

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2480 OF 2018

NANDKUMAR LAXMANRAO DAKHORE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Shri Ghatol Patil Shahaji B.
AGP for Respondents 1 to 4 and 6 to 8 : Shri S.W.Munde.
Advocate for Respondent 5 : Shri P.V.Mandlik, Senior Advocate a/w Shri
Mandlik Pratap P.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th April, 2019

Per Court:

1 On 26.03.2018, this Court had passed the following order :-

- "1] The petitioner is aggrieved by the order dated 17/01/2018, by which, the Additional Divisional Commissioner-2, Aurangabad has partly allowed the Revision Petition filed by respondent No.5 and has remitted the matter to the Additional Collector for a fresh decision.
- 2] I have heard the learned Advocate for the petitioner and the learned AGP on behalf of respondent Nos.1 to 4, 6, 7 and 8.
- 3] Issue is as regards recovery from respondent No.5. By order dated 09/06/2016 the Tahsildar concluded that respondent No. 5 was liable to pay Rs. 6,07,24,485/- for the unlawful excavation of 6519 brass sand, under Section 48(7) of the Maharashtra Land Revenue Code, 1966 (for short "the M.L.R.Code,1966"). This order was challenged before the Sub-Divisional Officer by respondent

No.5. By order dated 16/09/2016 the appeal was rejected. In a further proceedings, by way of an Appeal under Section 247 of the M.L.R. Code, 1966, the Additional Collector, Parbhani dismissed the appeal.

- 4] The litigating sides appeared before this Court in Writ Petition No.9167/2016 which was disposed of by the Division Bench on 03/08/2017 and in a Review Application No. 218/2017, in which the learned Division Bench passed an order on 14/08/2017, concluding that the penalty would be recovered in accordance with the law, unless there is any other legal impediment.
- 5] Despite the strenuous submissions of the learned AGP, prima-facie, I find that the impugned order dated 17/01/2018, remanding the matter back to the Additional Collector is without reasons .
- 6] Issue notice to the respondents, returnable on 03/05/2018.
- 7] Learned AGP waives service for respondent Nos.1 to 4, 6, 7 and 8.
- 8] Until the returnable date in this matter, the impugned order dated 17/01/2017 shall stand stayed.
- 9] Copy of the petition paper book for issuance of notice to respondent No.5, shall be supplied on or before 06/04/2018 , failing which, this petition shall stand dismissed without reference to the Court on 07/04/2018."

2 Prima facie, this Court had concluded in paragraph 5 of the above reproduced order that the Additional Divisional Commissioner had directed the remanding of the matter back to the Additional Collector, without assigning reasons.

3 After hearing the parties, this Court passed an order on

25.02.2019 in which, it was mentioned that the locus of the Petitioner would be tested.

4 It is pointed out today by the Petitioner that he was before the learned Division Bench of this Court in Writ Petition No.9167/2016. This Court had entertained the said petition and had disposed of the same by order dated 03.08.2017 directing that the amount of penalty, as confirmed by the Additional Collector, be recovered in accordance with law.

5 The learned AGP submits that the amount was not recovered.

6 Respondent No.5 herein then preferred Review Application No.218/2017. The learned Division Bench of this Court passed an order on 14.08.2017 observing in paragraph 6 that the penalty amount is to be recovered from Respondent No.5 subject to any judicial or quasi judicial order passed in any proceeding. It was then observed in paragraph 7 that if any judicial or quasi judicial authority, in an appropriate legal proceeding, passes an order, the order of recovery would be subject to the said order. It was also noted that till any prohibitory order is passed, the Authorities are entitled to execute the order of this Court.

7 I have considered the strenuous submissions of the learned Senior Counsel appearing on behalf of Respondent No.5. I have also considered the affidavit in reply filed by him on 17.07.2018.

8 It is obvious that after the Additional Collector passed an

order on 09.06.2017, the learned Division Bench of this Court had passed it's orders on 03.08.2017 and 14.08.2017. The learned JMFC, Purna delivered the judgment on 29.11.2017. All these orders have been passed after the Additional Collector had passed it's order.

9 All these orders were placed before the Additional Divisional Commissioner, Aurangabad. In a single sentence, the Additional Divisional Commissioner, by abdicating it's jurisdiction to decide the revision application filed by Respondent No.5, concluded that the Additional Collector should take a decision. Such an order cannot be sustained. The Additional Divisional Commissioner is not expected to abdicate it's powers. It is, in fact, expected that the said Authority would apply it's mind to the subsequent orders passed and consider the issue before it on it's own merits.

10 In view of the above, this Writ Petition is partly allowed. The impugned order dated 17.01.2018 is quashed and set aside and Case No.2017/ROR/REV/ 259 stands remitted to the office of the Additional Divisional Commissioner-2, Aurangabad for a hearing and a fresh decision. The litigating sides shall appear before the said Authority on 26.04.2019 at 11:00 am. Formal notices need not be issued.

11 It is made clear that the said Authority shall decide the revision application on it's own merits and pass a reasoned order considering all the orders in connection with the cause of action.

12 All contentions of the parties are kept open for the said Authority to consider while deciding the said revision.

13 Considering that the dispute is before the Authorities for the past two years, it is expected that the Additional Divisional Commissioner would deliver it's reasoned order on or before 15.07.2019.

kps

(RAVINDRA V. GHUGE, J.)