



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

WRIT PETITION NO.2675/2023

Santosh S/o Mahadeorao Madavi,
aged about 44 Yrs., Occ. Agriculturist
and Business, R/o Ranade Plots, Ram
Nagar, Wardha, Tq. & Dist. Wardha,
The Proprietor M/s Maa Santoshi
Explosives.

... Petitioner

- Versus -

1. The Divisional Commissioner,
Nagpur Division, Nagpur.
2. The Collector,
Office at Civil Lines,
Near Mahatma Gandhi Statue,
Wardha.
3. The Executive Engineer,
Vidarbha Irrigation Development
Corporation, Lower Wardha Canal
Division, Wardha.

... Respondents

Mr. Mohammad Ateeque, Counsel for the Petitioner.

Ms. S.S. Jachak, Assistant Government Pleader for Respondent
Nos.1 and 2.

Ms. Mallika Babhulkar, Counsel with Mr. M.A. Kadu, Counsel
for Respondent No.3.

CORAM: A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 1.9.2023

ORAL JUDGMENT (Per A.S. Chandurkar, J.)

Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. The challenge raised in the present writ petition is to the order dated 28.3.2023 passed by the Divisional Commissioner in proceedings under the Explosives Act, 1884. By the said order, the appeal preferred by the present petitioner for challenging the order dated 2.1.2023 passed by the District Magistrate and Collector in proceedings under Rule 115 of the Explosives Rules, 2008 came to be dismissed and the no objection certificate granted to the petitioner for storage of explosives on 27.9.2006 came to be cancelled.

3. On 24.8.2023 after hearing the learned counsel for the parties, following order was passed:-

“We have heard the learned counsel for the parties for some time. The learned counsel for the petitioner by referring to Rule 102 of the Explosives Rules, 2008 (for short “Rules of 2008) read with Rule 115 thereof submits that no objection certificate granted under Rule 102 can be cancelled by the authority issuing the same or by an authority superior to it. On 27.9.2006 the Collector, Wardha issued no objection certificate to the petitioner in the matter of storage of explosives. By the order dated 2.1.2023 the Collector has proceeded to cancel the no objection certificate. It is the specific contention of the petitioner that the proceedings were heard by the Additional Collector / Resident Deputy Collector after which the same were transferred to the District Collector. In other words, it is submitted that the impugned order is being passed by an authority who did not hear the parties. A specific ground in this regard is raised vide ground 9(a) of the appeal memo preferred by the petitioner under Rule 121 of the Rules of 2008. Inviting attention to reply to paragraph 9(a) as submitted by the respondent No.3 it is urged that such fact stands admitted. Similarly, reference is made to the affidavit-in-reply filed by the respondent No.2 vide paragraph 3.

2. To consider this aspect it will be necessary to peruse the record of the proceedings maintained by the office of the Collector while passing the order dated 2.1.2023. The learned Assistant Government Pleader appearing for respondent Nos.1 and 2 to produce the said record for perusal.

3. *Stand over to 31.8.2023.*

4. *The ad interim order to continue till that date.”*

4. The learned Assistant Government Pleader has produced the record of the proceedings maintained by the office of the District Magistrate and Collector. The same indicates that the parties were heard by the Additional Collector / Resident Deputy Collector after which the matter was considered by the District Magistrate and Collector. He thereafter passed the order on 2.1.2023. It is, thus, clear that the District Magistrate and Collector did not hear the parties but merely proceeded to pass the final order. On this ground, the order dated 2.1.2023 becomes unsustainable. This ground was raised by the petitioner vide para 9(a) of the appeal preferred before the Divisional Commissioner. That ground, however, has not been considered.

5. The learned counsel for the petitioner has tendered pursis signed by the petitioner stating therein that the petitioner is willing to hand over the portion of the land that was acquired at

the behest of respondent No.3 which was the reason for the said respondent to initiate the proceedings under Rule 115 of the Explosives Rules, 2008. The pursis is taken on record.

6. It is seen that present proceedings have been initiated by the respondent No.3 for cancelling the no objection certificate granted to the petitioner for storage of explosives only on the ground that 0.78 H.R. land from Survey Nos.164/1 and 164/2 had been acquired vide award dated 13.1.2013 and therein one Magazine admeasuring 15 meters x 18.60 meters has been erected.

7. The undertaking submitted by the petitioner is accepted. The petitioner is present in Court today and according to him within a period of seven days which would be till 9.9.2023 he would hand over possession of the portion affected by the acquisition of 0.78 H.R from Survey Nos.164/1 and 164/2. The respondent No.3 is free to take possession of the said acquired portion from the petitioner. The petitioner as well as the representative of the respondent No.3 shall appear before the

Collector on 12.9.2023. If the respondent No.3 receives the possession of the acquired portion of the land it shall bring the said effect to the notice of the District Magistrate who shall thereafter consider the effect of the same and drop the proceedings if there is no further legal impediment.

8. For aforesaid reasons, the order dated 2.1.2023 passed by the District Magistrate and Collector as well as the order dated 28.3.2023 passed by the Divisional Commissioner are quashed and set aside. The proceedings in Reference Petition No.300/NAG/WAR/2019 are expedited.

9. With these directions, writ petition is disposed of. Rule accordingly. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)