

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 6858 OF 2012

Devidas s/o Sitaram Kuwar

Petitioner

versus

The State of Maharashtra
& others

Respondents

Mr. M.M. Nerlikar, AGP for respondents.

**CORAM: PRADEEP NANDRAJOG, CJ &
R.G. AVACHAT, J.**

DATE: 27.09.2019

PER COURT :

1] Though none appears for the writ petitioner, we have perused the averments in the writ petition and have heard learned AGP for the State.

2] The challenge is to order dated 18.06.2012 dismissing Original Application No. 651/2011 filed by the petitioner challenging notice/order dated 01.10.2009 and follow up notices dated 16.06.2010 and 10.05.2011. Liability in the sum of Rs. 63,636/- was fastened upon the petitioner vide order dated 01.10.2009. The two orders were consequential orders calling

upon the petitioner to pay Rs. 63,636/- as per order dated 01.10.2009.

3] The relevant facts are that in the year 2003, at the request of the villagers, construction of a water tank in Sonwad, Tq. Shahada, Dist. Nandurbar was sanctioned. The petitioner was working as a Deputy Engineer in the Minor Irrigation Division. He visited the site on account of there being some issue regarding whether the site at which the tank was to be constructed belonged to private individual or not. The project had been inaugurated in the presence of the Collector.

4] It so happened that ultimately the land turned out to be a private land and compensation to the owner in the sum of Rs. 1,07,848/- was paid, part liability was fastened upon the petitioner. The same was in the sum of Rs. 63,636/-.

5] Suffice it to state, petitioner was directed to construct/erect the tank at the spot mentioned. It is not the case that the petitioner was obliged by law or instructed by the department to verify whether the land on which the tank was to be constructed belongs to the Government or was a private

land.

6] This aspect has been overlooked by the Tribunal vide impugned order dated 18.06.2012. It also needs to be highlighted that by the year 2010, the petitioner had superannuated from service and recovery was directed to be made by deducting Rs. 5,303/- per month from the pension of the petitioner.

7] We dispose of the petition quashing order dated 01.10.2009. We declare that the sum of Rs. 63,636/- cannot be recovered from the petitioner. If the amount has been recovered in full or in part from the pension of the petitioner, the same shall be re-credited in the account of the petitioner where pension is deposited. If the amount has not been recovered or part thereof requires to be recovered, the recovery would be stopped.

(R.G. AVACHAT, J.)

CHIEF JUSTICE