IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4778 OF 2022

Murlidhar Shamrao Mahadik ... Petitioner
versus
Tahsildar, Baramati, Pune and Ors. ... Respondents

Mr. Chaitanya Nikte with Ms. Aditi Rajput for Petitioner.
Mrs. V.S.Nimbalkar, AGP for State.
Mr. Ravi S., for Respondent No.4.

CORAM: N.J.JAMADAR, J.
DATE : 16 MARCH 2023

P.C.

1. Heard the learned Counsel for the parties.

2. Rule.

3 Rule made returnable forthwith.

4. With the consent of the learned Counsel for the parties, heard finally at the stage of admission.

5. The challenge in this Petition is to the attachments orders dated 28 January 2019 and the order 30 November 2020 creating a charge on the agricultural lands bearing Gat Nos.117, 118 and 119 situated at Village Undwadi Supe, Tal Baramati, Dist. Pune (the subject properties).

6. The Petitioners purchased the subject properties under Sale Deeds dated 26 December 2014, 27 October 2014 and 27 October 2014. Since the subject properties were Class II properties, with restricted tenure, the Petitioner obtained

permission of the Competent Authority on 30 July 2014. The Divisional Commissioner while granting permission had directed the Petitioner to pay the unearned income (Nazrana), which was duly paid by the Petitioner. The Accountant General (Audit II) – Respondent No.4 forwarded an Inspection Report dated 15 November 2018 to the District Collector, Pune – Respondent No.2. Based on the said inspection report, Tahasildar, Baramati – Respondent No.1 addressed notices asserting that there was a shortfall in the payment of unearned income to the tune of Rs.12,17,100/-, Rs.36,17,100/- and 25,28,850/- in respect of the lands bearing Gat Nos.119, 118 and 117, respectively.

7. The Petitioner gave reply contesting the claim. Eventually, the impugned attachment orders came to be issued on 28 January 2019. By a further order dated 30 November 2020, a charge in the record of right of the subject properties was directed to be entered. Mutation entry came to be effected.

8. The Petitioner asserts that the action of the Respondents in determining the shortfall of unearned income merely on the basis of a remark in the inspection report by the Accountant General is unsustainable. Respondent Nos.1 to 3 have not arrived at a finding that there was, in fact, deficit in payment of unearned income.

9. I have heard the learned Counsel for the Petitioner and the learned AGP for Respondent Nos.1 to 3 and 5.

10. The learned Counsel for the Petitioner submitted that the action of the

Respondent Nos.1 to 3 in seeking to recover the alleged deficit unearned income merely on the basis of the inspection report submitted by the Accountant General is wholly arbitrary and without application of mind. Respondent Nos.1 to 3 have not provided an effective opportunity of hearing to the Petitioner and independently arrived at a finding that the unearned income charged and collected by the State was inadequate.

11. The learned Counsel for the Petitioner invited the attention of the Court to the observations made in the order dated 8 February 2019 of the Division Bench of this Court in the case of **Tushar Tanaji Bhilare V/s. Office of the General (Audit) II and Anr.**[1] In the said case, after adverting to the procedure and purpose of the audit, as explained by the Accountant General on an Affidavit, this Court held that the objections raised in the Audit Report / Inspection Report by themselves cannot form the basis for recovery of the amount. The authorities of the State who professed to demand more amount towards the unearned income have to independently apply their mind and arrive at an appropriate decision as regards the admissibility of the amount towards revenue recovery. The observations in paragraphs 4 and 5 are material and govern the facts of the case at hand as well. They read as under :

> "4. On consideration of the procedure and the purpose of conducting the audit by the Accountant General in respect of the Government Accounts, the Petitioner would be justified in contending that mere raising of objections by the Auditor in the Audit Report / Inspection

1 WP 1266 of 2019 dated 8 February 2019

> report itself shall not form the basis for recovery of the amount. The concerned authorities have to independently apply mind and arrive at appropriate decision as regards the admissibility of claim of amount towards the revenue recovery.
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> 5. In the instant matter, it appears that authorities have not independently applied mind nor have conducted the assessment independently as regards the objections stated to have been raised by Auditor. In the circumstances, we direct that the demand issued by Tahsildar, Haweli, Dist Pune impugned in this Petition shall be construed as a notice and the Petitioner shall be extended an opportunity of hearing before confirming the said demand. The Tahsildar, Haweli, shall after extending the opportunity of hearing to the Petitioner proceed to pass a reasoned order and may take steps as permissible in law."

12. Faced with the aforesaid position and the enunciation of law, the learned AGP, on instructions, submitted that the Sub-Divisional Officer, Baramati, would give an opportunity of hearing to the Petitioner and decide the admissibility of the claim for deficit in unearned income, if any.

13. The course suggested by the learned AGP seems to be appropriate as the impugned orders indicate that the sole basis of the demand is the remark of the Accountant General in the inspection report.

14. Hence, the following order :

ORDER

(i) The impugned attachment orders dated 28 January 2019 (Exhibit F1) and the order dated 30 November 2020 directing entering of a charge in the record of right of the subject properties and the consequent mutation entry No.4032 dated 1 December 2020 (Exhibit H) stand quashed and set aside.

(ii) The demand notices issued to the Petitioner shall be considered as Show Cause Notices.

(iii) The Petitioner shall appear before the Sub-Divisional Officer, Baramati, on 19 April 2023.

(iv) The Sub-Divisional Officer, Baramati, shall after providing an opportunity of hearing, decide the admissibility of the demand keeping in view the observations of the Division Bench in the case of **Tushar Tanaji Bhilare (Supra)** extracted above.

(v) It is hereby made clear that this Court has not delved into the merits of the demand and the Sub-Divisional Officer, Baramati shall decide the same on its own merits and in accordance with law.

(vi) If the Petitioner creates any third party rights in respect of the subject properties, till the Sub-Divisional Officer, Baramati decides the admissibility of the demand and passes an effective order, those rights shall be subject to the order which may be passed by the Sub-Divisional Officer, Baramati, Pune.

(vii) Rule is made absolute to the aforesaid extent.

(viii) The Writ Petition stands disposed. No costs.

(N.J.JAMADAR, J.)