

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5567 OF 2023

Dnyaneshwar s/o Kanhu Kurhade ... PETITIONER

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

.....
Mr. R.B. Temak, Advocate for petitioner
Mr. S.G. Sangle, A.G.P. for respondents - State
.....

CORAM : S.G. CHAPALGAONKAR, J.
VACATION COURT

DATE : 18th MAY, 2023

PER COURT :

Heard Mr. Kharosekar, learned Advocate appearing for the petitioner. Issue notice to respondents. Mr. Deshmukh, learned A.G.P. waives service for the respondents – State.

2. Mr. Temak, learned Advocate for the petitioner would submit that, by an order dated 2/11/2016, the Additional Collector at Ahmednagar had granted permission for excavation of the Murum in favour of the petitioner out of Gat No.17/1 and 17/2 of village Yelkhopwadi, Taluka Sangamner, District Ahmednagar. He would submit that, the Tahsildar – respondent

No.4 issued show-cause notice dated 29/11/2022, calling explanation why penalty of Rs.2,33,10,020/- shall not be imposed against the petitioner. The petitioner replied the said show-cause-notice. However, without giving further opportunity of hearing, the Tahsildar – respondent No.4 passed the order dated 1/12/2022 and imposed the penalty of the like amount. Mr. Temak would submit that, the petitioner approached the appellate authority by filing appeal bearing No.413/2022, which is pending before the Sub-Divisional Officer, Sangamner for hearing. However, during pendency of such appeal, the petitioner has been served with the demand notice dated 4/5/2023. In that view of the matter, Mr. Temak submits that, unless the statutory appeal is decided by the appellate authority, the respondents be restrained from taking any coercive action against him.

3. The learned A.G.P. appearing for the respondents opposes such prayer.

4. After considering the arguments advanced by the respective Advocates appearing for the parties, it appears that, prima facie the respondent No.4 has passed the order without giving sufficient opportunity to the petitioner and even their appeals which are filed before the Sub-Divisional Officer are

kept pending without further decision. In that contingency, it is improper on the part of respondents to execute the order passed by the Tahsildar, which is subject matter before the appellate authority and further serve the demand notice against the petitioner.

5. Considering the totality of circumstances, it would be appropriate to direct the respondent No.3 – Sub-Divisional Officer, Sangamner, Taluka Sangamner, District Ahmednagar to expeditiously hear and decide the appeal filed by the petitioner, in any case on or before 12th June 2023. Till the appeal is finally decided, no coercive action shall be taken against the petitioner in pursuance of the demand notice dated 4/5/2023.

6. Writ Petition is disposed of with the aforesaid directions.

(S.G. CHAPALGAONKAR)
JUDGE

fmp/-