IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4108 OF 2018

Ahmed Wahid Hawa .. Petitioner
V/s.
The State of Maharashtra .. Respondent

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Mr.S.K. Dubey a/w. Mr.H.N. Shaikh, Advocate for the Petitioner.
Ms.S.D. Vyas "B" Panel Counsel, for the Respondent – State.
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CORAM : S.C. DHARMADHIKARI AND PRAKASH D. NAIK, JJ.

DATED : APRIL 6, 2018.

P.C. :

The petitioner complains that an immovable property, which has a Warehouse in it has been sealed illegally by the Tahsildar, Taluka – Uran, District – Raigad, Maharashtra.

2 It is stated that this action is *ex facie* illegal, null and void. The seal is placed on 23rd March, 2018.

3 After hearing Mr.Dubey, learned counsel for the petitioner at length, as also the learned AGP, we repeatedly inquired as to which is the provision that enables the Tahsildar to

place a seal on the Warehouse and all that the learned AGP would reply upon is a power to attach defaulter's immovable property and take it under management; that is to be found in Section 182 of the Maharashtra Land Revenue Code, 1966.

4 That provision is contained in Chapter XI of the Code. The title to this Chapter is "Realisation of Land Revenue and Other Revenue Demands". Section 168 is the first section in that Chapter and which deals with liability for land revenue. Section 169 gives claims of State Government precedence over all others. Then the date on which land revenue falls due and payable is set out in Section 170, whereas, Sections 171 and 172 provide for temporary attachment and management of village or share of village to be vacated (withdrawn) on security being furnished. After Section 173 onwards, there are provisions by which land revenue can be recovered from the defaulters. Section 176 sets out the process of recovery of arrears and Section 177 states that, this process may be employed for the recovery of arrears of former years as well as of the current year. Then there is a notice of demand which has to be issued in terms of Section 178; forfeiture of the occupancy is contemplated in Section 179 and Sections 180 and 181 provide for distraint and sale of movable

property of the defaulters and sale of immovable property of the defaulters. Then, follows Section 182, which reads as under:

> *"182(1) If the Collector deems it inexpedient to adopt any of the processes specified in the foregoing provisions for recovery of arrears, '[he shall, in case where the immovable property belongs to a person belonging to a Scheduled Tribe, and in any other case, he may] cause the immovable property of a defaulter to be attached and taken under the management of himself or any agent whom he-may appoint for that purpose.*
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> *(2) The Collector or the agent so appointed shall be entitled to manage the lands attached and to receive all rents and profits accruing there from until the Collector restores the defaulter to the management thereof.*
>
> *(3) All surplus profits of the land attached, beyond the cost of such attachment and management, including the payment of the current revenue, shall apply in defraying the arrears due in respect of such lands.*
>
> *(4) The land so attached shall be released from attachment and restored to the defaulter on his making an application to the Collector for that purpose at any time within twelve years from the date of attachment*

(a) if at the time that such application is made it appears that the arrear has been liquidated; or

(b) if the defaulter is willing to pay the balance, if any, still due by him, and shall do so within such period as the Collector may specify in that behalf.

(5) If no application be made for the restoration of the land within twelve years, or if, such application has been made, the defaulter fails to pay the balance, if any, still due by him within the period specified by the Collector in this behalf, the Collector may sell the right, title and interest of the defaulter in the land without prejudice to the encumbrances created prior to the attachment of the land; and shall make over the sale proceeds to the defaulter after deducting there from the sum due to the State Government and expenses of the sale."

2 In Section 182 of Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "the said Code"), after sub-section (5), the following proviso shall be added, namely :-
"Provided that, before right, tile and interest of the defaulter in such land is put to sale by the Collector under sub-section (5), the Collector shall, by notice to the defaulter or his legal heir, ascertain his willingness to have the land restored back to him;

and if the defaulter or his legal heir gives his willingness to have such land restored back and pays, within such period, which shall not be less than ninety days, as may be specified by the Collector in the notice issued in this behalf, the following amounts, thereupon the said land shall be released from the attachment and restored to the defaulter or his legal heir, namely :-

> *(i) outstanding dues, payable to the government on account of arrears of land revenue and interest leviable thereupon, as per the prevailing orders of the Government;*
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> (ii) *where such defaulter is in unathorized possession of such land even after the said land has been attached by the Collector, an annual lease rent, not exceeding one percent of the market value of such land, as may be prescribed, for the period during which such defaulter is in unathorized possession of such land and different annual lease rents may be prescribed for land in different areas and for different uses of land; and*
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> *(iii) a penal amount, not exceeding fifty percent of the market value of such land for the current year, as may be prescribed, and different penal amounts may be prescribed for*

land in different areas and for different uses of land.

Explanation – For the purpose of this sub-section, "the market value of the land" means the value of such land specified in the Annual Statement of rates published under the provisions of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 or any other rules for the time being in force, in this regard for the relevant year, and where such Annual Statement of Rates is not prepared or available, it means the value of such land as determined by the Assistant Director of the Town Planning Department of the concerned District."

5 Thus, the Collector has to record an opinion that it is inexpedient to adopt any of the processes specified in the forgoing provisions for recovery of arrears. Despite the provisions, in a particular and peculiar case they are found to be inexpedient for recovery of arrears. The Collector has a discretion to cause the immovable property of defaulters to be attached and taken under the management of himself or any agent to whom he may appoint for that purpose.

6 The learned AGP would submit that this provision is

closest to the action that is taken in the instant case.

7 We are unable to agree with the learned AGP for more than one reason. Assuming this power could have been exercised and assuming that it further empowers the Authorities to place a seal on the Warehouse, we do not see the satisfaction and required to be recorded, has been recorded in the instant case. First of all, the notice, copy of which is at page 18 calls upon the petitioner to discontinue the non-agricultural user. The petitioner is also directed to deposit a sum specified in Section 48 of Sub-section 7, of the Code which is claimed to be a royalty for illegal extraction of the minerals from the land. Then, there is a notice of demand. None of these annexures to the petition and emanating from the respondent say that, there is a need to seal the property. It is in these circumstances, the impugned action cannot be justified. It cannot be declared as legal and valid, bearing in mind the peculiar facts of this case.

8 In such circumstances, we dispose of this Writ Petition with a direction that the seal placed on the Warehouse shall be removed latest by 7th April, 2018 at 11:00 a.m.

9 The petitioner can be proceeded against in terms of the notices issued to him strictly in accordance with law.

10 All contentions with regard to the legality and validity of the demands are kept open.

11 We record the statement made by Mr.Dubey, on instructions, as an undertaking given to this Court that the petitioner will not transfer or create any third party interest in the immovable property including the Warehouse therein. This undertaking is given in the presence of the petitioner.

(PRAKASH D. NAIK, J.) (S.C. DHARMADHIKARI, J.)