

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 8040 OF 2019

Daulatrao Dilipsingh Shinde .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

Mr. Avinash Khandekar for the Petitioner.
Mr. K. S. Thorat, AGP for Respondent Nos.1 to 3-State.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 18th DECEMBER, 2019.

P. C. :

1. Heard learned Counsel for the parties.
2. Petitioner Daulatrao Dilipsingh Shinde is a resident of village Mhaisal. He made a complaint dated 30.01.2019, Exhibit A, to the Grampanchayat drawing attention of the Grampanchayat that on account of excessive illegal mining in the village, there was imminent threat to the environment. Marching under his banner, 9 other villagers also signed a representation, Exhibit B dated 06.02.2019 to the Collector, with copy to Sub-divisional Officer and Tahasildar praying that immediate action be taken.
3. The immediate action which resulted was the issuance of a notice dated 19.06.2019 by the Tahasildar and directed against four individuals. The 4th is the Petitioner. The notice records that on 15.06.2019 the Circle Officer had gone to the spot and drawn up a

panchnama as per which 33180 brass of earth had been illegally excavated from Gat No. 1667 and that as per the panchnama the illegal abstraction was from the year 2014-15 to 2016-17. The Petitioner responded to the show cause notice dated 19.06.2019 on 24.06.2019 demanding the necessary documents and in particular the panchnama drawn up by the Circle Officer. He specifically denied therein having any concern with the land comprised in Gat No. 1667.

4. The impugned order dated 05.07.2019 was passed rejecting the response of the Petitioner and levying upon him penalty in a sum of ₹ 10,54,06,080/-.

5. The Petitioner appears to be a strong willed person, for the reasons any other person would have suffered a heart attack for such penalty levied. He approaches this Court praying that the order dated 05.07.2019 be quashed.

6. There are enough reasons to quash the penalty. At the foremost it is the fact that it was the petitioner who drew the attention of the authorities to the illegal mining. He is the sole signatory to Exhibit 'A' and joint signatory to Exhibit 'B'. The second reason is that the show cause notice dated 19.06.2019 referred to and recorded illegal mining on land comprised in Gat No. 1667. The show cause notice is premised on a panchnama drawn up by the Circle Officer on 15.06.2019. The show cause notice states that as per panchnama the 4 noticees were the offenders and had carried out the illegal activities from the year 2014-15 till 2016-17. Now, common sense tells us that the spot proceeding at best could disclose the volume of soil extracted in land comprised in Gat No. 1667 but could not furnish any information as to when the illegal

excavation took place and who resorted to the illegal excavation. The next reason for the impugned order to be quashed is that the Petitioner's denial of having any concern with land comprised with Gat No. 1667 has not been redressed with reference to a finding as to who owns the land comprised in Gat No. 1667. Lastly, the show cause notice is addressed to four persons and without any finding as to why the Petitioner alone is liable he is visited with the penalty.

7. Allowing the Writ Petition, we quash the order dated 05.07.2019.

8. Since the issue relates to illegal mining, we issue a direction the Collector, District Sangli to find out who is the owner of the land comprised in Gat No.1667. The illegal mining has taken place in land comprised in said Gat No.1667. Notice to be issued to the recorded owner of the said land. If the land is not in any private ownership and vests in the Government, a proper inquiry would be held to find out the culprit and action taken against him as per law.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun
M.
Kadam

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by Arjun M.
Kadam
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2019.12.19
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