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

WRIT PETITION NO.1005 OF 2020

Prakash Ramji Shigvan

..... Petitioner

Vs.

The State of Maharashtra and Ors.

..... Respondents

Mr.Sumit Kothari for the Petitioner

Mr.K.S.Thorat, A.G.P. for the State

Mr.Tanaji Shejal, Tahsildar, Mandangad, Dist. Ratnagiri present in court

**CORAM: K.R. SHRIRAM, J &
FIRDOSH P. POONTWALLA, J.**

DATED : 13TH JULY 2023

P.C.

1. Petitioner is impugning the notice dated 19th August 2019 wrongly typed as 18th August 2019 in the prayer.
2. Petitioner is the owner of plot of land bearing Survey no.30 D situated at Village Mandangad, Taluka Mandangad, District Ratnagiri admeasuring 14.23 R (the said land). The same was self acquired property. Pursuant to registered sale deed dated 25rd June 2002 transaction has been recorded in the 7/12 extract. Subsequently, petitioner purchased another plot of land along with others bearing Survey No.2A/6 situated at Village

Bhingloli. Taluka Mandangad vide registered Sale Deed dated 7th February 2018 ('the said property'). Petitioner on 2nd October 2018 applied for permission for development of the said property. On 20th October 2018 the Chief Officer Mandangad Nagar Panchayat granted permission to petitioner. On 22nd October 2018 petitioner applied for permission to excavate soil from the property in dispute. Permission was granted on 24th October 2018 by the Chief Officer Nagar Panchayat, Mandangad. Sarpanch of Village also granted NOC on 24th November 2018 to Petitioner for storing excavated soil at the said land.

3. Petitioner received communication dated 30th October 2018 from Respondent no.4. Tahsildar granted NOC to excavate 300 brass soil. Fees were deposited by Petitioner with the Revenue Department on or about 1st November 2018. Similar permissions were also granted by Respondent no.4. Petitioner received permission to excavate totally 1000 brass of soil.

4. Petitioner was granted permission by Chief Officer, Planning Authority of Mandangad Nagar Panchayat for construction of residential and commercial buildings.

5. On or about 7th June 2019 Tahsildar informed Collector Ratnagiri-Respondent no.2 herein that Petitioner was granted permission to excavate and transport 1000 brass soil but on inspection, it appears that Petitioner has excavated 2118 brass soil. Tahsildar vide letter dated 19th June 2019 called upon Petitioner to show cause as to why penalty should

not be imposed for excavation of 1118 brass soil. Petitioner replied vide letter dated 24th June 2019. Order dated 19th August 2019 came to be passed directing Petitioner to deposit a sum of Rs.3,12,36,920/-. It is this demand which is impugned in the petition.

6. If we consider the notice, and Mr.Thorat agrees, only allegation in the notice dated 7th June 2019 is that Petitioner has excavated 1118 brass more than what he was permitted to excavate and Petitioner was called to show cause why penalty should not be imposed for excess excavation. Even in the order passed on 19th August 2019, though there are no details given, it is also stated that penalty was being imposed because Petitioner excavated 1118 brass more soil. But in affidavit in reply filed by Respondent no.4, allegations are made that soil excavated was not used for filling of the ditch / use of the soil at the site of construction but it was used for commercial purpose. No such allegation is even made in the notice dated 7th June 2019. It is also stated that Petitioner applied for permission to excavate soil for commercial / government use and for transportation of the said minor minerals. Copies of the applications are annexed to affidavit in reply. Mr.Thorat agreed that in none of these applications Petitioner has stated that Petitioner wanted to excavate the soil for commercial / government use. On the contrary, the applicant states it is only for purpose of construction of the house. Mr.Thorat agrees that averments made in affidavit in reply are not true. The affiant Tanaji

Siddheshwar Shejal, Tahsildar Mandangad, Dist. Ratnagiri Respondent no.4 is present in court. He is also not able to explain the basis on which he made such averments. Mr.Thorat states that the panchnama states so. Panchnama is different from the application. The said Tanaji Siddheshwar Shejal is expressing regret and is apologising to the court and prays that no perjury notice be issued to him. Tanaji Siddheshwar Shejal states that it was not a deliberate or intentional statement but an oversight. Tanaji Siddheshwar Shejal is warned not to repeat this.

7. Since the impugned order dated 19th August 2019 has been passed without even granting personal hearing to Petitioner, Mr.Thorat on instructions of Tanaji Siddheshwar Shejal states that Respondent no.4 will withdraw the impugned order dated 19th August 2019. Respondent no.4 may pass a fresh order on the notice dated 7th June 2019 after giving a personal hearing to Petitioner, notice whereof shall be communicated atleast three working days in advance. Respondent no.4 may thereafter pass such order as he may deem fit in accordance with law. Order to be passed shall be a reasoned order and shall deal with all submissions of Petitioner.

8. Petition disposed.

9. We clarify that we have not made any observation on the merits of the matter.

10. The amount deposited by Petitioner pursuant to the order dated 4th

September 2019 passed by this court shall be given credit to in case any adverse order is passed against Petitioner. If the show cause notice is discharged then the amount deposited shall be refunded to Petitioner within 8 weeks thereafter.

(FIRDOSH P.POONTIWALLA, J.)

(K.R. SHRIRAM, J.)