

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

WRIT PETITION NO. 1010 OF 2022

Rajesh Ishwarsingh Balode __ Vs. __ State of Maharashtra and ors

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

Court's or Judge's orders

Mr. Saurabh Singha, Advocate for petitioner
Mr. N.R.Patil, AGP for respondent Nos. 1 to 5

CORAM : AVINASH G. GHAROTE, J.
DATE : 17/11/2022

1] Heard Mr. Saurabh Singha, learned counsel for the petitioner and Mr. Patil, learned AGP for respondents.

2] The learned counsel for the petitioner on instructions submits that the petitioner is willing to deposit the amount of ₹.7,98,000/- (Rupees Seven Lakh Ninety Eight Thousand) as per the order of the Tahsildar dated 31.8.2021 (pg.39).

3] The statement is accepted as a statement to the Court and the amount be deposited within a period of 15 days from today, with the Respondent No.2 Tahsildar, Akola, who shall keep the said amount in an interest carrying fixed deposit.

4] The petition challenges the order dated 10.12.2021 and 28.1.2022 (pages 61 & 67 respectively) whereby the Respondent No.1 – Collector, Akola has by

exercising suo motu powers of revision under Section 257 of the Maharashtra Land Revenue Code (for short “MLR Code”) take cognizance of the order dated 31.8.2021 and the subsequent order dated 11.11.2021 and has imposed the penalty of ₹. 58,36,800/- (pg. 63) upon the petitioner.

5] The petitioner had excavated soil from the Morna river at Akola for the purpose of supplying the same to the Maharashtra Hybrid Seeds Corporation Ltd., a Government of Maharashtra Undertaking. While doing so, part of the soil excavated was first collected and stored on his own property by the petitioner at which point of time since a spot inspection was conducted on 6.7.2021, and as the soil was found to be stored, the order dated 31.8.2021, was passed by the Tahsildar, Akola, imposing a penalty of ₹. 7,98,000/- upon the petitioner. This was challenged by the petitioner by way of an appeal before the SDO Akola, who by the order dated 30.11.2021 (page 59), had dismissed the appeal. The Collector, Akola taking suo motu cognizance of the order dated 31.8.2021 in exercise of the powers under Section 257 of the MLR Code registered a revision, issued notice to the petitioner and by the impugned order dated 10.12.2021 (pg 61) has recorded a finding that the order dated 31.8.2021 has been cancelled by the Tahsildar and a fresh order was passed on 11.11.2021 (pg.56), saddling a liability of ₹.29,86,800/- upon the petitioner, which having been found to be without the requisite

permission under the MLR Code, the same was also set aside by the order dated 10.12.2021 (pg.63).

6] What is however material to note is that one of the course which could have been adopted by the learned Collector consequent to setting aside the order dated 11.11.2021 by the Tahsildar, was to have remanded the matter back to the Tahsildar for a fresh determination. That, however, was not done, instead the Collector himself determined the penalty and fixed the same at ₹.58,36,800/- by his order dated 10.12.2021 (pg.63). Though it is permissible under Section 257(3) of the MLR Code for Respondent No.1 to modify the order, such an exercise could only have been performed by Respondent No.1 after getting the quantity of soil measured by an expert in view of the communication dated 8.7.2021,(pg.33), which indicates that the measurement given therein was on an approximation and therefore the exact measurement was required to be conducted through an expert. That apart, since the spot inspection is dated 8.7.2021 (pg.33) which records the quantity of soil stored at the place, it is obvious that the letter dated 16.11.2021 (pg.121) by the Collector, which fixes the rate of soil for the year 2021, would not be applicable, as that cannot be applied retrospectively, and therefore, the petitioner would be entitled to the benefit of the applicability of the rates prior to what has been fixed by the communication dated 16.11.2021 (pg. 121).

7] That being the position, the impugned order dated 10.12.2021 (pg.61) is hereby quashed and set aside and the matter is remanded back to the Collector, Akola to redetermine the penalty in light of what has been stated above.

8] The writ petition is allowed in above terms.
No costs.

JUDGE

Rvjalit