IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10464 OF 2019

M/s. Arya Infrasupport Services Private Ltd. through Director N. G. Vedak ...Petitioner
V/s.
Hon'ble Minister Revenue and Forest Dept. Maharashtra State and Ors. ...Respondents

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Mr.Sharad Bhosale a/w Ms.Shraddha Jadhav and Mr.Dilip Bodake, for the Petitioner.
Mr.C.D. Mali, AGP for the Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 17 OCTOBER 2022

ORDER :

. Heard finally by consent of parties.

2. The Revenue Department had auctioned the rights for excavation of sand in *Savitri River* and *Bankot Creek* in the year 2010-11. The Revenue Department had issued an advertisement for grant of such rights in four groups. It is undisputed that the Petitioner was the successful bidder in obtaining the rights for excavation of the sand in respect of Group No.1 (Bankot to Shiple) and Group No.2 (Kudgaon to Peve).

3. The record discloses that the period for such excavation was of 201 days. One of the conditions of grant of such rights stipulated that the possession of the site for excavation of sand will be given to the bidder on obtaining environmental clearance. It is further undisputed that the Petitioner deposited the bid amount in respect of two groups on 21 January 2011. However, on account of the fact that the environmental clearance was not obtained immediately there was a delay of about 130 days in respect of Group No.1 and 135 days in respect of Group No.2, insofar as the delivery of the actual possession to the Petitioner is concerned. The Petitioner claims that on account of this delay he lost the period of 130/135 days and could not commercially exploit the rights. He therefore sought pro-rata refund of the amount. The then Revenue Minister after obtaining remarks from the Revenue and the Finance Department by an order dated 24 May 2014 had allowed the pro-rata refund of the amount deposited.

4. It appears that after a period of about 5 years the Finance Department moved the Hon'ble Minister for review of the order dated 24 May 2014. The Hon'ble Revenue Minster by order dated 29 January 2019 has reviewed the order dated 24 May 2014. The net result is that the claim for refund of the amount stands rejected. Feeling aggrieved the Petitioner is before this Court.

5. I have heard the learned counsel for the parties. Perused record.

6. The learned counsel for the Petitioner submitted that the Revenue Minister was not justified in taking up the *suo moto* review of the order dated 24 May 2014 and further in refusing to grant the claim of refund. It is submitted that there were no circumstances justifying such review as the order dated 24 May 2014 did not demonstrate any error apparent on the face of the record.

7. The learned counsel submitted that the review is permissible only on the ground as set out in Sub-Section-2 of Section 258 of the Maharashtra Land Revenue Code and none of the grounds were attracted in the present case.

8. It is submitted that merely because the grant was subject to the obtaining of the environmental clearance cannot justify the authorities in refusing to grant the refund for the part of the period for which the Petitioner was unable to commercially exploit the rights for the reasons beyond his control. He therefore, submitted that the order deserves to be set aside.

9. The learned AGP has supported the impugned order. It is submitted that the auction was conditional. The Public

Notice clearly stipulated that the possession of the site shall be given after obtaining the environmental clearance and therefore the Petitioner was well aware that there could be a delay. He submitted that the review was entertained as the Finance Department had moved the Hon'ble Revenue Minister for such review. It is submitted that the relevant aspects were not considered in the order dated 24 May 2014 and thus the review has rightly been allowed.

10. The learned AGP pointed out the decision of the Supreme Court in ***M/s.S.B. Gurbaksh Singh V/s. Union of India & Others***[1], in order to submit that there is no limitation for such review but the same has to be exercised within the reasonable time.

11. I have carefully considered the circumstances and the submissions made.

12. A perusal of the order dated 24 May 2014 shows that the then Hon'ble Minister of Revenue, after considering the report of the Additional Commissioner, had granted the refund. A perusal of the said order, further shows that the Revenue Minister had considered the fact that the actual possession of the excavation site was delivered to the Petitioner on 24 March 2011 and 19 March 2011 respectively and for which the Petitioner was

1 **AIR 1976 Supreme Court 1115**

not responsible. The Revenue Minister had also noted that in similar circumstances the claim of one S.R. Shipping for pro rata refund was allowed and therefore even on the principles of parity, the Petitioner was entitled for such refund.

13. Coming to the impugned order it can be seen that it is not based on discovery of any new or important matter as contemplated under Sub-section 2(i) of Section 258 nor does it record that the order dated 24 May 2014 suffers from any mistake or error apparent on the face of the record as contemplated under Sub Section 2(ii) of Section 258 of the Code.

14. The Hon'ble Revenue Minister has referred to the report of the Additional Commissioner which was already considered by the then Hon'ble Revenue Minister in the order dated 24 May 2014. It can be seen that the actual possession of the excavation site was delivered to the Petitioners, after a period of about 130 and 135 days, out of the total period of 201 days, for which the rights were auctioned/ granted.

15. The Hon'ble Revenue Minister in the impugned order dated 29 January 2019 has observed that the earlier order dated 24 May 2014 is erroneous. Such an observation is clearly not warranted in the exercise of powers of review. It is well

settled that an Application for review cannot be treated as an Appeal.

16. It is true that there is no limitation as such provided for exercise of powers of *suo-moto* review. However, such powers have to be exercised within a reasonable period. The question a to what is reasonable, would obviously depends upon facts and circumstances of each case. That apart in the present case, I find that even on merits there was no case for review of the order dated 24 May 2014 made out.

17. At this stage, the learned AGP submits that the Petitioner has not deposited the entire amount of the bid, which aspect is denied by the learned counsel for the Petitioner.

18. I do not find it necessary to go into this aspect. It is for the concerned authority to examine the amount deposited and then to grant the pro rata refund.

19. In that view of the matter, the Petition is allowed. The order dated 29 January 2019 is hereby set aside. Consequently, the order dated 24 May 2014, stands restored.

20. The amount as indicated earlier be refunded within a period eight weeks from today.

21. In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.