IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1463 OF 2019

Shree Bal Properties & Finance Pvt. Ltd. …Petitioner
A Company incorporated
under Indian Companies Act, 1956,
having registered address:
4, Buona Casa, Sir P.M. Road,
Fort, Mumbai – 400 001
Through one of its directors
Mr.Sharad Dattatray Bal

Versus

1. State of Maharashtra …Respondents
   Through the office of
   Government Pleader
   Attached to this Hon'ble Court

2. The Tahsildar, Pune
   76/10, NH4, Shukrawar Peth,
   Pune, 411 002

3. The Divisional Commissioner
   (Revenue) Pune
   Office of the Divisional
   Commissioner, Pune,
   Vidhan Bhavan, Pune-411001.

4. The Collector Pune District,
   New Collector Office Building,
   Opposite Sassoon Hospital
   Station Road, Pune 411 011

Mr.Siddhesh Suresh Bhole a/w Ms.Krupashee Sawant for the petitioner.
Mrs.P.N. Diwan, AGP for the respondent – State.

Mr.Sharad Bal, authorised representative of the petitioner – Shree Bal Properties and Finance Pvt. Ltd.

CORAM : R.M. BORDE AND

PUSHPA V. GANEDIWALA, JJ.

DATE : 27th FEBRUARY 2019.

ORAL JUDGMENT

1. Heard. Rule. With the consent of the parties the petition is taken up for final hearing at the stage of admission.

2. The petitioner is objecting to the order issued by the Collector, Pune on 11th January 2017 directing it to deposit Rs.11,59,54,500/-. The amount is determined towards unearned income on account of sale of the property for non agricultural purpose. The petitioner has deposited unearned income to the tune of Rs.6,24,03,000/- on 7th July, 2012. However, Government Auditor has raised an objection in his audit report of the year 2014 that the amount deposited by the petitioner is deficient and short recovery of unearned income in the sum of Rs.11,60,00,000/- shall have to be made. After issuance of the order by the Collector, Pune, a notice within contemplation of Rule 5 of Maharashtra Realisation of Land Revenue Rule, 1967 was

issued on 16th January 2017. The order of attachment has been issued and the property is put under attachment on 16th February 2017.

3. The petitioner states that the respondent Authorities recorded mutation in the name of the State Government on 27th February 2017 and proceeded to issue sale notice on 23rd January 2019. It is the contention of the petitioner that prior to issuance of notice calling upon the petitioner to deposit the amount, no opportunity of hearing was extended to the petitioner to explain as regards the objection of unearned income as claimed by the Collector. The petitioner contends that had it been extended an opportunity of hearing, it would have satisfied the Authorities, as regards the sufficiency of amount already deposited by it towards unearned income. Apart from this, the Authorities could not have proceeded to direct the recovery of the amount merely on account of recording of alleged deficiency by the Government Auditor in his audit report. It is contended that the objection raised by the Auditor in his audit report, shall not form the basis for raising the demand, without independent application of mind to the facts and circumstances of case and without recording reasons for arriving at such conclusions.

4. In this context, the explanation tendered in affidavit in reply by one Astha Luthra, functioning as Senior Deputy Accountant General/ Admn. in the office of Accountant General (Audit) II, Maharashtra, Nagpur presented in Writ Petition No. 720 of 2017 is relevant. In paragraph Nos. 2 to 8 it is recorded thus :

> *"2. At the outset I submit that the Office of the Accountant General (Audit) – II, Maharashtra, Nagpur, conducts the audit of the accounts of the State Government of Maharashtra for and on behalf of the Comptroller and Auditor General of India (hereinafter referred to as CAG for short), an independent constitutional authority, under the provisions of Article 148 to 151 of the Constitution of India and the CAG's (Duties Powers and Conditions of Service) Act, 1971.*
> *3. I say that the audit report of CAG relates to matters arising from performance audit of selected programmes and activities and compliance audit of Govt. Departments. The compliance audit refers to examination of transactions relating to expenditure and revenue receipts of the audited entities to ascertain whether the provisions of the Constitution of India, applicable laws, Rules, Regulations and various orders and instructions issued by competent authorities are being complied with whereas Performance Audit examines whether the objective of an organization, programme or a scheme have been achieved economically, efficiently and effectively.*
>
> *4. In Compliance Audit, initially the Audit Party test checks the records/ documents etc. of the auditee units and brings out the irregularities noticed during such test checks to the notice of the Head of the Auditee Unit for examination and reply. In case reply of the Head of the Unit is convincing, the audit objection is settled on the spot. The irregularities which cannot be settled based on the replies of the Head of the Auditee Unit are included in the Inspection Report incorporating the views of the Head*

of Auditee Unit are included in the Inspection Report incorporating the views of the Head of Auditee Unit to be issued by the O/o. Accountant General (Audit) – II, Maharashtra, Nagpur to the Head of Auditee Unit as well as its higher authorities for examination and reply.

5. Major Irregularities in the form of audit objections in the Inspection Report, which are not settled due to replies of the executives bearing unconvincing or there being no reply are again brought to the notice of the highest authority of the State Government in the form of Draft Paragraph for examination.

6. Such Draft Paragraphs and replies of the State Government thereto are considered by the Office of the CAG and are included in the Audit Report to be submitted to the Governor of Maharashtra for laying before the State Legislature in accordance with the provisions of Article 151 of the Constitution of India after approval by the CAG.

7. In performance Audit, the irregularities noticed by Audit party are brought to the notice of head of auditee units for examination and reply. In case reply of the Head of the Unit is convincing , the audit objection is settled on the spot. The irregularities which cannot be settled based on the replies of the Head of the Auditee Unit are included in the Draft Performance Audit Report, incorporating the views of the Head of Auditee Unit is issued by the Audit to the concerned Ministry of Government for comments/ compliance. On receipt of Ministry's comments the objection are included in the Audit Report of the C & A.G. of India to be submitted to the Governor of the State for laying before the State Legislature, in case the reply of Ministry is not convincing or no reply is received from the Ministry.

8. Audit Paragraph from the Audit Reports of the CAG are examines by the Public Committee, a Parliamentary Committee constituted by the State Legislature in accordance with the provisions of the Rules of

> Procedures and Conduct of Business in State Assembly. Accordingly, the CAG of India presents the Audit Report to the Governor of State which is laid before the State Legislature."

5. On consideration of the procedure and the purpose of conducting the audit by the Accountant General in respect of the Government Accounts, the Petitioner would be justified in contending that mere raising of objections by the Auditor in the Audit Report/ Inspection Report itself shall not form the basis for recovery of the amount. The concerned authorities have to independently apply mind and arrive at appropriate decision as regards the admissibility of claim of amount towards the revenue recovery.

6. In the instant matter, it appears that the Authorities have not independently applied mind nor have conducted the assessment independently in furtherance of the objection raised by the Government Auditor in his report. In the circumstances, we direct that the order issued by the Collector impugned in this petition shall be construed as a notice of demand and the petitioner shall be extended an opportunity of hearing before confirming the said demand or passing of a final order. The Collector, Pune shall after extending an opportunity of hearing to the petitioner shall pass a

reasoned order in observance of the procedure prescribed under the law.

7. The petitioner shall cause appearance before the Collector, Pune on 6th March 2019, and as such no separate notice requiring its presence shall be necessary.

8. In view of the quashment of the order passed by the Collector, the consequential actions/steps/orders taken by the Revenue Authorities shall also be deemed to have been quashed.

9. The petitioner undertakes that it will not create any third party interest or any other encumbrances in respect of the property which is subject matter of recovery until the decision of the Collector as regards the demand towards the unearned income.

10. The Collector, Pune shall take appropriate decision in the matter in observance of directives as recorded above and in accordance with law as expeditiously as possible preferably within three months from today.

11. It is needless to point out that in the event of issuance of any order adverse to the interest of the petitioner, it would be open for

the petitioner to avail of remedies available in law, for raising challenge.

12. In view of the directions above, the writ petition is disposed of.

13. It is further clarified that this Court has not expressed any opinion on merits of controversy raised in this petition and it would be open for the Collector to take into consideration all contentions those would be raised by the petitioner and shall proceed to pass order in accordance with the provisions of law.

14. Rule is made absolute. There shall be no order as to costs.

15. Parties to act upon authenticated copy of this order.

[PUSHPA V. GANEDIWALA, J.] **[R.M. BORDE, J.]**