

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3241 OF 2018

M/s. S.K. Heights Pvt. Ltd. ... Petitioner.

V/s.

The State of Maharashtra & Ors. ... Respondents.

**ALONGWITH
CONTEMPT PETITION (ST.) NO. 10975 OF 2018
IN
WRIT PETITION NO. 3241 OF 2018**

M/s. S.K. Heights Pvt. Ltd. ... Petitioner.

V/s.

Dr. Mahendra Kalyankar & Ors. ... Respondents.

Mr. R. D. Suryawanshi, Advocate for the Petitioner.

Mr. A.I. Patel, Additional G.P. for the State - Respondent Nos.
1, 2 & 3 in both the matters.

CORAM : R.M. BORDE & N.J. JAMADAR, JJ.

DATE : APRIL 25, 2019.

PC :

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

2 The Petitioner has approached this court, raising objection to the order passed by the Tahasildar, Thane, on 03rd November, 2016, directing the Petitioner to pay amount

towards the royalty for illegal excavation of soil, totaling Rs. 7,04,45,000/- within a period of seven days from the receipt of the said order. The order, impugned in this petition, is stated to have been issued in exercise of powers conferred under the provisions of Section 48(7) of the Maharashtra Land Revenue Code, 1966. According to the Petitioners, the aforesaid order was never served upon the petitioner; however, he came to know only after initiation of action for recovery of the notice of attachment of the property issued by the Tahasildar, Thane on 23.01.2017. The petitioner contends that the order impugned in the petition has been issued in breach of the principles of natural justice in as much as the petitioner was not extended an opportunity of hearing before passing the adverse order.

3 Learned AGP appearing for the State has invited our attention to the notices stated to have been issued to the petitioner prior to passing of the impugned order. It is observed that the notice dated 05th April, 2016 had actually been served on the petitioner on 25th April, 2016 i.e. on the prescribed date of hearing of the matter. The petitioner as such could not effectively avail an opportunity of placing his contentions before the Tahasildar. Though the petitioner has raised issues, touching the merits of the order and has contended that the impugned order, in any case, is not sustainable in law and is not in conformity with law laid down

by the Apex Court in the matter of **Promoters and Builders Association of Pune vs. State of Maharashtra & Ors.**, reported in (2015) 12 Supreme Court Cases 736, however, at this stage, we do not propose to deal with merits and demerits of submissions made, since we propose to remit the matter back to Tahasildar for reconsideration. It would be open for the Tahasildar to re-consider the issue of violation allegedly made by Petitioner, after extending an opportunity of hearing to the petitioner and pass appropriate order in observance of the law laid down by the Hon'ble Supreme Court in the matter of “Promoters and Builders Association”, cited supra.

4 The order dated 03rd November, 2016 impugned in this petition shall be treated as notice to the petitioner to show cause and the petitioner shall have liberty to put his reply to the notice before the Tahasildar. The petitioner shall also be accorded personal hearing before passing of the final order by the Tahasildar.

5 The petitioner shall appear before the Tahasildar on 28th May, 2019 and as such no separate notice, requiring his presence, is necessary.

6 The order impugned in this petition dated 03rd November, 2016 and the consequential action taken in

furtherance of said order i.e. notice of attachment of property, stands quashed and set aside.

7 Writ Petition stands disposed of accordingly. Rule is made absolute to the extent specified above. No costs.

8 In view of disposal of writ petition, contempt petition (ldg.) no. 10975/2018 does not deserve consideration and the same is disposed of. The notices issued earlier in contempt petition, are hereby recalled.

(N.J. JAMADAR, J.)

(R.M. BORDE,J.)

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