

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12206 OF 2018**

CEAT Speciality Tyres Limited .. Petitioners

Vs.

State of Maharashtra
& Anr. .. Respondents

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Mr. Rohaan Cama, Ms. Sneha Sheth and Ms. Archana Uppuluri
i/b Zerick Dastur & ANB Legal for the Petitioners.

Mr. M.M. Pabale, A.G.P. for Respondent Nos.1 and 2.

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**CORAM: PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATED : 22nd JANUARY, 2020.

P.C:-

1. As per the Notification dated 11th May, 2015 issued by the Revenue and Forests Department notifying the Maharashtra Minor Mineral Extraction (Development and Regulation) (Amendment) Rules, 2015, amending Rule 2 and Rule 46, the second proviso added to Rule 46 reads as under:

“Provided further that, no royalty shall be required to be paid on earth which is extracted

AJN This order stands corrected as per speaking to the minutes order dated 28.01.2020.

while developing a plot of land and utilized on the very same plot for land levelling or any work in the process of development of such plot.”

2. Thus, it is apparent that excavation or mining by a person will not attract any royalty to be paid if the Minor Mineral extracted while developing a plot of land is utilized on the same land for purposes of levelling or in any work relating to the development of the said plot.

3. MIDC allotted 49.8 Acres land to the Petitioners bearing Plot No.G-2, Additional Ambernath Industrial Area, Bohonoli Village, Taluka Ambernath, District Thane to set up a Tyre manufacturing plant. Obtaining clearance of the building plans from MIDC on 20th October, 2016, the Petitioners commenced land levelling work at site including digging of trenches to lay the foundation and needless to state the process resulted in excavation of soil yielding sand and stones.

4. The Tahsildar, Ambernath issued a Show Cause Notice dated 13th June, 2018 to the Petitioners informing the Petitioners that the visit by the Mandal Officer on 10th May, 2018 to the site revealed that 100 Brass sand and 200 Brass stones had been excavated but used for levelling at the site.

5. Alleging that the same was in violation of Section 48(7) of

the Maharashtra Land Revenue Code, 1966, the Petitioners were put to notice as to why penal action not been taken.

6. The Petitioners were called upon to produce the necessary licence enabling the Petitioners to excavate Minor Minerals.

7. The Petitioners responded to the Show Cause Notice on 19th July, 2018. The Petitioners wondered as to why the notice has been issued at all when the same itself recorded the fact that the excavated Minor Minerals were used at the site for levelling the site.

8. Penalty order dated 26th July, 2018 was visited upon the Petitioners levying royalty on the sand and stones both being Minor Minerals extracted. The total demand is in the sum of ₹68,10,000/-.

9. The case of the Petitioners is short and simple.

10. The case is that the amended Regulation post 11th May, 2015 exempted levy of royalty on Minor Minerals extracted while developing a plot of land provided the same were utilized at the same plot of land.

11. The Petitioners relied upon the factual admission in the

Show Cause Notice which records that the sand and stones excavated were used for levelling at the site.

12. The only opposition to the Writ Petition is on the technical plea of availability of an alternative appellate remedy to the Petitioners.

13. Suffice it to state where a Show Cause Notice or a penalty order is sans a jurisdiction to the existence of an alternative remedy would not disentitle a Petitioner to avail writ remedy.

14. In view of the aforementioned facts and highlighted admission of the fact contained in the Show Cause Notice dated 13th June, 2018 that the sand and stones excavated at the site was used for levelling the site, holding that the second proviso to Rule 46 shall apply, we dispose of the Writ Petition quashing the Order dated 26th July, 2018. The consequential Demand Notice dated 23rd August, 2018 and the Order dated 14th September, 2018 are also quashed. We further declare that the Show Cause Notice dated 13th June, 2018 is illegal on the face of the fact recorded in the Show Cause Notice.

15. No costs.

(SMT. BHARATI DANGRE, J.)

(CHIEF JUSTICE)

AJN

This order stands corrected as per speaking to the minutes order dated 28.01.2020.