

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1134 OF 2009

Mundra Salt & Chemical Industries

...Petitioner

Versus

1.The Collector, Mumbai Suburban District & Ors.

...Respondents

AND

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9492 OF 2009

Mundra Salt & Chemical Industries

...Petitioner

Versus

1.The Tahsildar, Thane & Ors.

...Respondents

Mr.Rajesh S.Datar with Dushyant Pagare, for the Petitioner.

Mr.G.W.Mattos, AGP for the State in writ petition 1134/09.

Mr.S.K.Kankal, AGP for the State in writ petition 9492/09.

Mr.S.R.Rajguru, for Union of India.

CORAM: G.S.KULKARNI, J.**DATED: 8th February, 2019**

P.C.:

1. Writ petition no.1134 of 2009 filed on the original side and Writ Petition no.9492 of 2009 filed on the appellate side involve common issues of facts and law.

2. Challenge in the writ petition no.1134 of 2009 as filed on the original side is to the order dated 4 June 2009 passed by the Collector, Mumbai Suburban District whereby the petitioner-Mundra Salt & Chemical Industries has been directed, to pay the non agricultural assessment charges, with effect from the date the Salt Department of the Government of India canceling the licence of the petitioner, to manufacture salt on the land in question.

3. Challenge in the petition as filed on the appellate side is to the recovery notices which are dated 20 January 2007, 29 June 2009 and 28 October 2009 issued by the concerned revenue department, Thane Collectorate, demanding payment of non-agricultural assessment charges in respect of land which was also used by the petitioner for manufacturing of salt, being levied from the date the petitioner's licence to manufacture salt was cancelled by the Salt Department of the Government of India.

4. The petitioner had earlier approached this court in Writ Petition no.1658 of 2008 (Original side) when this Court by an order dated 24 September 2008 directed that the petitioners be given hearing. This Court had passed the following order:-

“The learned A.G.P. states that the respondents will given hearing to the petitioner as regard their liability to pay land revenue. The

Authority will also hear the Commissioner. The respondents shall proceed with the notice only if they pass an order to the effect that prima facie they have authority to issue notice and the petitioners are liable therefor. In this view of the matter nothing survives in the petition . Hearing shall take place at the office of Collector, Mumbai on 13.10.2008.”

5. Accordingly the Collector, Mumbai Suburban District has passed the impugned order dated 4 June 2009 as assailed in the original side-writ petition, filed by the petitioner-Mundra Salt and Chemicals Industries.

6. This Court heard the Writ Petition (O.S.) for admission on 22 September 2009 and while admitting the petition following interim order was passed:-

“1. Rule. Respondents waive service.

2 By agreement of the parties pending the hearing and final disposal of the writ petition, parties have agreed to the following interim order:

i) The petitioners shall pay an amount of Rs.1,28,85,000/- (Rupees one crore twenty eight lacs, eighty five thousand) to the respondent no.2 on or before 3rd November,2009. The Respondent no.2 shall bring back the amount so deposited by the petitioner on such terms and conditions as ordered by this Court.

ii) The petitioners shall also furnish a bank guarantee of a Nationalised Bank to the satisfaction of the Prothonotary and Senior Master, High Court, Bombay to the tune of Rs. 1,24,57,603

(Rupees One crore twenty four lacs fifty seven thousand six hundred and three) on or before 3rd November, 2009 initially for a period of two years and thereafter renewed from time to time until further orders passed by this Court.

iii) In view of the petitioners agreeing to what is stated in clauses (i) and (ii) above the respondents shall not take any action on the order dated 4th June, 2009 passed by respondent no.1.

iv) This order will in no way preclude the respondents from initiating appropriate proceedings against the buyers of a part of the petitioners property under an agreement dated 6th November, 2007.

6 In view of the fact that the pleadings in the writ petition are complete, the hearing of the writ petition is peremptorily fixed on 4th December, 2009.”

7. Thereafter, the petition was taken up for final hearing prior to the winter vacation 2018 when the hearing of these petitions was adjourned as the learned AGP's appearing in these petitions fairly submitted that they would seek instructions considering the broader canvass of the issues falling for consideration of this Court in these petitions.

8. Today Mr.Mattos, learned AGP on the instructions would submit that the respondent no.1 – Collector intends to withdraw the impugned order dated 4 June 2009 with liberty to issue a fresh show cause notice to

the petitioner and decide the said show cause notice after hearing the petitioner and the Salt Department of the Government of India, and pass a fresh order in accordance with law.

9. This suggestion of the Collector, Mumbai Suburban District is a fair course of action. Accordingly, the Collector, Mumbai Suburban District is permitted to withdraw the impugned order dated 4 June 2009 with liberty to issue a fresh show cause notice, which be issued within a period of four weeks from today. The petitioner shall file its reply to the show cause notice within a period of four weeks from receipt of show cause notice. The Salt Department of the Government of India may also place on record its submissions, if it so desires. The Collector shall grant an opportunity of personal hearing to the petitioner as also hear the representatives of the Salt Department, Government of India and pass a fresh reasoned order in accordance with law, within a period of five months from today. Ordered accordingly.

10. Mr.Mattos at this stage submits that till the above exercise of issuance of fresh show cause notice and its adjudication is undertaken, the interim order dated 22 September 2009 as passed by this Court be

permitted to remain in operation. It would be in the interest of justice that the ad-interim order as passed in this petition shall remain in operation till the fresh show cause notice to be issued is decided and for a period of fifteen days from the date of communication of the order as would be passed on the show cause notice by the Collector.

11. In regard to the petition as filed on the Appellate side, the Collector, Thane, may also issue a similar show cause notice and the adjudication of the said show cause notice also can be undertake by a common authority/Collector by adhering to the same procedure as directed. The notices as impugned in this petition, therefore, also do not survive.

12. The petitions are accordingly disposed of in the above terms. No costs.

13. All contentions of the parties on merits of the disputes are expressly kept open.

(G.S.KULKARNI, J.)