers. This was the gist of the reasoning of the Appellate Authority whilst allowing the Appeal filed by the Petitioner herein.

6 The order dated 9-1-2014 was implemented in as much as thereafter the order dated 30-5-2014 came to be issued by the Additional Collector Jawahar, by which the lease in respect of the 4 Hectors of land was renewed for a period of 10 years, as also the lease in respect of the land admeasuring 80 Ares was also renewed for 10 years. The Respondent Nos.5 to 13 herein thereafter filed a Review Application before the State Government seeking review of the order dated 9-1-2014 passed by the Appellate Authority. The said review was inter alia on the ground that the judgment of the Apex Court in the matter of **Jagpal Singh & Ors. Vs. State of Punjab & Ors.**¹, was not considered as also on the ground that the authorities had erred in coming to a conclusion that the land is not gurcharan land. The Respondent Nos.5 to 13 in the Review Petition relied upon Mutation Entry No.678 by which Mutation Entry, the land was entered in the name of the Grampanchayat as also Mutation Entry No.743 which was an entry made in the name of the State Government. By the said Mutation Entry the conditions on the basis of which the land was allotted to the Grampanchayat were incorporated in the revenue record. The Respondents also relied upon the fact that the said land was granted for a public purpose, namely for grazing of cattle etc.

1 2011 AIR (SCW) 990

7 The said Review Application was opposed to on behalf of the Petitioner herein by filing his reply to the said application and the Petitioner sought the dismissal of the Review Application for the reasons mentioned in the said reply. The Appellate Authority i.e. the Principal Secretary and Officer on Special Duty (Appeals and Revisions) Government of Maharashtra, considered the said Review Application and having regard to the mandate of the Judgment of the Supreme Court as also having regard to the fact that the land was entered as gurcharan right from the year 1955-1956 to the year 1995 and thereafter entry appears in the name of Grampanchayat Virathan and thereafter entry was appearing in the name of the State Government by virtue of Mutation Entry No.743, as also considering the fact that there was intense opposition from the villagers of the said Village Virathan, allowed the said Review Application by the impugned order dated 19-3-2016 and thereby set aside the order dated 9-1-2014 passed by the Appellate Authority i.e. the Principal Secretary and Officer on Special Duty (Appeals and Revisions) Government of Maharashtra. As indicated above, it is the said order dated 19-3-2016 which is taken exception to by way of the above Petition.

8 Heard the Learned Counsel for the parties.

9 The principal contention of the Learned Senior Counsel for the

Petitioner Mr. Walawalkar was that the Appellate Authority had erred in entertaining the Review on the basis of the grounds urged in the Review Application. It was the submission of the Learned Senior Counsel that since the judgment of the Apex Court was already cited before the Appellate Authority on the earlier occasion, no ground for review was made out. It was also the submission of the Learned Senior Counsel that once the leases were renewed by the orders dated 30-5-2014 passed by the Additional Collector Jawahar, then the procedure as envisaged in Rule 46(7) of the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013, were required to be followed and the leases could not be set aside by reviewing the order dated 9-1-2014. It was the submission of the Learned Senior Counsel that the NOC of the Grampanchayat was not required in view of the fact that the Grampanchayat Virathan was not a notified Grampanchayat.

10 Per contra the Learned Counsel appearing for the Respondent Nos.5 to 13 Mr. Joshi, would support the impugned order. It was the submission of Mr. Joshi that though the judgment of the Apex Court in Jagpal Singh's case (supra) was cited before the Appellate Authority in the earlier round, the cognizance of the said judgment was also not taken and that the consequential Government Resolution dated 12-7-2011 was also not placed before the Appellate Authority in the earlier round. It was the submission of Mr. Joshi that the said resolution is exhaustive in the matter of removal of

encroachment from the lands belonging to the Grampanchayat and public lands. It was also the submission of Mr. Joshi that the procedure as envisaged under Rule 46(7) of the said Rules is not required to be followed in view of the fact that in the instant case the leases were granted as a result of the order dated 9-1-2014 and therefore once the order was set aside, the natural corollary of the same would be that the leases were required to be set aside.

11 The Learned AGP Mrs. Bhende would also support the impugned order and would support the contention raised by the Learned counsel Mr. Joshi.

12 Having heard the Learned Counsel for the parties I have considered the rival contentions. In the instant case the action of staying the leases by order dated 3-1-2012 passed by the Additional Collector was on account of the complaint made by the Respondent Nos.5 to 13 as members of Grampanchayat Virathan. The said complaint was made on the basis of the resolution passed by the Grampanchayat in the year 2011 to stop the quarrying activities in the said Gat No.102 in view of the deleterious effect of quarrying on the houses of the villagers. Hence the procedure which commenced pursuant to the order dated 3-1-2012 culminated in the order dated 9-1-2014 passed by the Appellate Authority i.e. the Principal Secretary and Officer on Special Duty (Appeals and Revisions) Government of

Maharashtra, in the first round. Though the judgment of the Apex Court in Jagpal Singh's case (Supra) which concerns the removal of encroachment and illegal occupation of gairan and gurcharan land etc., the Appellate Authority did not take cognizance of the said judgment. The Appellate Authority in the first round proceeded on the basis that the land in question is not gurcharan land as it appears in the name of the State Government. It is required to be noted that pursuant to the judgment in Jagpal Singh's case, the State of Maharashtra has issued a Government Resolution dated 12-7-2011 which is exhaustive in respect of preventing encroachment of the villager land as well as lands used for public purposes and directs the manner in which the said encroachment is required to be dealt with. The said resolution was obviously not before the Appellate Authority on the first occasion when the Appellate Authority dealt with the matter in Appeal. In the light of the mandate of the Apex Court in Jagpal Singh's case and having regard to the resolution passed by the State Government dated 12-7-2011 the Appellate Authority deemed it appropriate to exercise the review powers and set aside the order dated 9-1-2014 passed by the Appellate Authority, in my view it is not possible to accept the contention urged on behalf of the Learned Senior Counsel that no case for exercising review powers under Section 252 of the Maharashtra Land Revenue Code was made out. Non consideration of the judgment of the Apex Court and non production of the Government Resolution dated 12-7-2011 would in my view be an adequate ground for review powers to be exercised by the

Appellate Authority. Since the grant of renewal of lease for quarrying was flowing out of the order dated 9-1-2014 of which review was sought and once the said order dated 9-1-2014 was set aside the logical corollary of the same would be that the leases would have to be set aside which the Appellate Authority has accordingly done by the impugned order dated 19-3-2016.

13 It would have to be borne in mind that the Respondent Nos.5 to 13 are the members of the Grampanchayat Virathan and can be said to be only interested in protecting the interest of the villagers of the said village. The fact that the blasting on account of the quarrying activities undertaken in the said Gat No.102 has deleterious effect on the houses of the villagers, also cannot be lost sight of. In so far as the nature of the land is concerned, as indicated above right from the year 1955-1956 to the year 1995 the entry in the revenue record was as “gurcharan” i.e. grazing land. Since the land was allotted to the Grampanchayat Virathan the entry thereafter came to be made in the name of Grampanchayat and since thereafter the conditions were incorporated in so far as allotment of the land is concerned, the said Mutation Entry No.743 in the name of the State Government came to be made. Hence the fact remains that the land in question was originally gurcharan land and can be said to continue as such though the entry has been made in favour of the State Government, as the land was granted to the Grampanchayat for grazing purposes. Hence activities by way of mining of minor minerals cannot be permitted. The

Appellate Authority has by the impugned order also directed the authorities concerned to cancel all the leases for quarrying in the said Gat No.102 by following the procedure concerned. In my view, therefore, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

14 At this stage, the Learned Counsel for the Petitioner prays that the statement by the Learned AGP that steps for cancellation of the leases would not be taken, may directed to be continued for some period of time. In my view, it is not possible to accede to the said request, the said prayer is accordingly rejected.

[R.M.SAVANT, J]