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

WRIT PETITION NO. 2286 OF 2023

Balraj Digambar Jadhav ... Petitioner

vs.

The State of Maharashtra thr its Principal ... Respondents
Secretary and Ors

Mr. Drupad S. Patil, a/w Mr Dheeraj Patil, for the Petitioner.

Mrs. M.S. Bane, AGP, for the Respondent-State.

**CORAM : R. D. DHANUKA AND
GAURI GODSE, JJ.**

DATED : 27th APRIL, 2023

P.C. :-

1. Rule. Learned AGP waives service for the Respondents. Rule is made returnable forthwith. By consent of parties, Petition is taken up for final hearing. By this Petition filed under Article 226 of the Constitution of India, the Petitioner has impugned the Demand Notice dated 6th October 2022 issued by the Respondents under Section 48 of the Maharashtra Land Revenue Code, 1966 (for Short 'MLR Code'). The Petitioner also prayed for Writ of Mandamus directing the Tahasildar, Taluka Karveer, District Kolhapur to forthwith withdraw the impugned Demand Notice dated 6th October 2022 issued to the Petitioner in purported exercise of powers conferred under Section 48 of the MLR Code.

2. It is the case of the Petitioner that he owns land bearing City Survey No. 836/1, situated at E(1)-Ward, Kolhapur on 1st April 2021. The Kolhapur Municipal Corporation granted development permission to the Petitioner under Sections 45 and 69 of the Maharashtra Regional Town Planning Act, 1966. On 9th April 2021, Respondent No.2 granted permission for amalgamation of Survey No. 836/1 to Survey No. 836/9. On 17th June 2022, Respondent No.4, Tahasildar issued a show cause notice to the Petitioner alleging that excavation of mining material of 150 Brass was carried out without permission under the provision of the Bombay Minor Mineral Extraction Rules, 1955. The said show cause notice was responded by the Petitioner and the Petitioner called upon the Tahasildar, to withdraw the said show cause notice dated 17th June 2022. On 6th October 2022, the Respondent No.4 once again issued Demand Notice under Section 48 sub section 7 and 8(1)(2) of the Maharashtra Land Revenue Code, 1966, to pay royalty and 5 times the market value of the amount of mineral as penalty. It is the case of the Petitioner that the said Demand Notice was issued and Panchanama dated 20th December 2021 was allegedly drawn by the Circle Officer. Petitioner accordingly filed this Petition inter alia praying various reliefs.

3. The learned counsel for the Petitioner invited our attention to various Exhibits annexed to the Petition including the show cause notice and the Reply of the Petitioner. None of the explanations given by the

Petitioner are considered in impugned order passed by the Respondent. He submitted that the Petitioner has not shifted/transported excavated material outside the land in question which was developed by the Petitioner. He submitted that the panchanama prepared by Circle Officer does not refer to any alleged activity of transportation of material from the plot in question to some other plot. The entire material was used on same site for laying down foundation.

4. Learned counsel for the Petitioner states that Petitioner is carrying on construction of laying down foundation and/or plinth and construction of basement after obtaining the requisite permission for non-agricultural use as contemplated under Section 44 of the MLR Code and Building/Development permission under Section 18 of the Maharashtra Regional and Town Planning Act, 1966. Petitioner was required to excavate the surface of the land to some extent. The said activity does not involve any activity of mining and does not amount to “winning” or “mining” the minor minerals. The Petitioner did not supply any excavated material to any party.

5. Learned counsel for the Petitioner invited our attention to the Judgment of Supreme Court in case of *Promoters and Builders Association of Pune v State of Maharashtra and Ors*¹. Hon'ble Supreme Court has held that liability under Section 48(7) of the MLR Code for

1 (2015) 12 SCC 736

excavation of ordinary earth would, therefore, truly depend on a determination of the use/purpose for which the excavated earth had been put to. An excavation undertaken to lay the foundation of a building would not, ordinarily, carry the intention to use the excavated earth for the purpose of filling up or levelling. A blanket determination of liability merely because ordinary earth was dug up, therefore, would not be justified; what would be required is a more precise determination of the end use of the excavated earth; a finding on the correctness of the stand of the builders that the extracted earth was not used commercially but was redeployed in the building operations, needs to be considered.

6. Learned counsel for the Petitioner invited our attention to the Judgment delivered by the Division Bench of this Court in case of *Tata Projects Ltd v State of Maharashtra and Ors*² and submitted that after considering Rule 46 which was amended after the Judgment of the Supreme Court in case of *Promoters and Builders Association of Pune(supra)*, this Court has held that unless there is a clear finding given by the authority after giving an opportunity to the parties, that the said earth is used and/or utilized for any commercial purpose and/or the earth so extracted was not used and utilized on the very same plot of land, there is no question of imposing any royalty. He submits that in this case, show cause notice also does not allege that the earth excavated by the

² 2018(1) Mh. L.J 643

Petitioner was not used and/or utilized on the very same plot of land.

7. Learned counsel for the Petitioner invited our attention to the impugned order dated 6th October 2022 and submitted that the findings recorded by the Tahasildar are contrary to the allegations made in the show cause notice while giving an opportunity to the Petitioner to deal with such allegations.

8. Mrs Bane, learned AGP for the State on the other hand submitted that the impugned order is passed by the Authority under Section 48 of the MLR Code is appealable under the provision of MLR Code and this Court may not interfere with the impugned order passed by the authority under Section 48 of the MLR Code. Learned AGP could not point out any cause mentioned in the show cause notice that the earth excavated by the Petitioner was not used and or utilized on the very same plot of land. After the decision of the Hon'ble Supreme Court in case of *Promoters and Builders Association of Pune(supra)*, the State Government introduced Rule 46 of the principle Rule 46 under the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013. Perusal of the said rule clearly indicates that the authorities are empowered to demand royalty of minor mineral removed from the lease area at the rate specified under Scheduled I, provided that the material excavated while developing the plot of land is not utilized on the very same plot of land levelling or any work process development of such plot. After advertng to the said Rule

46, this Court in case of *Tata Projects Ltd (supra)* has held that unless there is a clear finding given by the authority after giving an opportunity to the parties, that the said earth is used and/or utilized for any commercial purpose and/or the earth so extracted is not used and utilized on the very same plot of land, there is no question of imposing any royalty.

9. Learned AGP could not point out the finding recorded in the impugned order demanding royalty or any such cause in the show case notice by which an opportunity was granted to the Petitioner to deal with those cause as to why royalty shall not be imposed upon the Petitioner.

10. The principle laid down by this Court in case of *Tata Projects Ltd (supra)* squarely apply to the facts of this case. In our view the Respondent have neither alleged nor proved that the earth excavated by the Petitioner was used and/or utilized for any commercial purpose and/or the earth so extracted was not used and utilized on the very same plot of land. Therefore, question of imposing any royalty does not arise.

11. The perusal of Panchanama annexed to the Petition also would clearly indicate that it is not the case of the Respondent that the earth excavated by the Petitioner is not used on the same land or was removed from the same land for any purpose or for any other commercial purpose or otherwise. In our view the impugned Demand Notice dated 6th October 2022 issued by the Authorities under Section 48 of the MLR Code is totally illegal and contrary to the provision of Section 48 read with Rule 46

of the said Rules. It was not alleged in the show cause notice that material that was excavated by the Petitioner was taken out from the site of the said plot for commercial use or any other purpose or material was not used on the same plot. Thus, the impugned Demand Notice demanding the amount on the premise that the Petitioner had committed violation of Section 48 of Rule 46 of the said Rules is in gross violation of principles of natural justice. In our view since the impugned order is ex-facie, illegal and in breach of principles of natural justice, the argument of the learned AGP that this Petition may not be entertained as there exist an alternative remedy, has no merits. We accordingly pass following order:

- i) Writ Petition is made absolute in terms of prayer clauses (a) and (b).
- ii) Rule is made absolute in the above terms.
- iii) All contentions of the parties are expressly kept open.
- iv) Parties to act on the authenticated copy of this order.

(GAURI GODSE, J.)

(R. D. DHANUKA, J.)