

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6427 OF 2022

Dorabh Peshotan Dubash ... Petitioner
Vs.
The Talathi Village Bhose & Ors. ... Respondents

**AND
WRIT PETITION NO.6428 OF 2022**

Dorabh Peshotan Dubash ... Petitioner
Vs.
The Talathi Village Bhose & Ors. ... Respondents

Ms. Aparna Devkar for the Petitioner in both WPs.
Mr. P. V. Nelson Rajan, AGP for Respondents No. 1 to 6-State in both WPs.

CORAM: ABHAY AHUJA J.

DATE : 21ST JULY 2022

ORAL ORDER :

1. Heard.
2. Since the facts and the challenge in both the Writ Petitions are more or less similar, both these Petitions have been heard together and are being disposed by this order.
3. By these Petitions, the Petitioner is aggrieved that the Tahsildar, S.D.O. as well as the Additional Collector, Satara have

confirmed the issuance of the stop work notice alleging that the Petitioner has excavated various quantities of soil without permission and passed orders directing Petitioner to deposit various amounts. The notices had been issued under Section 48(7) of the Maharashtra Land Revenue Code, 1966.

4. Ms. Devkar, learned Counsel for Petitioner points out that despite filing a reply clarifying that the excavation was not for commercial purpose and was only for use of the excavated soil for levelling Petitioner's own land, the authorities have failed to consider the same. Learned Counsel for Petitioner draws the attention of this Court to various judgments passed by this Court. She specifically draws this Court's attention to the decision in the case of **Rahul Rasiklal Nahar & Ors. Vs. The State of Maharashtra & Ors. (writ Petition No.2743 of 2010, dated 13th January, 2015, authored by Hon'ble Mr. Justice A. S. Oka, as His Lordship then was)** wherein after considering the decision of the Supreme Court in the case of *Promoters and Builders Association of Pune Vs. State of Maharashtra & Ors.; (2015) 12 SCC 736*, the Division Bench of this Court, has in Paragraph 9 observed as under :-

“9. We find from the impugned order that the determination as contemplated by the Apex Court has not been made by the Tahsildar. There is no adjudication on the purpose for which the excavated earth has been put to use. Thus, the impugned order has been passed without making the determination of the issue as contemplated by the paragraph 16 of the judgment and order of the Apex Court. The impugned order dated 4th July, 2009 proceeds on the presumption that by mere excavation of earth by the petitioners, sub-section (7) of section 48 of the said Code has been violated.”

5. It is clear from the aforesaid Paragraph that unless there is an adjudication on the purpose for which the excavated earth has been put to use, the orders would be treated as passed without making the determination of the issue as contemplated by the Apex Court's decision in the case of *Promoters and Builders Association of Pune Vs. State of Maharashtra & Ors. (supra)*. After observing as above, the Division Bench of this Court quashed and set aside the impugned order therein dated 4th July, 2009 as well as the show cause notice and directed the Tahsildar to make an adjudication as contemplated in Paragraph 16 of the Apex Court decision in the case of *Promoters and Builders Association of Pune Vs. State of Maharashtra & Ors. (supra)* after giving an opportunity of being heard to the Petitioners therein.

6. A perusal of all the orders ending with the impugned orders dated 26/11/2021 in the two Petitions indicates that nowhere the said orders have given a finding/adjudication with respect to the purpose for which the earth/soil excavated by the Petitioner has been put to use.

7. Mr. P. V. Nelson Rajan, learned AGP for Respondents No. 1 to 6-State was unable to point out any such adjudication/finding by the authorities except to say that the Additional Collector while passing his order has observed that Mahabaleshwar is an Eco-sensitive Zone and confirmed the penalties levied by the lower authorities. He further submits that against the decision of the Additional Commissioner, an Appeal would lie under Section 257 of the Maharashtra Land Revenue Code, 1966 to the Hon'ble Minister and these Writ Petitions are not maintainable.

8. I have heard learned Counsel for the Petitioner and learned AGP for the State. Admittedly, none of the orders of the authorities ending with the Additional Commissioner have given an adjudication/finding with respect to the purpose for which the

excavated soil has been used. As far as, learned AGP's contention with respect to alternate remedy is concerned, this Court also dealt with a similar plea in the case of **Rahul Rasiklal Nahar & Ors. Vs. The State of Maharashtra & Ors. (supra)** and rejected the same in the light of the law laid down by the Apex Court in the case of *Promoters and Builders Association of Pune Vs. State of Maharashtra & Ors. (supra)*. In my view, when a finding on the purpose for which the excavated soil has been used is missing, no purpose would be served in relegating the Petitioner to the remedy of Appeal.

9. In this view of the matter, the two orders dated, viz., order dated 26/11/2021 passed in RTS/Re/76/2021 and order dated 26/11/2021 passed in RTS/Re/77/2021 by Respondent No.5-Additional Divisional Commissioner, Pune Division are hereby quashed and set aside.

10. Respondent No.2-Tahsildar to issue fresh show cause notice(s) to Petitioner within a period of two weeks from today. The Tahsildar shall grant reasonable time to Petitioner to file Reply. The Tahsildar is also directed to make an adjudication as contemplated

in Paragraph 16 of the Apex Court decision in the case of *Promoters and Builders Association of Pune Vs. State of Maharashtra & Ors.* (*supra*) after giving an opportunity of being heard preferably within a period of four weeks.

11. The order(s) passed by Respondent No.2-Tahsildar shall be communicated to the Petitioner within one week of passing of the said order(s).

12. In the event, the order(s) passed by the Tahsildar be adverse to the Petitioner, to enable the Petitioner to adopt a statutory remedy, no further steps shall be taken on the basis of the said order(s) for a period of one month from the date of service of the order.

13. All other issues raised by the Petitioner are expressly kept open.

14. The Writ Petitions are disposed of in the above terms.

(ABHAY AHUJA, J.)