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

**WRIT PETITION NO.1818 OF 2017**

VGS Realty Construction Pvt. Ltd. ...Petitioner
vs.
State of Maharashtra and Others ...Respondents

Mr. Karl Tamboly i/b. Ms. Ketki Puli i/b.Diamondwala & Co., for the Petitioner.
Mrs. Jyoti Chavan, AGP for the Respondents-State.

**CORAM : N. J. JAMADAR**
**DATE : FEBRUARY 27, 2020**

**ORAL ORDER**

. Heard the learned counsel for the parties.

2. This Petition under Article 226 of the Constitution of India assails the legality, propriety and correctness of an order dated 19th April, 2017 passed by the Revenue Minister under section 247 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "Code") in Revision Application rejecting the Revision Application against an order dated 31st December, 2016 passed by the Additional Commissioner, Konkan Division, Mumbai in Appeal/Desk/MNAL/476/2016 whereby the Additional Commissioner was in turn persuaded to dismiss the Appeal preferred by the Petitioner against the

order passed by the Additional Collector, Mumbai Suburban District on 20th April, 2016 levying a penalty of Rs. 1,83,62,985/- for excess excavation of the minor minerals, in exercise of the power under section 48(7) and (8) of the Code.

3. The background facts necessary for determination of this Petition can be summarized as under:

a] The Petitioner is a company registered under the Companies Act, 1956. It deals in the business of development and redevelopment of land including implementing slum rehabilitation schemes in the city of Mumbai. The Petitioner had applied for excavation and removal of minor minerals/murum from various lands at village Malad, Taluka Borivali, District Mumbai. The Sub Divisional Officer, Mumbai had granted excavation permission for different quantities of the minor minerals on 7th January, 2013, 13th September, 2013, 26th November, 2013, 3rd July, 2015 and 27th March, 2015 for aggregate excavation of 20625 brass of minor minerals. It is the claim of the Petitioner that the Petitioner had excavated the minor minerals from the designated lands within the permissible limits.

b] The controversy seems to have arisen as the complaints, including one Mr. Vijay Tripathi dated 16th October, 2015, were received by the authorities of excess excavation in breach of excavation permits. It is the claim of the revenue authorities that the Petitioner was called upon to furnish requisite information and documents by notices dated 31st March, 2015, 24th June, 2015 and 12th August, 2015. However, the Petitioner did not furnish any response.

c] A show cause notice came to be issued to the Petitioner on 10th February, 2016 with the assertion that the Petitioner had excavated excess 2895 Brass minor minerals. Thus, the Petitioner was called upon to show cause as to why the sum of Rs. 1,83,62,985/- should not be recovered from him for the said excess excavation. In the said notice, the Respondent No. 5 adverted to the previous notices dated 31st March, 2015, 24th June, 2015 and 12th August, 2015 allegedly issued to the Petitioner and the fact that on 29th December, 2015 site inspection was carried by the District Mining Officer and it transpired that the total excavation was of 23520 Brass, which was in excess of the permission by 2895 Brass.

d] The Petitioner gave a reply on 1st April, 2016. The Petitioner claimed that the excavation carried out by the Petitioner was to the extent 20244 brass only. The Petitioner shared the contours plan along with levels and areas of excavation work. The Petitioner called upon the Respondent No. 5 to share the data for arriving at the quantity referred to in the aforesaid notice dated 10th February, 2016 so as to facilitate the Petitioner to submit cross measurements at the earliest.

e] The Respondent No. 5, after considering the reply, was persuaded to hold that the explanation offered by the Petitioner in the said reply dated 1st April, 2016 was not satisfactory. Thus, the Respondent No. 5, computed the royalty along with penalty on 2895 Brass excess excavated minor mineral and ordered the Petitioner to pay the sum of Rs. 1,83,62,985/- within a period of seven days of the said order.

f] The Petitioner challenged the aforesaid order passed by the Respondent No. 5 in Appeal before the learned Commissioner, Konkan Division, Mumbai. The Appellate authority, after providing an opportunity of hearing to the Petitioner found no reason to interfere with the order passed by the Respondent No. 5 and dismissed the Appeal, by the impugned judgment and order dated 31st December, 2016. The Revision filed thereafter before the Revenue Minister also failed. The Petitioner has thus invoked the writ jurisdiction of this Court.

4. Heard Mr. Karl Tamboly, learned counsel for the Petitioner and Mrs. Jyoti Chavan, learned AGP for the State at some length.

5. The learned counsel for the Petitioner submitted that the impugned order and the orders passed by Additional Commissioner and Respondent No. 5 suffer from the vice of breach of fundamental principles of natural justice. The authorities have not considered the reply submitted by the Petitioner. According to Mr. Tamboly despite a specific contention and request of the Petitioner that the data on the

basis of which an inference of excess excavation was drawn be shared with the Petitioner, the authorities went on to pass the impugned order without providing a copy of the report of measurement carried out by the District Mining Officer on 29th December, 2015. Thus, the determination process is completely vitiated.

6. In opposition to this, the learned AGP submitted that the site inspection was carried out in the presence of Mr.P.D. Dube, the representative of the Petitioner, as is evidenced by the copy of the panchanama annexed to the report of District Mining Officer dated 29th December, 2015. Thus, according to the learned AGP, the grievance of the Petitioner that the Petitioner was not provided an effective opportunity of hearing to meet the case of excess excavation, is unsustainable.

7. From the perusal of the material on record it becomes clear that controversy revolves around the quantity of minor minerals excavated by the Petitioner. Did the Petitioner excavate minor minerals in excess of the permit ?

8. The answer is essentially rooted in facts. The authorities

assert that there was inspection and assessment which revealed that the Petitioner had excavated 2895 Brass minor mineral beyond the permit. The Petitioner, on the contrary, claims to have excavated 20244 Brass only.

9. It is imperative to note that the notices which were allegedly issued to the Petitioner on 31st March, 2015, 24th June, 2015 and 12th August, 2015 do not contain allegation of excess excavation. In all these notices, the Petitioner was directed to submit contour plan, cross section plans and maps etc. A document which singularly and significantly bears upon controversy is the report of District Mining Officer dated 29th December, 2015. The District Mining Officer claims to have measured pits and rams and found total excavation of 23519.94 Brass. A copy of the panchanama purported to have been drawn on 29th December, 2015 is annexed to the said report. The crucial question which crops up for consideration is whether this material document was shared with the Petitioner and an opportunity was given to the Petitioner to meet the case of alleged excess excavation ?

10. The show cause notice dated 10th February, 2016 does not

provide a satisfactory answer. Though there is an assertion in the show cause notice that the District Mining Officer had inspected the site and after measurement found total excavation 23520 Brass, yet it does not appear that either a copy of the said report or panchanama was annexed to the said show cause notice which came to be served upon the Petitioner. In addition to this, in the reply dated 1st April, 2016 the Petitioner had made a specific request to the authorities that the data for arriving at the quantity of alleged excess excavation by the authorities be furnished to him, so as to facilitate cross measurement by him at the earliest.

11. Admittedly, the factum of excess excavation hinges upon the correctness of the report of the District Mining Officer. As this vital document does not seem to have been furnished to the Petitioner nor an opportunity provided to the Petitioner to meet the case of excess excavation as adverted to in the said report of the District Mining Officer, the determination suffers from the vice of not providing an effective opportunity of hearing to the Petitioner.

12. In the circumstances, it would be necessary to remit the

matter to the Additional Collector (Respondent No. 5) to decide the issue of excess excavation and the royalty and penalty, if any, which may be leviable after providing an opportunity to the Petitioner to deal with the report of the District Mining Officer and the panchanama which was purportedly drawn on 29th December, 2015.

13. Since the sum of Rs.1,37,72,238/- has been recovered pursuant to the order passed by the Tahsildar on 22nd March, 2017, the disposal of the said amount shall abide the order which may ultimately be passed by the authorities on a fresh consideration of the grievance of the Petitioner.

14. Mr. Tamboly, learned counsel for the Petitioners raised a grievance regarding the manner in which the amount came to be recovered from the account of the Petitioner with IndusInd Bank, Opera House Branch, Mumbai. However, since the matter is being remitted back to the authorities, I am not inclined to deal with the said grievance.

15. It is however made clear that this Court has not

considered the merits of the matter and the observations hereinabove have been made only for the purpose of determining as to whether the determination by the authorities was in conformity with fundamental principles of adjudication.

16. Hence, the following order:

1] Writ Petition stands allowed.

2] The impugned order dated 19th April, 2017 passed by Respondent No. 2 - Revenue Minister, the order dated 31st December, 2016 passed by the Additional Commissioner and order dated 20th April, 2016 passed by Respondent No. 5 stand quashed and set aside.

3] The matter stands remitted to Respondent No. 5.

4] The Respondent No. 5 shall determine the aspect of excess excavation, if any, and royalty and penalty, if any, under the provision of Section 48(7) and (8) of the Code, after providing an opportunity to the Petitioner to deal with the report of the District Mining Officer dated 29th December, 2015 and the panchanama purported to have been drawn on 29th December, 2015.

5] The amount of Rs. 1,37,72,238/- recovered from the Petitioner shall abide the outcome of the fresh determination by Respondent No. 5.

6] The Petition accordingly stands disposed of.

7] All contentions of the parties are kept open.

**(N. J. JAMADAR, J.)**