

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8353 OF 2012

Rawmin Mining and Industries Pvt. Ltd.
and Another.

.. Petitioners

Vs

The State of Maharashtra and Others.

.. Respondents

—

Shri Girish S. Godbole along with Shri M.H. Kane and Shri Rahul Kadam i/b W.S.Kane & Co for the Petitioners.

Mrs. Neha Bhide, AGP “B” Panel for the Respondent Nos.1 to 3.

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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ
DATED : 15TH FEBRUARY 2017

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

1. Called out for final hearing. Heard learned counsel appearing for the Petitioners and learned AGP for the first to third Respondents.

2. With a view to appreciate the submissions canvassed across the bar, a reference to few facts will be necessary. The Tahsildar, Radhanagari passed an order dated 5th March 2011 directing the first Petitioner and the fifth to ninth Respondents to pay penalty of Rs.1,65,66,200/- on account of illegal mining and a sum of Rs.329.96 for illegal non-agricultural use. Being aggrieved by the said order, an Appeal under Section 247 of the Maharashtra Land Revenue Code,

1966 (for short “the said Code”) was preferred by the first Petitioner. By the Judgment and Order dated 16th April 2012, the said Appeal was dismissed by the Assistant Collector, Radhanagari Division, Kolhapur. He relied upon the Government Circular dated 8th March 2010 issued by the Finance Department of the State Government directing that while admitting the Appeal against an order of recovery of amounts, the Appellate Authority of the State Government should not stay the recovery as a matter of course and should seek deposit of 50% of the amount demanded. After ensuring that 50% of the amount demanded is deposited with the State Government, the Appeal should be disposed of within the stipulated time. The Appellate Authority recorded a finding that the first Petitioner did not show willingness to deposit 50% of the penalty amount determined under the impugned order passed by the Tahsildar, Radhanagari and in fact, he refused to pay the said amount.

3. By this Petition under Article 226 of the Constitution of India, the challenge is to the Government Circular dated 8th March 2010 as well as to the order of the Appellate Authority dated 16th April 2012.

4. The learned counsel appearing for the Petitioners tendered across the bar a letter dated 1st November 2012 addressed by the Secretary of the Finance Department to various Secretaries of the State Government stating that the Circular dated 8th March 2010 subject

matter of challenge in this Petition has been withdrawn. We must note here that this fact has been confirmed by the learned AGP appearing for the first to third Respondents.

5. The submission of the learned counsel appearing for the Petitioners is that the impugned order of the Appellate Authority is based only on the said Government Circular dated 8th March 2010 and as the said Circular has been withdrawn, now the impugned order will have to be set aside. He submitted that in any event, the Appeal could not have been dismissed without hearing the same on merits only on the ground of failure of the first Petitioner to deposit 50% of the amount payable under the impugned order of the Tahsildar, Radhanagari and at highest, the Application for interim relief could have been disposed of by imposing a suitable condition in accordance with law. The learned AGP has supported the impugned order.

6. We have considered the submissions. The Appeal preferred by the first Petitioner was under Section 247 of the said Code. There is no provision under the said Code which provides that any amount is required to be deposited by the Appellant as a condition precedent for entertaining an Appeal. The purport of the Government Circular dated 8th March 2010 was that interim stay should not be mechanically granted by the Appellate Authority while entertaining an Appeal against

an order directing payment of an amount. It was directed under the impugned Government Circular that the Appellate Authority should ensure that 50% of the amount demanded should be deposited. The Circular cannot be interpreted to mean that an Appeal under Section 247 of the said Code should not be entertained on the ground of non-deposit of 50% of the amount under demand. As the said Code does not provide for such a condition precedent for entertaining an Appeal, on the basis of the said Circular such a condition could not have been imposed. As stated earlier, the purport of the Circular was that a blanket stay should not be granted as a matter of course. Now, the said Government Circular dated 8th March 2010 has been withdrawn.

7. The power of the Appellate Authority or the Revisional Authority to grant stay is under Section 256 of the said Code. Under Sub-section (5) of Section 256 of the said Code, the Appellate Authority while exercising the power of granting stay of impugned order is empowered to impose such condition as it deems fit including a condition of furnishing security.

8. When in an Appeal under Section 247 of the said Code, the challenge is to an order directing payment of an amount by the Appellant, while considering the prayer for grant of stay pending the Appeal, the Appellate Authority can always impose a condition of

depositing the entire amount demanded by the impugned order or of depositing a part of the said amount or of furnishing security for the entire amount or for a part of the amount. A straight-jacket formula of granting stay subject to condition of depositing 50% of the amount is not legal as it interferes with the discretion of the Appellate Authority under Sub-section (5) of Section 256 of the said Code. Whether a condition should be imposed while granting stay and what condition should be imposed all depends upon the facts and circumstances of each case. However, where the challenge is to the demand of an amount from the Appellant, in a given case, the Appellate Authority may be justified in imposing condition of deposit or furnishing security, as the case may be.

9. In the facts of the present case, the Appeal was dismissed only on account of the refusal of the first Petitioner to pay 50% of the amount demanded in terms of the Government Circular dated 8th March 2010. As stated earlier, on account of such refusal, the Appeal could not have been dismissed.

10. As the Appeal was dismissed under the impugned order on the basis of the Government Circular dated 8th March 2010, the remedy of a Second Appeal under the said Code could not have been an efficacious remedy.

11. Therefore, the Petition must succeed and we pass the following order:

ORDER:

- (a) The impugned order dated 16th April 2012 is quashed and set aside;
- (b) RTS Appeal No. 31 of 2011 is restored to the file of the Court of learned Assistant Collector, Radhanagari Division, Kolhapur;
- (c) We direct the Petitioners to appear before the Appellate Authority on 31st March 2017 at 11.00 a.m. On that day, the representative of the first Petitioner shall produce an authenticated copy of this Judgment and Order before the Appellate Authority which shall act upon the same;
- (d) Within a period of two months from the date fixed for appearance, the Appellate Authority shall decide the prayer for stay in the restored Appeal in accordance with law;

- (e) The prayer for stay shall be disposed of in light of the observations made in this Judgment and Order;
- (f) The ad-interim relief granted by this Court on 26th September 2012 shall continue to operate till the disposal of the prayer for stay by the Appellate Authority as directed above;
- (g) In the event, the prayer for stay is rejected, the ad-interim relief granted in this Petition will continue to operate for a period of three weeks from the date on which the order refusing to grant stay is communicated to the Petitioners;
- (h) We make it clear that while considering the prayer for stay, the Appellate Authority shall not be influenced by the ad-interim relief granted by this Court which is continued under this Order;
- (i) All contentions on merits of the Appeal and the Application for stay are expressly kept open;

- (j) The Rule is accordingly made absolute on above terms;
- (k) All concerned to act on an authenticated copy of this Judgment and Order.

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)