

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11529 OF 2013

Shekhar Suresh Patwardhan Petitioner
Vs.
The State of Maharashtra & Ors. Respondents

Mr. Siddhesh A. Pilankar for the Petitioner.
Mr. B.V. Samant, AGP, for Respondent Nos.1 to 3.
Mr. Sachindra B. Shetye for Respondent No.4.

WITH

WRIT PETITION {L} NO.16775 OF 2014

Raghunath Vithu Shitap Petitioner
Vs.
The District Mining Officer,
Collector Office, Ratnagiri & Ors. Respondents

Mr. Sachindra B. Shetye for the Petitioner.
Mr. B.V. Samant, AGP, for Respondent Nos.1 to 3.
Mr. Siddhesh A. Pilankar for Respondent No.4.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : FEBRUARY 07, 2018

P.C:

1. By the first petition, the petitioner prays as under:-

"(a) Be pleased to direct the Respondent No.1 and 2 to take action against Respondent No.3 for not acting upon the government resolution dated 23rd January 2009 and orders dated 9th May 2011 and 6th August 2012 as well as reminders issued by Respondent No.2 on 3rd September 2012, 15th September 2012, 25th September 2012 and 29th October 2012 by issuing a writ of mandamus under article 226 of The Constitution of India, 1956."

2. With the assistance of the learned Advocates, we have perused a copy of the Government Resolution dated 23-1-2009.

3. This Government Resolution concerns the abandoned and/or closed mines. When the mining or excavation activities are abandoned or they are closed, the site is left either unfilled or unlevelled. At times the areas where the excavation activities are undertaken are not properly demarcated and fenced. The indiscriminate mining/excavation activities, therefore, cause accidents and particularly where digging of pits and which are not later on filled in, results in accumulation of water/slush, etc.. There are some accidents reported of drowning, etc.. With a view to deal with such situations and

prevent such occurrences, this Government Resolution has been issued. It empowers the Competent Authorities to deal with individual complaints or grievances of the nature referred in this Government Resolution.

4. The petitioner in the next petition is alleged to have indulged in such activities but the argument of that petitioner is he is not responsible nor has he caused any damage to the earth by any illegal activities of the nature referred in the Government Resolution of 23-1-2009. The activities may be of the predecessor in-title or the successors, but this petitioner cannot be proceeded against and particularly when the Government Resolution is issued in 2009 and the alleged digging is much prior thereto.

5. That the petitioner in the second petition is aggrieved by an order and copy of which is also annexed to that petition at Annexure "D", page 25. The Tahsildar, Ratnagiri, by the order dated 22-4-2014 acted upon a direction of this Court issued in Writ Petition No.11529 of 2013, dated 17-1-2014, that

is the first petition on our board and the prayer from which we have reproduced above. That writ petition worked out itself by this order of 17-1-2014. The second petition complains that without hearing the petitioner in that petition or the affected parties and presuming that the order of this Court directs the petitioner in that petition to fill up and level the pit or the alleged excavated portion, he has been directed to do so.

6. On the earlier occasion, we enquired from Mr. Samant, learned AGP, as to how the order of 22-4-2014 can be made without hearing the petitioner and the affected parties. He sought time to take instructions. The matters were posted today for passing final orders.

7. It is fairly stated by Mr. Samant that the Revenue Officials/Competent Authority misunderstood and misread the order of 17-1-2014 and did not adhere to the principles of natural justice before in issuing a direction of the aforesaid nature. It also did not deal with the petitioner's objection that the Competent Authority and particularly under the

Maharashtra Land Revenue Code, 1966, has no jurisdiction nor any power and authority to issue the impugned direction. If at all the aggrieved complainant has any remedy, it is to approach a Competent Civil Court, bring a suit and seek such reliefs as are permissible in law. Rather, he had instituted such a suit earlier but failed to obtain any prohibitory order. The complainant, however, says that the suit did not raise the grievance and particularly raised in this petition.

8. Be that as it may, it would be improper for us to consider a purely factual dispute. In the light of the fair statement and stand of the State before us coming through the learned AGP, we quash and set aside the order of 22-4-2014. We direct that the Competent Authority shall hear all the affected parties and pass a speaking order. We clarify that we have not expressed any opinion on the rival contentions. The petitioner in the second petition can raise appropriate pleas including on the jurisdiction, competence and power of the authorities under the Maharashtra Land Revenue Code, 1966 to deal with the complaint of the aggrieved party. Equally, the aggrieved party

can counter these submissions and each of these are kept open.

9. The writ petitions are disposed of.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)