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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11912 OF 2016

Shivganga Stone Crusher … Petitioner
Vs.
The Circle Officer & Ors. … Respondents

……….

Mr. Umesh R. Mankapure i/b. Mr. Akshay P. Shinde for the Petitioner.
Ms. Aparna Vhatkar, AGP for Respondent nos. 2, 3, 4 and 6.

……….

CORAM : A.S. OKA & A.K. MENON, JJ.
DATE : 18th APRIL, 2017

P.C.

1. Rule. Learned AGP waives service for the respondents. Rule is made returnable forthwith and the petition is taken up for final disposal.

2. The basic challenge in this petition is to the demand made by the District Mining Officer calling upon the petitioner to pay a sum of Rs.43.66 lakhs as the amount payable in accordance with Sub-Section (7) of Section 48 of the Maharashtra Land Revenue Code, 1966 (for short “the said Code”).

3. The submission of the learned Counsel appearing for the petitioner is that recovery has been initiated on the assumption that the penalty has been ordered to be imposed by the Auditor General. The

submission is that without considering the relevant factors which ought to have been considered, the Collector acting upon recommendation of the Auditor General has fixed the penalty amount on the ground that there was illegal extraction of minerals by the petitioner. He urged that the so called order passed by the Auditor General be set aside and therefore, consequential action taken on the basis of the order also deserves to be set aside.

4. The learned AGP supported the action by submitting that there is an express power vesting under Sub-Section (7) of Section 48 of the said Code of calling upon a person unauthorisedly excavating minerals to pay market value of the minerals and penalty. Hence, no interference is called for.

5. We have considered the submissions. We have perused the extracts of the Audit Report of the Auditor General. In the audit report it has been observed that there is unauthorised extraction of quantity of 970 brass by the petitioner and therefore, penalty under Sub-Section (7) of Section 48 deserves to be imposed.

6. Letters dated 28th December, 2012 (Exhibit -H) and 3rd March, 2016 (Exhibit-J) addressed by the District Mining Officer to the petitioner proceed on the footing that the Auditor General has imposed penalty of Rs.43.66 lakhs on the petitioner and therefore, action has

been taken for recovery of the said amount, as if the said amount was arrears of land revenue payable by the petitioner.

7. Sub-Section (7) of Section 48 of the said Code reads thus :

> *"Any person who without lawful authority extracts, removes, collects, replaces, picks up or disposes of any mineral from working or derelict mines, quarries, old dumps, fields, bandhas (whether on the plea of repairing or construction of bunds of the fields or on any other plea), nallas, creeks, river-beds or such other places wherever situate, the right to which vests in, and has not been assigned by the State Government, shall without prejudice to any other mode of action that may be taken against him, be liable, on the order in writing of the Collector, to pay penalty not exceeding a sum determined, at three times the market value of the miners so extracted, removed, collected, replaced, picked up or disposed of, as the case may be.*
>
> *Provided that, if the sum so determined is less than one thousand rupees, the penalty may be such larger sum not exceeding one thousand rupees as the Collector may impose."*

Thus, there is a power vesting in the Collector or in Revenue Officer not below rank of Officer to impose penalty on person who illegally extracts minerals .

8. Perusal of the letters dated 28th December, 2012 (Exhibit-H) and 3rd March, 2016 (Exhibit-J) show that the District Mining Officer

proceeded on the footing that there is a direction issued by the Auditor General of imposing penalty of Rs. 43.66 lakhs under Sub-Section (7) of Section 48 of the said Code.

9. Neither the Collector nor an Officer authorised by the Collector under Sub-Section (7) of Section 48 have made any adjudication on the question whether there was any unauthorised extraction of the minerals by the petitioner. Only after making a fact finding exercise to ascertain whether there was illegal extraction, an action under Sub-Section (7) of Section 48 of the said Code could have been initiated either by the Collector or by the Officer nominated by him.

10. In the present case, in view of the observation made in the Audit Report, the District Mining Officer proceeded on the footing that, the Auditor General has already fixed a quantum of penalty at Rs. 43.66 lakhs. The perusal of the extract of the report (Exhibit-I) of the Auditor General shows that he has not passed any such order. He has mentioned that though authorised extraction was of 280 brass, unauthorised extraction to the extent of 970 brass has been made. The Auditor General had no jurisdiction to determine the extent of unauthorised extraction and quantum of penalty. At highest what is observed by the Auditor General can be a recommendation.

11. Therefore, the action recovery of a sum of Rs. 43.66 lakhs is illegal. However, the Audit Report need not be set aside.

12. However, it will be open for the Collector or his nominee to initiate action of recovery of royalty and penalty under Sub-Section (7) of Section 48 after issuing a show cause notice to the petitioner and after giving an opportunity of being heard to the petitioner.

13. Accordingly, we pass the following order :

(i) Rule is made absolute in terms of prayer clauses (c) to (f) which read thus :

> *"(c) To quash and set-aside the impugned notice dated 28/12/2012 (Exh-H) issued by the third Respondent;*
>
> *(d) To quash and set-aside the impugned notice dated 03/03/2016 (Exh-J) issued by the third Respondent;*
>
> *(e) To quash and set-aside the impugned notices dated 27/6/2016 (Exh – K), 7/7/2016 (Exh – K), 19/7/2016 (Exh-K) all issued by the second Respondent.*
>
> *(f) To quash and set-aside the impugned order dated non-speaking order 9/9/2016 (Exh.-M) passed by the third Respondent".*

(ii) As the orders on the basis of which the property of the petitioner was put to auction have been set aside, even the consequential action of issuing the notice dated 27th September, 2016 (Exhibit 'N') will be rendered inoperative;

(iii) We make it clear that it will be open for the Collector or his nominee to initiate proceedings for the recovery of royalty and penalty, if any, against the petitioner under Sub-Section (7) of Section 48 of the said Code. However, the royalty and penalty amount, if any, shall not be fixed without giving an opportunity of being heard to the petitioner after issuing a show cause notice to him;

(iv) We make it clear that we have made no adjudication of the liability of the petitioner and all contentions of the parties are kept open;

(v) Rule is made partly absolute on above terms. No order as to costs.

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