

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

**WRIT PETITION NO.9238 OF 2018**

Shri. Balasaheb Dagadu Shelke .... Petitioner

Vs.

Shri. Sanjay Pawar, .... Respondents  
(Tahsildar, Karmala) & Ors.

Mr. G.S. Godbole a/w Mr. Y.G. Thorat I/by Ashok B. Tajane for the  
Petitioner.

Mr. Nitin P. Deshmukh for Respondent no.1  
Mr. S.D. Rayarikar, AGP for Respondent nos. 2 and 3.  
Mr. Purushottam G. Chavan for Respondent nos. 4 and 5.

**Coram : SMT. SADHANA S. JADHAV, J.**  
**Date : 8<sup>th</sup> February 2019**

P.C.:

1            Heard. Rule. Rule made returnable forthwith with the  
consent of the parties.

2            The petitioner herein is proprietor of Shelke  
Construction. The petitioner being aggrieved by the order dated 7<sup>th</sup>  
June 2018 passed by Tahsildar, Karmala, District Solapur has filed

the present writ petition. The facts necessary to decide the present writ petition are as follows :

The petitioner herein had submitted a tender for road repairs and raising the height and width of road passing by Ujjani Canal Division No. 9, Mangalwedha. The Project was floated through Maharashtra Krishna Valley Development Corporation. The petitioner-Company had been issued Work Order on 3<sup>rd</sup> August 2009. The nature of work involved excavation of minerals from the land owned by the Government.

3           According to the learned counsel for the petitioner since the Project was undertaken by the Government, it was not necessary to deposit the royalty for excavation of minerals, however, in case it was payable, it was to be deducted from the earnest money deposit paid by the petitioner at the time of accepting the Work Order.

4           The issue involved in the present petition is to the limited extent as to whether an authority i.e. the Tahsildar has followed the principles of natural justice before passing of the order. It is seen

from the records that the Ex-Sarpanch, Devidas Vitthal Salunkhe and Ram Jayvant Pandule had filed complaints against the contractor, to the extent that non-payment of royalty towards excavation amounts to cheating and cause loss to State exchequer.

5           According to the learned counsel for respondent nos. 4 and 5, the respondents had filed several complaints since 2011. The last complaint was filed on 11<sup>th</sup> April 2018. Respondent no.4 had filed an application under the provisions of Maharashtra Land Revenue Code contending therein that it is incumbent upon the contractors to pay the royalty for excavation of minerals i.e. of rubble, stone etc. It was mentioned that the said minerals were excavated without permission from the District Mining Officer and the Construction Company had not paid royalty to the concerned authorities i.e. to the Revenue Department. It is contended by the respondents that he has placed implicit reliance upon the letter received from the District Mining Officer as well as the other revenue authorities that the petitioner has not deposited the royalty. According to respondent nos.4 and 5, the application was filed under

Section 48, Sub-Clause 7 of the Maharashtra land Revenue Code and that a great loss was caused to the Government revenue.

6 Perused the impugned order. It appears that the Tahsildar had given a hearing to the respondent nos. 4 and 5 and the Excavation Engineer was the sole respondent as shown in the order. The Tahsildar i.e. respondent no.1 herein had considered the submissions of the complainant i.e. respondent nos. 4 and 5 and had arrived at a conclusion that the petitioner herein has excavated stones and rubble for the work undertaken by him without obtaining any permission from the District Mining Officer. It was also held that the petitioner has not deposited the royalty. It was further held that the excavation was done without any permission and therefore they were saddled with five times the cost price of the minerals and calculated the same to Rs.3,04,2,000/-. The petitioner was further directed to deposit the amount within 90 days from passing of the order.

7 It is pertinent to note that no notice was issued to the petitioner. It is further seen from the records that on 17<sup>th</sup> July 2018,

the Executive Engineer, Ujjani Canal Division No. 9, Mangalwedha had written a letter to the petitioner-Company on the address “M/s Shelke Construction Company, Shelke Group, 1<sup>st</sup> Floor, Office No. 101, Suyog Fusion Apartment, Dhole-Patil Road, Pune – 411 001”.

8           The Tahsildar had informed the petitioner of the order dated 7<sup>th</sup> June 2018 on the address as “M/s Shelke Construction Company, 291, Somwar Peth, Ganesh Gayatri Apartment, Pune – 400 011. The Executive Engineer had informed of the said order by letter dated 17<sup>th</sup> July 2018. It is further stated that the notice was not accompanied by the order, which was passed and therefore the petitioner had no knowledge of the findings or the reasons recorded by the Tahsildar. Since no notice was issued, the petitioner could not avail the opportunity of hearing and therefore it is apparent that the order has been passed to the prejudice of the petitioner.

9           An implicit reliance can be placed on the judgment of the Hon'ble Apex Court in the case of State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta and State of Punjab Vs. Shri Khaushal Singh,

P.A.S. reported in (1973)1 SCC 120, wherein the Hon'ble Apex Court has held as follows:

“The question for our consideration now is whether the orders imposing a cut in the pension should be set aside for the reason that the officers were not given reasonable opportunity to show cause. The law on the point is not in doubt. Where a body or authority is judicial or where it has to determine a matter involving rights judicially because of express or implied provision, the principle of natural justice audi alteram partem applies. .... the principle of natural justice is also liable to be invoked if the decision of that body or authority affects individual rights of interests and having regard to the particular situation, it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard. ....If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made the order is nullity.”

10           According to the learned counsel for the petitioner, he had not only completed the work but also handed over the Project to the Government long time ago, all effective deductions has been made from the contract value. In any case, it is a matter of fact that no hearing was given to the petitioner. He had no opportunity to

defend his case. Hence, the order dated 7<sup>th</sup> June 2018 deserves to be quashed and set aside.

11            Learned counsel appearing for respondent no1. has submitted that respondent no1. has been transferred to the post of Executive Magistrate, Sangli on 30<sup>th</sup> August 2018. Since the petitioner has alleged malafides against the authorities i.e. the Tahsildar, he has been arraigned as the respondent by name. In all fairness, the learned counsel for respondent no1. Submits that no notice was issued to the petitioner and hence, the principles of natural justice have not been followed. Hence, the order deserves to be quashed and set aside. Hence, the following order.

### **ORDER**

- I)            The petition is allowed.
- II)           Rule is made absolute in terms of prayer clause (A).

**(SMT. SADHANA S. JADHAV, J.)**