IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (Stamp) No. 35861 OF 2018

Shri. Satish Bapusaheb Khalkar
and another ...Petitioners

Versus

State of Maharashtra
and others ...Respondents

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Mr. Kalpesh U. Patil, Advocate for the Petitioners.
Mr. S.H. Kankal, A.G.P., for Respondents No.1, 3 & 4.
Mr. U.B. Nighot, Advocate for Respondent No.2.
Mr. Dinesh Chavan, Under Secretary, Revenue Department, Mantralaya, Mumbai is present in Court.

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CORAM : R. G. KETKAR, J.

DATE : 20th DECEMBER, 2018

P.C.

1. Heard Mr.Kalpesh U. Patil, learned counsel for the petitioners, Mr. S.H. Kankal, learned A.G.P. for respondents No.1, 3 & 4-State and Mr. U.B. Nighot, learned counsel for respondent No.2, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 4.12.2018 passed by the Hon'ble Minister of Revenue, Maharashtra on the stay application filed in Revision Application No.34/2018. By that order, the Hon'ble Minister stayed the order dated 31.10.2018 passed by the Additional Commissioner, Pune Division, Pune in Appeal bearing

No.R.T.S./Revision/Pune/193 of 2018.

3. Rule. Mr. Kankal waives service on behalf of respondents No.1, 3 & 4 and Mr. Nighot waives service on behalf of respondent No.2. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing. The facts and circumstances, giving rise to filing of the present petition, briefly stated, are as under.

4. It is the case of the petitioners that on 12.4.2006 the Collector, Pune gave permission for carrying out excavation of stones for a period of five years in the land bearing Gat No.92/14 admeasuring 80 Ares situate at village Nighotwadi, Post-Manchar, Taluka-Ambegaon, District-Pune (for short, 'said property') to one Chander Bhiku Chavan. The period of five years was to expire on 11.4.2011. Said permission was given subject to the terms and conditions set out therein. Chander Bhiku Chavan applied to the second respondent Grampanchayat for issuing no objection certificate. Vide a letter dated 30.11.2005 the grampanchayat issued no objection in favour of Chander Bhiku Chavan for excavation of stones and running stone-crusher in the said property. Thereafter no objection was issued by the Grampanchayat on 17.8.2006.

5. It is the case of the petitioners that the registered sale-deed was executed by Chander Bhiku Chavan in their favour on 24.9.2007 and the petitioners were put in possession of the said property. Said Chander Bhiku Chavan also gave undertaking that he will apply to respondent No.4 Collector, Pune for transfer of the permission obtained for excavation of stones in the name of the petitioners. In pursuance thereof, Chander Bhiku Chavan and the petitioners herein applied to the 4^{th} respondent Collector vide letters dated 1.10.2007 for transferring the permission in their favour. Vide order dated 25.6.2008, respondent No.4 Collector transferred the permission dated 12.4.2006 in favour of the petitioners. Prior to applying for transfer, the petitioners also made an application to the Grampanchayat for issuing no-objection certificate. On 31.3.2008, the Grampanchayat issued no-objection certificate in favour of the petitioners.

6. After expiry of five years, the petitioners applied for renewal of the permission. Respondent No.4 Collector, Pune vide an order dated 7.2.2011 granted permission for a period of five years from 31.1.2011 to 30.1.2016. It is the case of the petitioners that vide order dated 4.2.2016, respondent No.4 extended five years' period from 4.2.2016 till 4.2.2021. It is the case of the petitioners

that the petitioners have also paid royalty to the Government for excavation of the stones from the said property.

7. It is the case of the petitioner that the second respondent filed complaint on 29.1.2018 before respondent No.4-Collector for cancelling the mining as well as stone crushing permission granted to the petitioners. This was followed by the notice dated 14.5.2018 by the Collector, Pune to the petitioners.

8. It is the case of the petitioners that respondent No.4 directed the petitioners to remain present before him on 29.9.2018. Without providing any opportunity of hearing to the petitioner, respondent No.4 Collector kept the application filed by respondent No.2 for orders and by orders dated 20.6.2018, respondent No.4 Collector cancelled the permission. Aggrieved by this order, the petitioners preferred Revision Application before the Additional Commissioner, Pune Division, Pune. By order dated 31.10.2018, the Additional Commissioner allowed the Revision Application.

9. Aggrieved by this decision, respondent No.2 preferred second revision before the Hon'ble Minister of Revenue, Maharashtra. Respondent No.2 also filed separate application for stay of the impugned order. The petitioners were served with the notice dated 30.11.2018 thereby intimating that the revision will be

heard on 4.12.2018 before the Hon'ble Minister. It is the grievance of the petitioners that the petitioners were not served with the revision as also stay application filed by the second respondent. They were served during the course of hearing before the Hon'ble Minister. The petitioners appeared before the Hon'ble Minister through Advocate. As they were not served with the copy of the Revision as also the stay application, adjournment was sought for filing reply and prayer was made that no stay be granted to the order dated 31.10.2018 passed by the Additional Commissioner till next date of hearing. It is the case of the petitioners that they were informed that the next date of hearing will be intimated to them. Instead of adjourning the matter, by order dated 4.12.2018, the Hon'ble Minister granted stay to the order dated 31.10.2018. It is against this order, the petitioners have instituted present Petition.

10. Mr. Patil submitted that the Hon'ble Minister without hearing the parties granted stay on 4.12.2018 till disposal of the Revision. As the petitioners were not heard, the impugned order deserves to be set aside.

11. On the other hand, Mr. Nighot supported the impugned order. He invited my attention to the finding recorded in the oder dated 20.6.2018 passed by the Collector, Pune. He further

submitted that clause (4) of the operative part of the order dated 31.10.2018 passed by the Additional Commissioner shows that said order was to come into force after expiry of appeal period. The appeal period is 60 days from 31.10.2018. He, therefore, submitted that no case is made out for interfering with the impugned order.

12. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. A perusal of the impugned order shows that the Hon'ble Minister did not hear the petitioners before granting stay. In fact the petitioners sought adjournment on the ground that they were not served with the proceedings filed by the second respondent and in fact were served during the course of hearing before the Hon'ble Minister. They, therefore, sought time for filing reply. Instead of granting time, the Hon'ble Minister granted stay to the order passed by the Additional Commissioner.

13. Mr. Nighot submitted that the order of the Additional Commissioner was to come into effect after 60 days from 31.10.2018 that is to say after 31.12.2018. In that view of the matter, there was absolutely no urgency for passing of order of stay on 4.12.2018 that too without hearing the petitioners. On this ground alone, the impugned order is liable to be set aside. The learned counsel

appearing for the parties submit that they will appear before the Hon'ble Minister on 28.12.2018 and for that purpose no fresh notice be issued to them.

14. In view thereof, the petition is disposed of in following terms:

i. The impugned order dated 4.12.2018 passed by the Hon'ble Minister of Revenue, Maharashtra on the stay application filed in Revision Application No.34/2018 is set aside;

ii. The parties to appear before the Hon'ble Minister of Revenue on 28.12.2018. The Hon'ble Minister will fix a suitable date and thereafter will dispose of the application for stay as expeditiously as possible and preferably before 31.12.2018.

iii. All contentions of the parties on merits are expressly kept open.

iv. Rule is made absolute in aforesaid terms with no order as to costs.

v. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)