

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13217 OF 2016

Supreme Manor Wada Bhiwandi
Infrastructure Pvt.Ltd.

... Petitioner.

V/s.

The Divisional Commissioner, Konkan Division
and others.

... Respondents.

Mr.Anilkumar K. Patil for the petitioner.
Mr.N.C.Walimbe, AGP for the respondents.

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CORAM : A.S.OKA AND M.S.SONAK, JJ.

DATE : 4th September 2018.

P.C.:

Heard the learned counsel for the petitioner and the learned AGP for the respondents. The learned counsel appearing for the petitioner tenders a draft amendment which is taken on record and marked "A-1" for identification. We permit the petitioner to carry out amendment as per draft amendment. Amendment to be carried out within two weeks from the date this order is uploaded on the server.

2. Considering the narrow controversy involved in this petition under Article 226 of the Constitution of India, the same is forthwith taken up for final disposal. The first order which is subject matter of challenge is dated 14/20th October 2016 (Exhibit-A to the petition) by which the Tahasildar, Palghar in exercise of powers under sub-section (7) of section

48 of the Maharashtra Land Revenue Code, 1966 (for short “the said Code”) directed the petitioner to deposit a sum of Rs.7,30,17,364/-. The allegation is that while carrying out the work of road widening, the petitioner has used minor minerals of the quantity mentioned therein without payment of royalty to the State Government. The petition as originally filed also contain a challenge to the show cause notice dated 27th September 2016 issued by the Tahasildar, Wada to the petitioner calling upon the petitioner to show cause as to why action under sub-sections (7) and (8) of section 47 of the said Code should not be initiated against it for illegal use of minor minerals while carrying out the work of widening of the subject road.

3. In reply filed to the petition by Shri Mohan Ramakant Naladkar, Sub-Divisional Officer, Wada, a copy of the order dated 18th October 2016 passed by the Tahasildar, Wada on the basis of the notice dated 27th September 2016 (Exhibit-B to the petition) has been annexed. By the said order, the petitioner has been directed to deposit a sum of Rs.2,39,82,53,620/-. This order is challenged by way of amendment which is permitted today.

4. In normal course, we would have relegated the petitioner to the remedy of appeal under the said Code. However, the learned AGP tendered across the bar a letter dated March 2018 addressed to him by the Sub-Divisional Officer, Sub-Division Wada. In the said letter, he has mentioned that the State is willing to give hearing to the petitioner and pass an appropriate order. Secondly, the main contention of the petitioner is that the order dated 14/20th October 2016 (Exhibit-A) was

passed without issuing a show cause notice and that long with show cause notice dated 27th September 2016, copies of the documents relied upon by the Tahasildar were not furnished.

5. As the respondents have shown willingness to give hearing to the petitioner, no purpose would be served by relegating the petitioner to the remedy under the said Code.

6. It will be also necessary for the Tahasildars of Wada and Palghar to provide copies of the documents relied upon by them in support of the impugned demand so that the petitioner can effectively reply to the demand.

7. Accordingly, we dispose of the petition by passing the following order:

- (i) We direct the representative of the petitioner to remain present in the office of the Tahasildar at Palghar on 3rd October 2018 at 11 a.m. when the Tahasildar will provide copies of the documents relied upon by him in support of the demand made under the order dated 14/20th October 2016;
- (ii) We direct the representative of the petitioner to remain present in the office of the Tahasildar at Wada on 8th October 2018 at 11.00 a.m. when the Tahasildar will furnish him the copies of the documents which are relied

upon in the demand subject matter of the order dated 18th October 2016;

- (iii) In both the cases, the petitioner shall file a reply on or before 31st October 2018. Thereafter, the Tahasildars of Palghar and Wada will give an opportunity of being heard to the petitioner and pass a reasoned order either confirming or modifying or withdrawing the demands made under the order dated 14/20th October 2016 and the order dated 18th October 2016. The Tahasildars shall pass appropriate orders as expeditiously as possible and, in any event, on or before 7th December 2018;
- (iv) We make it clear that we have made no adjudication on the merits of the demand which are subject matter of challenge in this petition and all questions are left open for being decided by the Tahasildars. All contentions on merits are kept open;
- (v) Rule is made partly absolute in terms of the above order.

(M.S.SONAK, J.)

(A.S.OKA, J.)