

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6081 OF 2016

Imranulla Khan Shafa Autulla Khan,
Aged about 50 years,
Occupation – Agriculturist and Trader,
R/o Pimpalgaon Raja, Tahsil – Khamgaon,
District – Buldana.

.... **PETITIONER**

VERSUS

- 1) State of Maharashtra,
through its State Revenue Minister,
Revenue and Forest Department,
Hutatma Rajguru Chowk, Madam
Cama Marg, Mantralayaya, Mumbai-32.
- 2) The Additional Commissioner,
Amravati Division, Amravati.
- 3) Additional Collector, Buldana,
Tahsil and District Buldana.
- 4) Sub-Divisional Officer, Buldana,
Tahsil and District Buldana.
- 5) The Tahsildar, Khamgaon,
Tahsil – Khamgaon, District – Buldana.
- 6) Attaullah Khan Latifullah Khan,
Aged – Major,
R/o Pimpalgaon Raja, Tahsil – Khamgaon,
District – Buldana.

.... **RESPONDENTS**

Mr. S.D. Chande, Counsel for the petitioner,
Mr. S.M. Ukey, Addl.G.P for respondents 1 to 5,
Mr. Tejas Deshpande, Counsel for respondent 6.

CORAM : ROHIT B. DEO, J.

DATED : 4th APRIL, 2022

ORAL JUDGMENT :

Heard. **Rule.** Rule is made returnable forthwith. With consent, the petition is heard finally.

2. The petitioner is assailing the order dated 10-6-2016 rendered by the Hon'ble Minister in Revision Goukhani-46/0915/Case NO.469/Kh preferred by respondent 6 challenging the order dated 25-5-2015 passed by the Additional Commissioner, Amravati Division, Amravati, in Revision preferred under Section 257 of the Maharashtra Land Revenue Code (Code) whereby the petitioner herein was granted a limited relief and the fine for the illegal excavation of soil was reduced from Rs.58,100/- (Rupees Fifty Eight Thousand One Hundred) to Rs.20,000/- (Rupees Twenty Thousand).

3. The reduction of the fine is on the premise that the petitioner is penalized twice for the same default. The Commissioner notes that the same quantity of soil as regard to which the Tahsildar, Khamgaon imposed penalty was shown in Case LNA-37/Pimpalgaon Raja/141/2009-2010, and an order dated 18-1-2020 was passed therein imposing penalty for alleged illegal excavation of 229.50 brass

of soil, which the petitioner has paid. The Commissioner has held that the quantity of illegally excavated soil involved in the earlier case is also included in the latter case and therefore, the penalty deserves to be reduced from Rs.58,100/- (Rupees Fifty Eight Thousand One Hundred) to Rs.20,000/- (Rupees Twenty Thousand). The consideration by the learned Commissioner is thus :

“Perusal of the records of the Lower Courts reveal that the Petitioner has excavated the soil without obtaining prior of the Tahsildar, Khamgaon and for illegal excavation of soil, the Tahsildar, Khamgaon has, vide his order dated 17-3-2011, imposed the fine of Rs.58,100/- as provided u/s. 48(7) of the Maharashtra Land Revenue Code, 1966. The same quantity of soil was shown in case no. LNA-37/Pimpalgaon Raja/141/2009-2010 in which Order is issued by the Tahsildar, Khamgaon on 18-1-2010. Again the same quantity of soil extracted illegally in the year 2011. Actually the said old soil was dump up on Survey No.170 and penalty was imposed in the year 2010. The Tahsildar wrongly made a Panchanama of the same quantity of soil extracted in the year 2011 and imposed fine of Rs.58,100/-. As the petitioner had paid fine for old 229.50 brass that much quantity should have been reduced when the Panchanama was made in the year 2011. I, therefore, feel it judicious that for one act of illegality twice fine should not be imposed. The Additional Collector, Buldana has erred in maintaining the Order of the Tahsildar, Khamgaon. Therefore, I reduce the find from Rs.58,100/- to Rs.20,000/-.”

4. It appears that in the revision preferred by respondent 6-complainant, the Hon'ble Minister has set aside the order of the Additional Commissioner without even considering the correctness or

otherwise of the reasons recorded by the Additional Commissioner.

5. The order impugned dated 10-6-2016 rendered by the Hon'ble Minister is, therefore, unsustainable and is set aside.

6. The order of the Additional Commissioner dated 25-5-2015 is restored.

7. The petition is disposed of in the afores-stated terms.

JUDGE

adgokar