

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

955 WRIT PETITION NO.10491 OF 2021

**ABDUL SATTAR KABIRUDDIN QURESHI & ANOTHER
VERSUS
THE STATE OF MAHARASHTRA & OTHERS**

...
Advocate for the petitioners : Mr.V.D.Salunke
AGP for Respondent-State : Mr.A.R.Kale
Advocate for Respondent no.5 : Mr.U.B.Bondar
...

**CORAM : S.V.GANGAPURWALA &
S.G.DIGE, JJ.**

DATE : 22.12.2021

P.C. :

1] Heard learned counsel for the petitioners, learned AGP for the respondent-State and learned counsel for respondent no.5.

2] The petitioners are assailing sealing of their brick kiln on 20th August, 2021.

3] Seizure appears to be on two counts; [i] the petitioner has not obtained N.A. permission and [ii] the petitioner does not have permission from the Pollution Control Board.

4] Mr.Salunke, learned counsel for the petitioners submits that under Section 44-A of the Maharashtra Land Revenue Code, 1966, the permission is not required for establishing and running the small scale enterprises. The business of brick kiln is a small scale enterprise. Learned counsel further submits that the Pollution Control Board has never taken any objection for running the brick kiln of the petitioners. Moreover, the petitioners have made application to the Pollution Control Board. The consent to establish the brick kiln is granted for a period up to commissioning of the plant or for five years. According to the learned counsel, the ground on which the sealing is made, is erroneous.

5] According to the learned AGP, enquiry is contemplated on the basis of the complaint filed by the neighbourers. The neighbourers had filed complaint because of nuisance and pollution created due to manufacturing of brick kiln. The enquiry was conducted by the Tahsildar. The Tahsildar had deputed his sub-ordinate for an enquiry. The petitioners did not co-operate and as a part of enquiry the action has been taken. The final order is not yet passed by the Tahsildar pursuant to enquiry. The petition is premature. No order is passed as yet.

6] As the brick kiln was being run without proper permission, the action has been taken. The other submissions are made with regard to the non-payment of royalty, utilization of soil and regarding drawing of water.

7] Mr.Bondar, learned Advocate for respondent no.4 – Pollution Control Board submits that the petitioners cannot manufacture the brick kiln without permission of the Pollution Control Board.

8] We have considered the submissions.

9] As contended by the State Authorities, the enquiry is being conducted. The final order is not passed. The authorities are entitled to conduct enquiry in accordance with law and may take final decision as permissible under law.

10] Sealing of the factory appears to be on two counts; [i] N.A. permission is not obtained under Section 44-A of the Maharashtra Land Revenue Code and [ii] permission would be required from Pollution Control Board for starting of small scale enterprise. As per sub-section [2] of Section 44-A intimation has to be given for the change of the date on which the change of user of land has commenced and furnish other information, in the prescribed form, within 30 days from such date to the

Tahsildar through the Village Officers, and shall also endorse a copy thereof to the Collector. The petitioners failed to inform the Tahsildar and the Collector within specified period. Sub-section [3] of Section 44-A of the said Act provides consequences if the person fails to inform the Tahsildar and the Collector, within the specified period.

11] The bricks on the site were allowed to be dealt with by the petitioners under interim order passed by this Court.

12] The final order pursuant to the enquiry is yet to be passed. Depending upon the final decision, the further steps would be taken.

13] At the same time the petitioners also cannot run the business of manufacturing the bricks without requisite permission under the Statute.

14] It appears that before taking action no opportunity was given to the petitioners.

15] In the light of above, we set aside the order of sealing the site of the petitioners under panchanama and order dated 20th August, 2021 which is pursuant to the letter of the Tahsildar dated 12th August, 2021 as appearing in the say.

16] The petitioners certainly cannot use the land without appropriate permission as provided under the Statute. If the petitioners use the land against the permission required under the Statute, then the authorities are entitled to take action against them.

17] With the above observations, Writ Petition is disposed of.

[S.G.DIGE, J.]

[S.V.GANGAPURWALA, J.]

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