IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2387 OF 2017

Bayer Crop Science Limited and anr. ... Petitioners.

V/s.

State of Maharashtra and ors. ... Respondents.

Dr. Milind Sathe, Sr. Advocate a/w. Mr. Saket Mone, Mr.Makarand Savant, Mr. Vishesh Kalra and Mr. Subit Chakrabarti I/b Vidhii Partners for the Petitioner.
Mr.P.P. More, AGP for the Respondent No.1 – State.
Mr. Rohit P. Sakhadeo for the Respondent Nos.4 and 5.

CORAM : R.M. BORDE AND V.L. ACHLIYA, JJ.
DATE : 9th JANUARY 2019.

P.C.:

1] Heard the learned Senior Advocate for the petitioners, the learned AGP for respondent No.1 – State and the learned Counsel appearing for respondent Nos.4 and 5.

2] The learned Senior Advocate appearing for the petitioners informs that though the challenge is raised in this Writ Petition in respect of demand notices dated 30th December 2015 and 31st December 2016, the issue in respect of the said two notices is a matter of consideration in a Revision Application tendered before the Hon'ble Minister and as such, the grievance raised by the petitioners in the instant Petition in respect of those two notices is concerned, the same is not pressed.

3] The petitioners are objecting to the notice dated 5th January 2017 and consequential action in pursuance to the notices dated 2nd February 2017 and 15th February 2017. The Tahsildar, Thane had issued notice on 5th January 2017 making a demand in respect of Non-Agricultural Tax amounting to Rs.3,73,575/-, Conversion Tax of Rs.18,67,875/- and a penalty of Rs.1,49,43,000/-. The petitioners state that the demand in respect of Non-Agricultural Tax and the Conversion Tax has been fulfilled and a sum of Rs.22,41,450/- is paid on 2nd March 2017. The petitioners are objecting to levy of penalty under the demand notice dated 5th January 2017. It is the contention of the petitioners that it is impermissible for the Tahsildar to direct imposition of penalty contrary to mandate of Section 42 -A of the Maharashtra Land Revenue Code,1960. It is informed that the petitioners have not yet taken steps for raising construction and the user of the land property has not been changed. It is further contended that it is impermissible for the Tahsildar to direct imposition of penalty without extending an opportunity of hearing to the petitioners. It is not a matter of controversy that before issuing direction in respect of imposition of penalty, the petitioners have not been extended opportunity of hearing. The petitioners contends that there is a valid defence available to him in respect of the demand notice issued by the Tashildar directing payment of penalty. In any case, adverse action of raising demand in respect of penalty shall not have been taken without extending an opportunity of hearing to the petitioners.

4] The learned AGP appearing for the State informs that an opportunity of hearing would be extended to the petitioners and the issue of imposition of penalty under the notice dated 5th January 2017 will be reconsidered.

5] In this view of the matter, the respondent No.1 – State shall not insist upon the recovery of amount of penalty claimed under the notice dated 5th January 2017 until the issue in that regard is reconsidered by Tahsildar, Thane. The Tahsildar, Thane shall pass an appropriate orders after extending an opportunity of hearing to the petitioners as expeditiously as possible and preferably within a period of eight weeks from today.

6] The petitioners shall cause appearance before the Tahsildhar, Thane on 21st January 2019 and as such no separate notice requiring presence of the petitioners before the Tahsildar is necessary.

7] In view of above, Writ Petition is disposed of.

(V. L. ACHLIYA, J.) **(R.M.BORDE, J.)**