

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.131 OF 2019
IN
WRIT PETITION NO.1854 OF 2012
ALONG WITH
WRIT PETITION NO.1854 OF 2012**

M/s Blossom Developers
Through its partner
Mr. K.N. Shaikh
Versus
The Tahsildar
And Another

... Petitioner

... Respondents

.....

Mr. Prakash Pandit a/w Ms. Prachi Pandit I/b Ms. Meena Fulbandhe for the
Applicant/Petitioner.

Mr. Abhay L. Patki, Addl. G.P. for the Respondents.

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CORAM : S.C. GUPTE, J.

DATE : 3 MAY 2019

P. C. :

. This petition challenges a demand notice/order dated 16 August 2012 passed by Tahsildar, Borivali, Mumbai. The demand is in respect of arrears of royalty and penalty for excavation of minor minerals. It is *inter alia* submitted by the Petitioner, who is a partnership firm and who has filed the present petition through its partner, K.N. Shaikh, that the dues and penalty claimed from the Petitioner were on account of royalty and penalty dues of the Petitioner's partner K.N. Shaikh, the recovery whereof has been set aside by the Minister of Revenue in a revision filed by K.N. Shaikh under Maharashtra Land Revenue Code, 1966. The petition has

been admitted and interim relief has been granted in favour of the Petitioner subject to its depositing a sum of Rs.3.50 crores with the Collector, Mumbai Suburban District. The conditional interim stay granted by this Court has been challenged by the Petitioner in a pending appeal before this Court, being Appeal No.735 of 2012. It appears that in the meantime, K.N. Shaikh has expired. That has led to the filing of the present Notice of Motion. Prayer clause (a) of motion seeks disposal of the petition with a direction to the Respondents-State not to implement the demand notice dated 16 August 2012 against the Petitioner firm. Prayer clause (b) of the motion requires directions to the Tahsildar, in the alternative, to restrict the recovery against the Petitioner firm only to the extent of Rs.80,35,261, which is the credit balance to the account of K.N. Shaikh in the capital account of the Petitioner firm.

2 There is no justification for disposal of the writ petition, simply on the ground that K.N. Shaikh, partner of the Petitioner firm, has expired and the revenue authorities can only now proceed against the capital account of K.N. Shaikh with the firm. The demand notice has been issued to the partnership firm and all contentions of the firm whilst contesting that demand are the subject matter of the present writ petition. Merely because during the pendency of the writ petition, K.N. Shaikh, whose dues, according to the Petitioner, are allegedly comprised in the impugned demand against the Petitioner firm, has expired, the petition cannot be disposed of on a Notice of Motion in the manner proposed by the Petitioner. The writ petition will have to be heard on merits and disposed of after hearing the contesting parties. There is, in the premises, no merit in the Notice of Motion.

3 Notice of Motion is, accordingly dismissed. The petition to come up for final hearing on **13 June 2019**.

(S.C. GUPTE, J.)