

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 160 OF 2017

Omkar Realtors & Developers Pvt. Ltd.	... Petitioner
V/s.	
State of Maharashtra & Ors.	... Respondents

Mr. Karan Bhosale a/w Ms. Asha Nair i/b Diomandwala & Co. for the Petitioner.

Mr. Kunal Bhangе, AGP for the Respondent/State.

Mr. Jayant Nikam, Superintendent Land Record, Mumbai City present.

Mr. Surendra Shelke, Chief Clerk present.

CORAM : K. K. TATED, J.

DATED : 25/01/2017

P.C.:

. Heard learned Counsel for the parties.

2 By this petition under Article 227 of the Constitution of India the Petitioner challenges the Demand Notice dated 02.01.2017 issued by the Respondent pursuant to the order dated 25.11.2016 passed by the Chief Additional District Collector, Mumbai City for illegal excavation of hill land in Dadar, Naigaon.

3 The learned counsel for the petitioner submits that Chief Additional District Collector, Mumbai City passed order calling upon the petitioner to pay penalty of Rs.3,84,76,638/- for alleged illegal excavated 6066 Brass as follows:

1) Quantity of Brass illegally excavated	6066 Brass
2) Rate of Minor Mineral, ordinary soil,	Rs.1,188.60

Hardened soil (Murum) as per CSR per Brass	
3) Penalty 5 times the market rate (6066 X 1188.60 X 5)	Rs.3,60,50,239.00
4) Royalty on 6066 Brass @ Rs. 400/- per Brass	Rs.24,26,400/-
Total --->>	Rs.3,84,76,638/-

4 The learned counsel for the petitioner submits that the said order was challenged by the petitioner before the learned Divisional Commissioner, Konkan Division by preferring the Appeal on 28.12.2016. He submits that the Appellate Authority heard the Appeal on 04.01.2017 and reserved the order. He submits that in the meanwhile, the Respondent/Recovery Officer, Recovery of Mumbai District Land Revenue issued a Demand Notice for payment of Rs. 3,84,76,638/- with 9.30% interest, if the amount is not deposited/paid within stipulated time. He submits that the issue about the penalty is already pending before the Appellate Authority. The Appellate Authority already heard the Appeal and closed for orders. Therefore, there is no question of calling upon the petitioner to pay the said amount. He further submits that the petitioner on 19.11.2016 deposited sum of Rs.10,60,096/- for permission of excavate 2652 brasses. He submits that the Authority is not deciding their application on its own merits just because the order dated 25.11.2016 passed by the Chief Additional District Collector, Mumbai City. He submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of Demand Notice dated 02.01.2017 till the final order comes from the Appellate Authority in Appeal preferred by them. He further submits that the Authority may be directed to issue permission to the petitioner excavated mines for which they

already paid the Royalty of Rs.10,60,096/- without influencing the order dated 25.11.2016.

5 The learned AGP after taking instructions from his Officer Mr. Jayant Nikam, Superintendent Land Record, who is present in the Court makes a statement that till the decision of the Appeal, they will not enforce and/or implement Demand Notice dated 02.01.2017. He further submits that if the order goes against the petitioner, they will stretch their hands for two weeks from the date of order. He further submits that petitioner's application for further excavating mines for which he paid Royalty of Rs.10,60,096/- they will decide the same within two weeks from today without influencing the order dated 25.11.2016 passed by the Chief Additional District Collector, Mumbai City. The statement made by the learned AGP is accepted. Hence, by consent of both the parties, following order is passed:

a) The operation and implementation of Notice of Demand for payment of land revenue under Section 267 of Maharashtra Land Revenue Code, 1966 dated 02.01.2017 is stayed till the final disposal of Appeal preferred by the petitioner before the learned Divisional Commissioner Konkan Division.

b) If order goes against the Petitioner in Appeal, the Respondent restrained from taking any coercive action against the petitioner for further period of two weeks from the date of order passed by the Appellate Authority.

c) The Respondent to decide the petitioner's application for excavating minerals for which they already paid Royalty of Rs. 10,60,096/- on its own merits within two weeks from today without

influencing the order dated 25.11.2016 passed by the Chief Additional Collector, Mumbai City.

- d) Parties to act on authenticated copy of this order.
- e) Writ Petition stands disposed of accordingly.

(K.K.TATED, J.)