

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

Writ Petition No. 9 of 2021

Vilas Kalu Chimote Vs. The State of Maharashtra through its Secretary & Others

WITH

Writ Petition No.1627 of 2021

Santosh Lunkaran Chandak Vs. The State of Maharashtra through its Secretary & Others

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

Court's or Judge's orders

WP No. 9/2021

Mr. V.B. Bhise, Advocate for the petitioner

Ms. T.H. Khan, AGP for the respondent – State.

WP No.1627/2021

Mr. Rahul Dhande, Advocate for the petitioner

Ms. T.H. Khan, AGP for the respondent – State.

CORAM : MANISH PITALE, J.

DATED : JUNE 28, 2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. These Petitions are heard together due to the common issues arising therein.

3. By Writ Petition No. 9 of 2021, the petitioner has challenged order dated 10/09/2020, passed by the respondent No.5 i.e. Tahsildar, whereby penalty of huge amount was imposed on the petitioner therein for alleged illegal excavation of *Murum*, by exercising power under Section 48 of the Maharashtra Land Revenue Code, 1966. A demand notice dated

27/10/2020, based on the said order issued by the respondent No.5 was also made subject matter of challenge in the said Writ Petition.

4. On 27/11/2020, this Court passed a detailed order recording the grounds of challenge raised in the Writ Petition and while issuing notice for final disposal, directed that no coercive steps be taken against the petitioner therein. It is relevant to mention here that the petitioner in the said Writ Petition is the owner of the land in which the said exercise of excavation is being carried out.

5. In Writ Petition No. 1627/2021, the petitioner is aggrieved by the action of the respondent No.4 - Tahsildar in initiating review proceedings pertaining to the aforementioned order dated 10/09/2020. It was pointed out that notices were issued in such proceedings and that since the petitioner was only carrying out excavation operations in the said land, despite interim order passed in Writ Petition No.9/2021, the respondent – Tahsildar was not justified in initiating the proceedings. On 09/04/2021, this Court issued notice in the said Writ Petition. Thereafter, an application for amendment was placed on record on behalf of the petitioner to bring to the notice of this Court that pursuant to the review proceedings, on 10/05/2021, the respondent – Tahsildar had passed an order imposing huge amount of penalty even as against the petitioner in Writ Petition No. 1627 of 2021.

6. Both these Petitions were taken up for consideration together. The learned A.G.P. appearing on behalf of the respondents invited attention of this Court to paragraph 5 of affidavit-in-reply dated 23/06/2021, filed on behalf of respondent No.1. The said paragraph reads as follows :

“5. It is humbly submitted that, after considering the relevant facts and the order dated 27.11.2020 passed by this Hon’ble Court in Writ Petition (St.) No. 11746/2020, it has come to the notice of the answering respondent that order dated 10.05.2021 is issued erroneously. The answering respondent will recall said order dated 10.05.2021 within 1 week and initiate the proceedings against the petitioner and said Vilas Chimote afresh by issuing notice to them before carrying out the measurement and thereafter proceed in accordance with law. It is humbly submitted that, the answering respondent issued said order dated 10.05.2021 under misguided perception that said order fixed liability on the petitioner and said Chimote and after issuing show cause notice the final order could be passed with permission of this Hon’ble Court. The answering respondent tenders unconditional apology for unintentionally over stepping his authority.”

7. A perusal of the above quoted paragraph in the reply filed on behalf of respondent No.1 would show that the respondents intend to withdraw the order dated 10/05/2021, passed by the respondent – Tahsildar and that the challenge sought to be raised by the petitioner in Writ Petition No.1627/2021, by way

of amendment would not survive. If the order dated 10/05/2021, itself stands withdraw and the statement of the respondent No.1 is taken on record that fresh proceedings are intended to be initiated not only against the petitioner in Writ Petition No. 1627/2021, but also the petitioner in Writ Petition No. 9/2021, both the Writ Petitions can be disposed of by granting liberty as sought in the said reply filed on behalf of the respondent No.1.

8. A statement is made on behalf of learned A.G.P. that due to inadvertence the aforesaid affidavit-in-reply has been stated to be filed on behalf of respondent No.1, although it has been sworn on behalf of respondents by respondent No.4 – Tahsildar. On this basis, it was submitted that the reply be treated as having been filed on behalf of respondent No.4. The statement is accepted.

9. The statement made in the above quoted paragraph of affidavit-in-reply filed on behalf of respondent No.1 is accepted by this Court. The consequence of the same is that the order dated 10/09/2020, passed by the respondent – Tahsildar, subject matter of challenge in Writ Petition No.9/2021, which stood reviewed by order dated 10/05/2021, passed by the respondent – Tahsildar, both are rendered inconsequential. The respondents are permitted to withdraw the order dated 10/05/2021, passed by respondent – Tahsildar, which effectively also nullifies the order dated 10/09/2020, passed by the

Tahsildar. The said exercise be carried out within a period of one week from today. The respondents will be at liberty to initiate fresh proceedings, if so advised, in the matter in the context of the petitioners before this Court by issuing proper notice to them and by proceeding in the matter strictly in accordance with law.

10. In view of the above, the Writ Petitions stand partly allowed and disposed of in above terms.

11. In view of the disposal of the Writ Petitions, all pending applications stand disposed of.

JUDGE

MP Deshpande