IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.6080/2016

Imranulla Khan Shafa Autulla Khan
...Versus...
State of Maharashtra, through its State Revenue Minister, Revenue and Forest Department, Mantralaya, Mumbai – 32 and others

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Shri S.D. Chande, Counsel for petitioner
Shri Sanjeev Deshpande, Addl. G.P. for respondent nos.1 to 5
Shri Tejas Deshpande, Counsel for respondent no.6

CORAM : AVINASH G. GHAROTE, J.
DATE : 27/02/2020

1. Heard Shri S.D. Chande, learned Counsel for the petitioner, Shri Sanjeev Deshpande, learned Additional Government Pleader for respondent nos.1 to 5 and Shri Tejas Deshpande, learned Counsel for respondent no.6.

2. The petitioner was granted licence to excavate the land of Survey No.170 Mouza Pimpalgaon Raja to the extent of 300 brass, for which the amount Rs.10,000/- was payable as royalty, which licence was up to 31/7/2010. On a complaint made by the respondent no.6, that excess excavation was done, proceedings were initiated before the Tahsildar, in which vide order dated 18/1/2010 the Tahsildar found that the petitioner, had excavated 419.50

brass over and above the permissible limit. However, considering the plea raised, that a quantity admeasuring 250 brass was of the previous year, which was excavated and stored in the land, after deducting the same, for the balance 229.50 brass, the licence fee was assessed to thrice the value per brass at Rs.40/- per brass, totalling Rs.27,540/- and the penal royalty at the same rate was assessed at same rate of Rs.40/- to Rs.9,180/-. The petitioner was, therefore, directed to pay Rs.36,720/-

3. This order of the Tahsildar was challenged by the petitioner by way of an appeal under Section 247 of the Maharashtra Land Revenue Code before the Sub Divisional Officer, Khamgaon, who by his order dated 26/11/2010, found that there was no material placed on record to substantiate the plea, that 250 brass of earth as found was excavated in the previous year and therefore, held that the total illegal excavation, was 419.50 brass. On the issue of the value of the earth, he found that there was nothing available with the P.W.D. on account of C.S.R. rates. He, therefore, invited the opinion of the Circle Officer, Pimpalgaon Raja, in respect of the rates for the year 2009, whose report indicated that the rate was Rs.85/- to Rs.90/- per brass, accepting which the Sub Divisional Officer calculated the licence fee and penalty as Rs.1,48,645/- and by his order dated 26/11/2010, directed the petitioner to pay the same.

4. Against this order, dated 26/11/2010 passed by the Sub Divisional Officer, the petitioner filed second appeal before the Additional Collector, Buldhana, who by his order dated 30/4/2011 rejected the appeal.

5. Being aggrieved by this rejection, the petitioner filed a revision before the Commissioner Revenue, Amravati by invoking powers under Section 257 of the Maharashtra Land Revenue Code. The Commissioner by his order dated 25/5/2015, set aside the order of the Additional Collector as well as of the Sub Divisional Officer and restored the order of the Tahsildar.

6. The respondent no.6 being aggrieved by the same filed an appeal before the Hon'ble Minister by invoking the provisions of Section 248 of the Maharashtra Land Revenue Code. The Minister by his order dated 10/6/2016 set aside the order of the Divisional Commissioner and restored the order of the Sub Divisional Officer, being aggrieved by which the present petition has been filed.

7. It is contended by Shri Chande, learned Counsel for the petitioner that the appeal as filed under Section 248 of the Maharashtra Land Revenue Code by respondent no.6 before the Hon'ble Minister was not maintainable. He further submits that even on merits the order of the Sub Divisional Officer since it did not take into consideration that there were no C.S.R. rates available for brick earth, it was not permissible for the Sub Divisional Officer to have obtained

the rates from the market through the Circle Officer. He, therefore, submits that the order of the Sub Divisional Officer as well as that of the Minister restoring the same were improper and were based on material, which was not legally permissible.

8. Shri Tejas Deshpande, learned Counsel for respondent no.6 submits that though appeal before the Hon’ble Minister is styled as an appeal under Section 248 of the Maharashtra Land Revenue Code, it is, in fact, an appeal under Section 249 of the Maharashtra Land Revenue Code. He submits that mere incorrect mentioning of the provision, would not take away the appellate powers of the Hon’ble Minister, as conferred upon him under Section 249 of the Maharashtra Land Revenue Code. He further submits that the order of the Sub Divisional Officer, correctly recorded a finding that there was no material to indicate that 250 brass of brick earth, found on the spot, was one, which was excavated in the previous year. He also supports the action of the Sub Divisional Officer in obtaining the market rates through the Circle Inspector, in absence of any rates available in the C.S.R., as maintained by the P.W.D.

9. Shri Sanjeev Deshpande, learned Additional Government Pleader for respondent nos.1 to 5 supports the impugned order and the arguments of the learned Counsel for the respondent no.6.

10. It is an admitted position that the order of the Tahsildar imposing penalty, dated 18/1/2010 was challenged before the Sub Divisional Officer by the present petitioner by invoking powers under Section 247 of the Maharashtra Land Revenue Code, in view of the position as contained in Schedule-E thereof. It is also apparent from a reading of the provisions of Section 247 of the Maharashtra Land Revenue Code, that further appeal lies to the officer as indicated therein and in any case the number of appeals do not exceed two. Thus, the appeal as preferred by the petitioner to the Sub Divisional Officer was in the nature of the second appeal, as provided for in Section 247 of the Maharashtra Land Revenue Code. The learned Sub Divisional Officer by his order dated 26/11/2010, increased the penalty and amount payable to a sum of Rs.1,48,645/-, the calculations for which are found on page 40 of the petition. In arriving at the figure, he took into consideration, that there was no material on record to substantiate the plea as raised on behalf of the petitioner that 250 brass of brick earth, was one which was excavated in the previous year.

11. The petitioner thereafter being aggrieved by the order of the Sub Divisional Officer invoked the powers under Section 257 of the Maharashtra Land Revenue and preferred a revision to the Additional Commissioner, Amravati, who by his order dated 25/5/2015 allowed the petition and confirmed the order of the Tahsildar by setting aside the

orders of the Sub Divisional Officer and the Deputy Collector.

12. The contention that this order passed by the Additional Commissioner under Section 257 of the Maharashtra Land Revenue Code was not susceptible to appeal has to be considered in the light of the provisions of Section 249 of the Maharashtra Land Revenue Code. Shri Tejas Deshpande, learned Counsel for the respondent no.6 is correct in submitting that the incorrect nomenclature or wrong mentioning of the provisions does not deprive the authority of its power to entertain an appeal.

13. Considering the matter in that light, it would be seen that the provision of Section 249 (2) of the Maharashtra Land Revenue Code specifically mandates that an order passed in revision, varying or reversing any order shall be appealable as if it were an order passed by the revisional authority in appeal. The order of the Additional Commissioner was obviously an order passed in the revisional power under Section 257 of the Maharashtra Land Revenue Code, reversing the order of the Authority below him, in light of which, it squarely fell within the scope of Section 249 Sub Section 2 of the Maharashtra Land Revenue Code. Thus, an appeal before the Hon'ble Minister was clearly maintainable.

14. Insofar as the contention that the Hon'ble Minister as well as the learned Sub Divisional Officer erred in passing the order of enhancement, it is material to note that

admittedly 419.50 brass of brick earth was excavated by the petitioner, which was besides what was permissible to be excavated under the licence granted to him. It has been observed that no material was placed before the authorities to substantiate the plea, that 250 brass of brick earth, out of this, was something which was excavated and left over from the previous year. In absence of any material to demonstrate it, the Sub Divisional Officer as well as the Hon'ble Minister were right in holding that the entire quantity found over and above, which was permissible to be excavated under the licence, was chargeable for royalty as well as penalty. The imposition, therefore, on this count cannot be faulted with.

15. The Tahsildar has imposed a rate of Rs.40/- per brass, considering the fact that Rs.10,000/- was the licence fee for excavation of 250 brass, which comes to Rs.40/- per brass. The rate of royalty and penalty, therefore, as imposed by the Tahsildar was clearly linked to the rate at which excavation was permitted. However, Section 48 Sub Section 7 of the Maharashtra Land Revenue Code mandates, that any person who without lawful authority, extracts, removes, collects, replaces, picks up or disposes of any mineral shall pay a penalty of an amount up to three times the market value of the minerals so extracted. This has been increased in the year 2017 to five times. Thus, the action of the Sub Divisional Officer in calling for the report from the Circle Officer regarding the market value of the brick earth

extracted by the petitioner and the consequent order imposing penalty by taking into account the market value is directly related to the provisions of Section 48 (7) of the Maharashtra Land Revenue Code.

16. That being the position, no fault can be found in the order of the Hon'ble Minister, setting aside the order of the Divisional Commissioner, Additional Collector and restoring the order of the Sub Divisional Officer. The writ petition is, therefore, without any merits and is dismissed. In the circumstances, there shall be no order as to costs.

JUDGE