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

WRIT PETITION NO. 12873 OF 2022

Swastik Infra Logic and Gorur Infra ... Petitioner
Project (JV)

vs.

The State of Maharashtra through the ... Respondents
Prin. Secretary, Urban Development Dept.
and Anr.

Ms. Neeta Karnik i/b. Mr. Ambadas V. Chatuphale for the
Petitioner.

Mr. P. P. Kakade, GP a/w. Ms. R. A. Salunkhe, AGP for
Respondent no. 1 – State.

Mr. Mandar Limaye for the Corporation.

Ms. Almas Sati i/b. Mr. Rajesh Bindra for the original
complainant (Intervenor).

**CORAM : S.V. GANGAPURWALA, ACJ. &
SANDEEP V. MARNE, J.**

DATED : 12 JANUARY, 2023

P.C. :-

1. The Petitioner challenges the notice dated 30 September 2019 issued by the Corporation and directions dated 6 June 2019 issued by the Secretary, Urban Development Department of the State of Maharashtra. Under the impugned notice the Petitioner has been directed to deposit royalty. Failure to

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deposit the royalty as demanded would result in the security deposit deducted from the bills being forfeited.

2. We have heard the learned counsel for the Petitioner, learned counsel for the Corporation and the learned AGP.

3. The Petitioner is issued with the certificate by the Executive Engineer of the Thane Municipal Corporation on 11 November 2014 that the Mining and Mineral has not been used for commercial purposes. The Petitioner was allotted work for providing, laying and commissioning of gravity sewers along with construction of manholes for sewerage network under PS-04 Sewerage zone in Thane City.

4. It was the case of the Respondent that if the mining and mineral excavated is used for commercial purposes, as per direction dated 6 June 2019 issued by the Secretary, Urban Development Department, the royalty has to be charged.

5. The similar issue was subject matter of consideration before the division bench of this court in Writ Petition No. 1429 of 2020 with connected Writ Petitions. The division bench of this court, in judgment and order dated 13 February 2020, allowed the Writ Petition holding that if it is not proved

that the extracted mine and mineral are not used for commercial purposes, then royalty could not have been charged. The facts in the present matter are akin to the facts of the aforesaid Writ Petition.

6. In view of the above and for the reasons recorded in the judgment and order dated 13 February 2020 in Writ Petition No. 1429 of 2020 with connected Writ Petitions, we follow the same course :

(i) Impugned notice dated 30 September 2019 is quashed and set aside.

(ii) From the bills remitted to the Petitioner if the State Government is able to discern the exact quantity of the excavated mine and minerals which has been commercially exploited by the Petitioner, it is at liberty to issue a fresh notice and by affording an opportunity to the Petitioner, to deal with the same.

(iii) As the impugned notice is quashed and set aside consequences shall follow and in case some amount is deducted, the Petitioner would be entitled for refund of the same.

(iv) The Security deposit shall be returned back to the Petitioner within eight weeks from today.

(v) Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)