IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7036 OF 2016

Shri Santosh Gulabchand Laddha .. Petitioner
Vs
The Tahasildar,
Taluka Niphad, Dist-Nashik and Others. .. Respondents

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Ms. Sneha G. Sanap for the Petitioner.
Ms. Aparna Vhatkar, AGP for the Respondents.

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CORAM : A.S. OKA & A.K. MENON, JJ

DATED : 17TH APRIL 2017

ORAL JUDGMENT: (PER A.S.OKA, J)

1. Rule. The learned AGP waives service for the Respondents. Forthwith taken up for final disposal.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner has challenged the Circular dated 17th February 2011 issued by the District Collector of Nashik. The said Circular deals with the issue of fixing royalty on the minor minerals generated by use of stone crusher. The Circular provides that royalty will be charged on the basis of the consumption of electricity by the stone crusher machine. On 18th September 2013, a letter was addressed by the Additional

Collector to the present Petitioner calling upon him to deposit a sum of Rs.21,09,510/- by way of royalty on minor minerals.

3. There are two affidavits filed by Shri Prashant Tamanna Kore, the District Mining Officer, Nashik, on behalf of the State Government. One is of dated 31st August 2016 and the other is dated 13th December 2016.

4. The main contention raised in this Petition under Article 226 of the Constitution of India is that the effect of the impugned Circular is that the quantity of minor minerals extracted will be calculated on the basis of the electricity consumed by the stone-crusher machine and royalty will be charged on that basis. The contention is that this method is completely contrary to the provisions of the Bombay Minor Mineral Extraction Rules, 1955 (for short "the said Rules of 1955") and the Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013 (for short "the Rules of 2013"). It is contended that the method adopted for calculating the quantity of minor minerals extracted is completely illegal.

5. In the first affidavit dated 31st August 2016 filed by Shri Prashant Kore, the District Mining Officer, Nashik, a reference is made to a Civil Suit filed by the Petitioner. Reliance is placed on the order

dated 7th July 2016 passed by the Sub-Divisional Officer in an Appeal preferred by the Petitioner. A copy of the said judgment and order in the Appeal is also annexed to the said affidavit.

6. In the second affidavit filed by Shri Kore, in Paragraph 4, he has dealt with the impugned Circular. Paragraph 4 of the said affidavit reads thus:

> "4. I say and submit that, the Circular dated 17.02.2011 issued by the Collector, Nashik is true, legal & correct. I say and submit that, said Circular has been issued by the Collector, Nashik by conducting actual verification on crusher sites, and by measuring electricity consumption for crushing of stones. I say and submit that, assessment of royalty of stone crushing of all Stone Crushers have been carried through above method as well as by conducting volumetric measurement of spot from the Public Works Department of the State of Maharashtra. I say and submit that, the method adopted by aforesaid Circular is based on the actual demonstration conducted by these Respondents, hence, if the Petitioner has any grievance about the Circular an alternative method or the option of volumetric measurement will be used by these Respondents for assessment of the Petitioner's royalty. I say and submit that, in this regard the Collector, Nashik has passed the order on 17.03.2016 and accordingly issued letters dated 19.03.2016, 16.04.2016, 10.05.2016 and 20.05.2016 to the Section Engineer, Public Works Department, Sub-Division, Niphad. It is therefore submitted that, the objection raised by the Petitioner as to the Circular Exhibit "A" is devoid of any merits."

(underlines supplied)

7. In Paragraph 5 of the said affidavit, a reliance is placed on the judgment and order dated 20th October 2010 passed by a Division Bench of this Court in Writ Petition No.2640 of 2010[1].

8. The learned counsel appearing for the Petitioner submitted that the royalty will have to be calculated on the basis of the minor minerals actually extracted and not on the basis of artificial calculation made on the basis of the electricity consumed. The learned AGP relied upon written instructions given by Shri Kore, the District Mining Officer, Nashik to the Office of the Government Pleader on 13th December 2016 in which he has justified the impugned Circular.

9. We have considered the submissions. The Respondents have relied upon the order dated 7th July 2016 passed by the Sub-Divisional Officer, Niphad in the Appeal preferred by the Petitioner being RTS Appeal No.228 of 2016 under Section 247 of the Maharashtra Land Revenue Code, 1966. The said Appeal does not decide the issue of the legality of the method adopted for determining the royalty and the validity of the impugned Circular. In fact, the Sub-Divisional Officer, Niphad, could not have gone into the said issue as the impugned Circular has been issued by his Superior Officer. In fact, in Paragraph 3 of the first affidavit, Shri Kore has stated that the Appeal

1 (Ibrahimsahib Burhansaheb Kokni v. The State of Maharashtra & Another.)

was dismissed on the ground that the assessment will be made by conducting volumetric measurement. In fact, in Paragraph 4 of the subsequent affidavit dated 13th December 2016, the said District Mining Officer has stated in so many words that if the Petitioner has any grievance about the impugned Circular, the option of volumetric measurement will be used by the Respondents for assessing the royalty payable by the Petitioner. We accept the said statement. In view of this statement, royalty payable by the Petitioner will have to be calculated on the basis of the volumetric measurement and not on the basis of the electricity consumption.

10. We may note here that the judgment and order dated 20th October 2010 in Writ Petition No.2640 of 2010 does not decide the issue of the validity of the impugned Circular. In the said Petition, what was challenged was the Circular dated 12th November 2005.

11. In view of the categorical statement made by the District Mining Officer in his both the affidavits, it is not necessary to quash the impugned Circular. However, the Respondents will have to give a similar option to the similarly placed persons.

12. Accordingly, we dispose of the Petition by passing the following order:

ORDER :

(a) We direct the Respondents not to calculate royalty payable by the Petitioner on the basis of the Circular dated 17th February 2011. We accept the aforesaid statement made by the District Mining Officer, Nashik, in Paragraph 4 of the affidavit dated 13th December 2016;

(b) In view of the aforesaid statement, assessment of the royalty payable by the Petitioner shall be made only on the basis of the volumetric measurement of the minor minerals extracted;

(c) Quantification of the royalty shall not be made on the basis of the electricity consumption;

(d) Needless to add that similarly placed persons who are aggrieved by the impugned Circular shall be given similar option of calculating the royalty payable on the basis of the volumetric measurement;

(e) If any notices are already issued demanding the royalty calculated on the basis of the impugned Circular, the Respondents shall withdraw such notices and shall issue fresh notices to the Petitioner after calculating the royalty on the basis of the volumetric measurement;

(f) Rule is partly made absolute on above terms;

(g) All concerned to act upon an authenticated copy of this order.

(A.K. MENON, J) (A.S. OKA, J)