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

Writ Petition No. 5547 of 2021

Dilip Buildcon Ltd
Having its head office at Bhopal
and is being represented thru
Authorised person, Shri Ashish
s/o Bhuminath Tripath,
a/a 33 yrs, Occu – private,
R/o 1355, Krishna Nagar,
Bhopal – 462010. **…. Petitioner**

.. Versus ..

(1) The Additional Commissioner,
Nagpur, Commissionerate
Building, Civil Lines, Nagpur.

(2) The Additional Collector,
Wardha, District Wardha.

(3) The District Mining Office,
Wardha, District Wardha. **…. Respondents**

Mr. R. R. Rathod, Advocate for the petitioner
Mr. D. P. Thakre, Addl. G.P. for the respondents

CORAM : ROHIT B. DEO, J.
DATED : 5-1-2022

ORAL ORDER

Rule. Rule made returnable forthwith.

2. With consent, the petition is finally heard at the admission stage.

3. The limited grievance of the petitioner is that the Additional Commissioner, Nagpur has refused to entertain the application for stay in Revenue Appeal 96/MNL-37/2021 Mauza Wabgaon, Tahsil Deoli, District Wardha unless the petitioner deposits 25% of the penalty imposed.

4. The submission of the learned counsel for the petitioner, Mr. Rathod is that the condition that 25% of the amount allegedly payable be deposited would operate harshly and the very right to prefer the appeal may be rendered illusory. This submission is in the context of the amount demanded which is Rs. 6,67,36,409/- (Rupees Six Crores Sixty Seven Lacs Thirty Six Thousand Four Hundred and Nine).

5. Considering the limited issue involved, it would not be necessary to refer to the factual matrix in detail. Suffice it to state that the genesis of the demand is the perception of the State Government that the petitioner excavated and used minor minerals in excess of the permission granted. The penalty which the petitioner impugned before the appellate authority is imposed by the Additional Collector, Wardha.

6. The order sheet dated 15.9.2021 records that the learned counsel for the petitioner argued on the application seeking condonation of delay and the application for grant of stay to the order impugned. It is further recorded that while the delay is condoned, the stay application

shall be considered after the petitioner deposits 25% of the penalty imposed. The order directing deposit of 25% of the penalty imposed is rendered in view of the provisions of section 256 of the Code which read thus:

> **256. Stay of execution of orders**
>
> (1) A Revenue or Survey Officer who has passed any order of his successor in office may, at any time before the expiry of the period, prescribed for appeal, direct the execution of such order to be stayed for such time as he thinks fit, provided no appeal has been filed.
>
> (2) The appellate authority may, at any time, direct the execution of the order appealed from, to be stayed for such time as it may think fit:
>
> [**Provided that,** where an order against which appeal is preferred involves payment of any amount to the Government, the execution of such order shall not be stayed unless the appellant deposits twenty five per cent of such amount payable to the Government under the order impugned.
>
> **Provided further that,** in exceptional cases, the appellate authority may, after recording the reasons in writing therefor, suitably reduce such amount of deposit:
>
> **Provided also that**, the amount to be deposited by the appellant as specified above shall be adjusted against the amount found payable to the Government under the final orders passed in appeal and in case the amount finally found payable to the Government is less than the amount deposited by the appellant, the excess amount shall be refunded to the Appellant without any interest.]
>
> (3) The authority exercising the powers of revision or review may direct the execution of the order under revision or review, as the case may be, to be stayed for such time as it may think

fit:

[**Provided that**, where an order against which application for revision or review is filed involves payment of any amount to the Government, execution of such order shall not be stayed unless the applicant deposits twenty five per cent of such amount payable to the Government under the order impugned.

Provided further that, in exceptional cases, the authority exercising the powers of revision or review may, after recording the reasons in writing therefor, suitably reduce such amount of deposit:

Provided also that, the amount deposited by the applicant as aforesaid shall be adjusted against the amount found payable to the Government under the final orders passed in revision or review proceedings and in case the amount finally found payable to the Government is less than the amount deposited by the applicant, the excess amount shall be refunded to the applicant without any interest:

Provided also that, the provisions contained in the above provisions shall not be applicable in case the authority exercise the powers of revision or review of any order *suo motu*.]

(4) The appellate authority or the authority exercising the powers of revision or review may set aside or modify any direction made under sub-section (1).

(5) The Revenue or the Survey Officer or the authority directing the execution of an order to be stayed may impose such conditions or order such security to be furnished as he or it thinks fit.

(6) No order directing the stay of the execution of any order shall be passed, except in accordance with the provisions of this Section.

7. The proviso which is introduced by amending the Code contemplates that the normal rule is that if the appeal involves payment

of any amount to the Government, the execution of such order shall not be stayed unless the appellant deposits 25% of the amount payable to the Government under the order impugned. The appellate authority may however, in exceptional cases, and after recording reasons in writing, suitably reduce such amount.

8. The learned counsel for the petitioner would contend that in view of the provisions of Government Circular dated 14.6.2017, the appellate authority ought to have made an exception to the normal rule by reducing the amount of prerequisite of 25% of the amount payable to the Government.

9. The learned counsel for the petitioner invites my attention to the Government Circular dated 14.6.2017, and in particular to the proviso of paragraph (ऊ) which read thus:

> "(ऊ) संबंधित ठेकेदाराने ३० दिवसाच्या आत गौण खनिजाच्या वाढीव उत्खननापोटी/वापरापोटी स्वामित्वधनाची रक्कम शासनजमा केल्यास एक विशेष बाब म्हणून त्यांच्याविरूध्द महाराष्ट्र जमीन महसूल संहिता, १९६६ मधील कलम ४८ (७) नुसार दंडात्मक कारवाई करण्यात येऊ नये. मात्र, संबंधित ठेकेदाराने ३० दिवसाच्या आत गौण खनिजाच्या वाढीव उत्खननापोटी/वापरापोटी स्वामित्वधनाची रक्कम शासनजमा न केल्यास तो दंडात्मक कारवाईस पात्र राहील."

10. I would consciously refrain from making any positive observation on the submission of the learned counsel for the petitioner

that in view of the Government Circular dated 14.6.2017, penalty ought not to have been imposed since the petitioner has paid the royalty towards the minor minerals excavated in excess. This aspect shall undoubtedly be decided on the basis of material on record by the appellate authority. However, I am satisfied that a case is made out for reduction of amount of pre-deposit, since the submission *prima facie* appears to be consistent with record.

11. Learned counsel for the petitioner Mr. Rathod fairly states that instead of 25% of the amount allegedly payable to the Government, the petitioner is ready to deposit 10% of the amount. I am satisfied that if 10% of the amount is deposited, the petitioner deserves hearing on the stay application.

12. The order impugned is set aside and the direction to deposit 25% of the amount allegedly payable to the State Government is substituted by the direction to deposit 10% of the amount within two weeks.

13. The petition is partly allowed and disposed of in the aforestated terms.

JUDGE

Digitally signed byAVINASH YUVRAJ WASNIK
Signing Date:06.01.2022 17:26

wasnik