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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14181 OF 2016

M/s.Samarth Persist ...Petitioner
vs.
Tehsildar, Mulshi & Ors. ...Respondents

Mr.Shriram S. Kulkarni for the Petitioner
Ms Aparna Vhatkar, AGP for the State

CORAM : A.S.OKA, &
SMT.ANUJA PRABHUDESSAI, JJ.
DATE : MARCH 16, 2017

P.C.:

1 Notice for final disposal was issued under the earlier order. According to the case of the petitioner, a permission was granted to the petitioner to carry on mining activities. By the impugned order dated 1st December 2016 passed by the Additional Collector, Pune a mining lease has granted to the petitioner under the order dated 17th from October 2014 which was valid till 31st December 2019 was cancelled. By the said order, directions were issued to the petitioner to close the mine and to take further steps.

2 One of the main challenges in the petition is that the impugned order has been passed without giving an opportunity of being heard to the petitioner. The learned AGP on instructions accepts that the order dated 1st December 2016 has been passed without giving an opportunity of being heard

to the petitioner.

3 Exhibit-H to the petition is the copy of the mining lease executed by the District Mining Officer in favour of the petitioner, as per order dated 17th October 2014 passed by the Additional Collector, Pune. The said mining lease was to expire on 31st December 2019. By the impugned order dated 1st December 2016 of cancellation of mining lease, civil rights of the petitioner have been affected. The said order is passed admittedly in breach of principles of natural justice. Only on this ground, same deserves to be set aside with a directions to the Additional Collector to issue show cause notice to the petitioner and to pass an appropriate order in accordance with law after giving an opportunity of being heard to the petitioner. The learned counsel for the petitioner raised an issue of applicability of the Gazette notification dated 10th March 2017. We need not deal with the said issue as the petitioner can always agitate the said issue before the Additional Collector.

4 Accordingly, we pass the following order:

- (I) Impugned order dated 1st December 2016 Exhibit N to the petition is hereby quashed and set aside only on the ground of breach of principles of natural justice;
- (II) We direct the Additional Collector, Pune to issue a show cause notice to the petitioner within a period of six weeks from today. After

giving an opportunity of filing reply to the show cause notice and after giving an opportunity of being heard to the petitioner, the Additional Collector shall pass an appropriate order in accordance with law within a period of four months from today;

(III) We make it clear that no adjudication is made on merits of the controversy as the impugned order has been set aside only on the ground of breach of principles of natural justice;

(IV) Writ Petition is disposed of.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)