

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

WRIT PETITION NO.6808/2016

Shri Rajendra S. Kamble

...Versus...

State of Maharashtra, through Secretary, Ministry of Revenue and Forest,
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 V.S. Kukday, Counsel for petitioner
Shri Sanjeev Deshpande, Addl. G.P. for respondents

CORAM : AVINASH G. GHAROTE, J.

DATE : 03/03/2020

1. Heard Shri Kukday, learned Counsel for the petitioner and Shri Deshpande, learned Additional Government Pleader for the respondents.

2. It is not in dispute that the petitioner was granted a lease for excavation of minor mineral in respect of Block-B in Mouza Nandapur. It is contended that on 27/2/2012 a show-cause notice was issued stating that 1144.79 brass of sand was illegally excavated, which was based upon a spot inspection report dated 5/1/2012. The Tahsildar held that there was illegal excavation to the extent of 1144.79 brass and a penalty of Rs.34,87,822.52 was imposed upon the petitioner by an order dated 31/3/2012.

3. In an appeal under Section 247 of the M.L.R.C. the Sub Divisional Officer by his order dated 30/7/2012 remanded the matter to the Tahsildar, Saoner to reconsider the matter, in light of the reports of the spot inspection, dated 5/1/2012 and that of the Royalty Inspector dated 2/3/2012, not showing any illegal excavation.

4. The learned Tahsildar by the impugned order dated 8/10/2016 refused to believe/rely upon the inspection report dated 5/1/2012 and the subsequent report of the Royalty Inspector dated 2/3/2012, as is reflected from a perusal of para 3 of the impugned order. The Tahsildar, however, for refusing to rely upon the above said two reports, has not given any reason whatsoever, as to in what matter and for what reason, the reports dated 5/1/2012 and 2/3/2012 were unworthy of reliance. Neither it is a case that the Tahsildar had any material available before him to contradict the statements, as contained in the above reports to hold that there was any illegal excavation or the extent of it. Perusal of the report dated 5/1/2012 does not depict that any illegal excavation, which is indicated, has been done to the East of the block allotted to the petitioner, was done by the petitioner. The report dated 2/3/2012 also is to the same effect. Thus, when both these reports do not attribute the excavation to the East of the block allotted to the petitioner, to the petitioner in absence of any other material available, the reports could not have been brushed away. The learned

Additional Government Pleader also has not been able to point out the reason, why the reports dated 5/1/2012 and 2/3/2012 have not been relied upon or any other material available to the Tahsildar, to arrive at a conclusion of illegal excavation by the petitioner.

5. In light of the above position, in absence of any material, contrary to the above reports available, on record the impugned order dated 8/10/2016 and the consequent action based thereupon, is clearly unsustainable in law. The same is, therefore, quashed and set aside along with the order dated 24/11/2016 at Annexure – 20, which is consequential to the order dated 8/10/2016.

The writ petition is, therefore, allowed. In the circumstances, there shall be no order as to costs.

JUDGE