

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

WRIT PETITION NO. 1944 OF 1988

M/s. Mema Engineers & Pvt. Ltd. and Anr. ... Petitioners

V/s.

State of Maharashtra & Ors. ... Respondents

Mr. Vineet Naik, Senior Counsel a/w Mr. Kapil Moye with Paresh Shah with Ms. Leena Mirasee, Ms. Tanmayee Salekar & Ms. Aditi Singh i/b Shah & Sanghavi for the Petitioners.

Mr. K.R. Trivedi, AGP for the Respondent.

**CORAM : A.S.OKA &
SMT. VIBHA KANKANWADI, JJ.
DATE : 21st JULY, 2017**

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

1. Called out for final hearing. Heard the learned Senior Counsel appearing for the Petitioners and the learned AGP appearing for the Respondents. With a view appreciate the submissions canvassed across the bar, a reference to factual aspects will be necessary. The case made out in the petition is that under the scheme formulated by the State Government for allotment of lands to private concerns to enable them to develop the same for the industrial and residential use, an area of 75 Acres out of the land bearing Survey No. 111D situated at village Ambivali was granted to M/s. Shah Construction Company Limited. The Additional Collector of Mumbai Suburban District by his order dated 15th June 1963 granted sanction for transfer of an area of 55 Acres out of the total area of 75 Acres of Survey No. 111D in favour of the first Petitioner Company subject to the terms and

conditions incorporated therein. The condition No.9 was regarding payment of one half of the unearned income in the event of the sale or transfer by the first Petitioner.

2. According to the case of the Petitioners, the said order was implemented and an agreement in prescribed form was executed by the first Petitioner, a copy of which is annexed as Exhibit 'B' to the petition. Thereafter, the Petitioners undertook the development of the land acquired by them. After developing the land, the same was converted into different plots. According to the case of the Petitioners, Plot Nos. 3, 4, 5, 16 and 25 were transferred by them in the year 1965, the details of which are set out in Exhibit 'C' to the petition.
3. Thereafter, the correspondence was made by the Petitioners as regards payment of unearned income by the first Petitioner. According to the case of the Petitioners, a cheque in the sum of Rs.26,482.88 representing the unearned income payable by the first Petitioner was forwarded to the State Government.
4. By a letter dated 02nd March 1983, the Additional Collector demanded a sum of Rs.3,43,069/- being 50% of the share of unearned income payable to the Government in respect of the said five plots. On 18th March, 1983 the first Petitioner addressed a letter to the Collector protesting about the said demand and reiterated that the cheque of sum of Rs.26,482.88 was forwarded which amount is equivalent to the 50% share of the State Government in the unearned income. The said letter also records that two more plots were sold by the Petitioners and a cheque in sum of Rs.34,031.51 was forwarded to the State Government. Therefore, the

Collector was called upon to withdraw the said demand.

5. On 21st April, 1988, a demand notice was issued to the first Petitioner by the Tahsildar, Andheri calling upon the first Petitioner to pay sum of Rs.3,42,071/- being amount equivalent to 50% of the share in the unearned income.
6. The submission of the learned Senior Counsel appearing for the Petitioners is that amount of unearned income was determined by the Additional Collector without giving an opportunity of being heard to the petitioners. He submitted that such a drastic action of demanding the amount as aforesaid could not have been taken without giving an opportunity of being heard to the Petitioners.
7. The learned AGP supported the impugned action by pointing out that as per the terms and conditions incorporated in the order of the Additional Collector, Mumbai Suburban District dated 15th June 1963, the Petitioners were under an obligation to pay 50% of the unearned income in relation to the transfer of plots made by the first Petitioner. He submitted that along with the letter dated 28th July, 1983 the Additional Collector forwarded valuation fixed by the Government in the form of a chart. He would therefore, submitted that no interference is called for.
8. We have given careful consideration to the submissions. There cannot be any dispute that in view of conditions imposed by the Additional Collector in his order dated 25th June, 1963 and Sub-Clause(g) of the Clause 2 of the Schedule II of the Agreement executed by the first Petitioner, the said Petitioner was an under an obligation to pay half of the unearned income

in the event of sale or transfer of the land allotted to the first Petitioner or a portion thereof. Only controversy to be decided is what is the quantum of amount payable by the first Petitioner. Along with the letter dated 2nd December 1967 addressed by the first Petitioner to the Secretary of the Government of Maharashtra in Revenue Department, break-up of the unearned income was given and a cheque in the sum of Rs.26,482.88 was forwarded by the first Petitioner. Before the said letter was submitted by the first Petitioner, on 13th November 1967, the first Petitioner addressed a letter to the Additional Collector of Mumbai Suburban District expressing its willingness to pay unearned income and requested to convey the procedure to be followed.

9. By a letter dated 28th July 1971, the first Petitioner informed the Secretary of the Government of Maharashtra in the Revenue Department that there were further transfers in respect of the two plots more particularly set out in the said letter on which 50% of the unearned income amounting to Rs.7,548.63 was payable. Therefore, the first Petitioner forwarded a cheque drawn in the sum of Rs. 34,031.51 (Rs.26,482.88 plus Rs.7,548.63). It appears that both the cheques were not encashed by the State Government.
10. We have carefully perused the reply filed to the petition by Shri. Shantaram Dhondur Mahadik, Naib Tahsildar in the office of the Additional Collector of Mumbai Suburban District. In the petition, a very specific contention has been raised that impugned demand in the sum of Rs.3,43,069/- was made without giving any opportunity of being heard to the Petitioners.
11. In the reply filed by the Shri. Shantaram Mahadik, it is not the case made

out that either a show cause notice was issued by granting opportunity to the Petitioners to file a reply or that hearing was given to the Petitioners before assessing the amount payable. Non payment of unearned income has serious consequences. Therefore, in our view, the impugned demand will have to be set aside only on the ground of breach of principles of natural justice.

12. We have perused the interim order passed by the learned Single Judge on 15th July 1988 wherein interim relief was granted subject to the Petitioners paying a sum of Rs.34,000/- by a cheque or demand draft within a period of two weeks from the said date. Today, the learned Senior Counsel appearing for the Petitioners has placed on record a letter dated 28th July 1988 addressed by the first Petitioner to the Additional Collector by which a Pay Order in the sum of Rs.34,000/- drawn in favour of the Additional Collector on Bank of India was submitted. A photocopy of the letter bears acknowledgement of the office of the Additional Collector of 28th July, 1988. However, neither the Petitioners nor the learned AGP are in position to tell us whether the said pay order was encashed. In any event, we find from the farad sheet that the interim relief granted on 15th July 1988 was never vacated.
13. Therefore, the Petition must succeed and we pass the following order.
 - i) The impugned demand made by the Additional Collector, Mumbai Suburban Division is hereby quashed and set aside only on the ground of breach of principles of natural justice;
 - ii) We direct the representatives of the Petitioners to remain present in the office of the Additional Collector, Mumbai Suburban Division on 07th September, 2017;

- iii) After giving an opportunity of being heard to the first Petitioner on the quantum of unearned income, the Additional Collector shall determine the amount payable by the Petitioners equivalent to 50% of the unearned income;
- iv) The exercise of determining the unearned income payable by the Petitioners shall be completed by the Additional Collector, Mumbai Suburban District on or before 31st October, 2017;
- v) The order passed by the Additional Collector Mumbai Suburban District shall be served to the Petitioners;
- vi) If the Additional Collector finds that the amount over and above sum of Rs.34,031.51 is payable by way of 50% share of State Government in unearned income, the Additional Collector shall determine the unearned income on the dates of the respective transactions;
- vii) Needless to add that if the pay order in the sum of Rs.34,000/- forwarded by the Petitioners has been encashed by the State Government, the credit for the said amount shall be given to the Petitioners;
- viii) We make it clear that we have made no adjudication on the merits of the demand made by the Additional Collector and therefore, the issue of the quantum of demand is kept open;
- ix) Rule is made partly absolute in the above terms. No order as to costs.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)