

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1783 OF 2018

(CHANDRAMANI BHAGWAN GAJBHIYE..VS.. STATE OF MAH. THR. MINISTRY OF REVENUE &
FOREST & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.P.Bhandarkar, Adv. a/b. Ms Sejal Lakhani, Adv. for the Petitioner.
Shri D.P.Thakre, Addl. G.P. for Respondent Nos. 1 to 4.

CORAM : ANIL S. KILOR, J.

DATED : JULY 31, 2023.

1. Heard.
2. The order dated 10/01/2018 passed by Additional Collector, Bhandara forfeiting the security deposit of Rs.10,95,510/- and further imposing penalty to the tune of Rs.3,21,70,000/- on the petitioner, is under challenge in this petition.
3. Shri Bhandarkar, learned counsel for the petitioner has pointed out that on 20/11/2017 a Sand Ghat was allotted to the petitioner and on 06/12/2017 the petitioner made a complaint, by which the concerned authorities made aware of the illegal excavation going on nearby the Ghat allotted to the petitioner as well as within the area of the Ghat allotted to the petitioner.
4. It is submitted that instead of taking strict action against the persons who were responsible for the illegal

excavation, a show cause notice was issued to the petitioner on 07/12/2017 making certain allegations against the petitioner namely that CCTV Cameras have not been installed, necessary boards displaying boundaries are not found, excavation was made more than 1½ meters, etc. It is submitted that the petitioner submitted his reply and thereupon, without granting any opportunity of being heard the impugned order came to be passed. Thus, it is submitted that the impugned order suffers from non-compliance of the principles of natural justice.

5. It is submitted that because such hearing was not granted, the petitioner was deprived of opportunity to raise the objections namely, jurisdiction of the Additional Collector, in such matters and before passing any such order or before reaching to the conclusion that illegal excavation was made the measurement report is required to be supplied. Furthermore, the petitioner lost the opportunity to raise a ground that the provisions of Sections 48(7) and 48(8) of the Maharashtra Land Revenue Code, 1966 would not attract in this case.

6. He, therefore, submits that in absence of such opportunity of being heard, the impugned order needs to be quashed and set aside.

7. The learned counsel for the petitioner, in support of his contentions as regards jurisdiction, carrying out measurement, preparation of the report and supplying

copy etc., has relied upon the judgments of this Court and a judgment of Karnataka High Court in the cases of (i) *Vijay Dashrath Shirbhate ..vs.. State of Maharashtra* in **Writ Petition No. 3296 of 1993**, (ii) *M/s. Molex (India) Private Limited ..vs.. Union of India & oth*, in **Writ Petition No.49553 of 2016 (T-Res)**, (iii) *M/s. Bhandara Traders ..vs.. State of Maharashtra & oth*. in **Writ Petition No.4401 of 2017** and (iv) *M/s. Mangalmurti Traders ..vs.. State of Maharashtra & oth*. in **Writ Petition No.5292 of 2015**.

8. On the other hand, the learned A.G.P. is not disputing the fact that no hearing was granted. Further there is nothing on record to show that any measurement map was prepared or any such document was supplied to the petitioner.

9. In the above referred backdrop, I am of the opinion that since numerous disputed questions of facts are involved in the present petition, it would be appropriate to remit the matter back to the respondent No.3 to take decision afresh after giving an opportunity of hearing to the petitioner and after considering the issues in respect of the jurisdiction, applicability of Sections 48(7) and 48(8) of the Maharashtra Land Revenue Code, 1966, supply of necessary documents, carrying out measurement etc. if so raised.

10. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 14/12/2017 passed by respondent No.3-Additional Collector is hereby quashed and set aside.
- iii) The matter is remanded back to the respondent No.3-Additional Collector, Bhandara to decide the matter afresh on its own merits, after hearing the petitioner and after giving him sufficient opportunity to file additional reply raising all the relevant issues, if he so desires.
- iv) The petitioner shall appear before the respondent No.3-Additional Collector, Bhandara on 18/08/2023 at 11:00 a.m.
- v) The learned Additional Collector, Bhandara shall make an endeavor to decide the matter as early as possible and in any case within four weeks from the date of appearance of the petitioner.

The Writ Petition is **disposed of** accordingly.
No order as to costs.