

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

Digitally signed by
VASANT
ANANDRAO IDHOL
Date: 2023.02.27
19:06:03 +0530

WRIT PETITION NO.1619 OF 2023

M/s.Ameya Logistics Private Limited
Through Its Authorised Representative ...Petitioner
V/s.
Tahsildar, Uran Dist. Raigad & Ors. ...Respondents

Mr.Ashutosh M.Kulkarni with Akshay Kulkarni for the Petitioner.

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

CORAM : R.D. DHANUKA &
M.M. SATHAYE , JJ.
DATE : 22ND FEBRUARY, 2023.

P.C. :-

1. Rule. Learned AGP waives service for the Respondents.
The matter is taken up for hearing and final disposal with the consent of parties.
2. This Petition filed under Article 226 of the Constitution of India seeks various prayers. By an earlier order dated 8th February, 2023, challenge in the present Writ Petition is restricted to prayer described in prayer clause (c), under which the Petitioner is seeking a writ of certiorari to quash and set aside the impugned communications / notices dated October, 2021 and 23rd November,

2021 demanding from the Petitioner an amount of Rs.21,91,397/- under the garb of penalty for the alleged unauthorised use of the writ land since 2018-19 ("the impugned notices" for short).

3. By our earlier order dated 8th February, 2023, learned AGP was directed to take instructions and to make a statement whether for the same reasons for which demands for the year 2022 are withdrawn, the impugned notices can also be withdrawn.

4. Mr.Kulkarni, learned counsel for the Petitioner invited our attention to the impugned notices, wherein the penalty is charged for the alleged unauthorised use of the writ property for NA purpose. He has further invited our attention to the letter dated 2nd March, 2022 issued by the Petitioner to the Respondent No.1 – Tahsildar (Uran), Taluka Uran, District Raigad which states that the demand made under the impugned notice was paid under protest. We are also informed that the said amount is lying in the Treasury.

5. A communication dated 3rd February, 2023 under which the notices issued on 2nd November, 2022 and 28th December, 2022 were withdrawn has been placed on record. The said letter has clearly set out the reason for the withdrawal of notices dated 2nd November, 2022 and 28th December, 2022. The reason is that by an order passed as far back as on 17th September, 2010, necessary NA permissions are obtained by the Petitioner.

6. Ms.Bane, learned AGP for the Respondent No.1 states, on instructions, that when the impugned notices were issued and the Petitioner had made payment under protest, it had not informed about the existence of NA permission for the subject matter land. We are surprised at the stand taken by the Respondent / State as stated above.

7. The reason given in the communication dated 3rd February, 2023 issued by the Tahsildar for withdrawing the notices issued in the year 2022 will obviously apply to the impugned notices issued in the year 2021 also. Since the communication dated 3rd February, 2023 accepts that NA permission was granted in favour of the Petitioner since 17th September, 2010, according to us, the impugned notices deserve to be quashed and set aside in the teeth of NA permission already granted in the year 2010. For the same reason, the Petitioner must be refunded the amount already deposited by it under protest.

8. In that view of the matter, we pass following order :

a). Writ Petition is allowed in terms of prayer clause (c). However, it is clarified that the Respondents will reimburse / refund the amount deposited by the Petitioner which is lying in the Treasury within two weeks from today.

b). Rule is made absolute accordingly. No order as to costs.

All concerned to act on the authenticated copy of this order.

(M.M. SATHAYE , J.)

(R.D. DHANUKA, J.)