

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13517 OF 2017**

Shri. Arun Ramkrushna Patil

...Petitioner

Versus

Additional Commissioner,

Konkan Division, Konkan, Mumbai and others

...Respondents

Mr. G. S. Godbole a/w Mr. Dinesh Tiwari, Mr. Swapnil Ambure i/by Dinesh Tiwari & Associates, Advocate for the Petitioner.

Mr. Amol Patil, AGP for Respondent Nos.1 to 5.

CORAM : REVATI MOHITE DERE, J.

DATED : 28th SEPTEMBER 2018

P.C.:

1] Heard learned counsel for the parties.

2] The principal grievance of the Petitioner is that the Appellate Authority i.e. the Divisional Commissioner has not exercised his discretionary powers under the second proviso to Section 256 (2) of the Maharashtra Land Revenue Code. Learned counsel for the Petitioner submits that the impugned order dated 7.11.2017 has been passed without considering the said proviso to Section 256 (2) of the Maharashtra Land Revenue Code and that the Petitioner's application for waiver and subsequently stay was rejected, as the Petitioner had not deposited 25% of the royalty/penalty amount.

3] Learned AGP opposes the Petition.

4] Perused the papers. Section 256 (2) of the Maharashtra Land Revenue Code reads as under :-

“(a) to sub-section (2), the following provisos shall be added, namely :-

“Provided that, where an order against which appeal is preferred involves payment of any amount to the Government, the execution of such order shall not be stayed unless the appellant deposits twenty-five per cent of such amount payable to the Government under the order impugned :

Provided further that, in exceptional cases, the appellate authority may, after recording the reasons in writing therefor, suitably reduce such amount of deposit:

Provided also that, the amount to be deposited by the appellant as specified above shall be adjusted against the amount found payable to the Government under the final orders passed in appeal and in case the amount finally found payable to the Government is less than the amount deposited by the appellant, the excess amount shall be refunded to the Appellant without any interest.”

5] Under the first proviso to Section 256 (2), the execution of an order involving the payment of any amount to the Government is not to be stayed unless the appellant deposits twenty-five percent of such amount payable to the Government under the order impugned. The second proviso stipulates that in exceptional cases, the appellate authority for reasons to be recorded in writing can reduce the said amount of deposit. It appears

that although an application for waiver was made under the second proviso to Section 256 (2), no finding has been recorded by the Divisional Commissioner on the same. It also appears that the Petitioner has styled his application as a waiver application instead of an application seeking reduction of the amount of deposit. Learned counsel for the Petitioner states that the Petitioner will suitably amend the said application for waiver to an application for reduction of the amount of deposit/penalty. It appears that the said application, styled as a waiver application was rejected, only as the Petitioner has not deposited 25% royalty/penalty amount. It may be noted, that the authority has not recorded its finding as to whether the Petitioner had made out a case for reduction of the amount in terms of the second proviso to Section 256 (2), as contended by the Petitioner in the application.

6] Considering the aforesaid, the impugned order dated 07.11.2017 passed by the Divisional Commissioner, Konkan Division, is quashed and set aside and the matter is remitted back to the Divisional Commissioner for fresh consideration.

7] The Petitioner is permitted to amend the Misc. Application filed by him before the Divisional Commissioner i.e. from an application to

waiver to an application for reduction of the royalty/penalty amount.

8] The Divisional Commissioner to decide the application for reduction of the amount in terms of second proviso to Section 256 (2) of the Maharashtra Land Revenue Code and thereafter the application for stay, as expeditiously as possible and in any event, within four weeks from the date of the receipt of this order.

9] The parties to appear before the Divisional Commissioner on 4th October 2018 at 3:00 p.m., on which date, the Petitioner shall amend the application for waiver into an application for reduction of the amount of royalty/penalty. The Divisional Commissioner will thereafter give a date convenient to him. All contentions of the parties are kept open.

10] The Petition is allowed in the aforesaid terms.

11] All concerned to act upon an authenticated copy of this order.

Balaji
Govindrao
Panchal

Digitally signed by
Balaji Govindrao
Panchal
Date: 2018.10.03
17:54:10 +0530

(REVATI MOHITE DERE, J.)