IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4346 of 2021

1. Nitin Shrikrishna Mahajan,
Aged 52 years, Occ. Business,
R/o. Mahajan Market, Sitabuldi,
Nagpur.

2. Ashok Ramchandra Mandlik,
Aged 52 years, Occ. Business,
R/o. Rahate Colony, Wardha Road,
Nagpur. .... **PETITIONERS**

...V E R S U S...

1. State of Maharashtra,
Revenue and Forest Department,
Through its Secretary,
Mantralaya, Mumbai.

2. Collector, Chandrapur.
District Chandrapur.

3. Tahsildar, Bhadrawati,
Taluka Bhadrawati,
District Chandrapur. .... **RESPONDENTS**

Shri V. N. Morande, Advocate for petitioners.
Ms N. P. Mehta, Assistant Government Pleader for respondents.

CORAM :- A.S.CHANDURKAR AND M. W. CHANDWANI, JJ.
DATE :- 14th MARCH, 2023.

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

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the order dated 20.07.2021 passed by the Tahsildar by which the petitioners have been called upon to pay an amount of Rs.8,49,068/- towards the balance payable on account of unearned income to the State.

3. The petitioners sought permission to purchase land admeasuring 1 H 34 R from Survey No.15 at Mouza Bhamdeli, Tahsil Bhadrawati, District Chandrapur from a tribal woman. While granting the said permission on 08.11.2016, the Additional Collector fixed the market value of the said land at Rs.23,77,510/-. It appears that during scrutiny of the matter by the Office of the Accountant General(AG), it was noticed that the market value of the said land was Rs.35,09,600/-. 75% of the amount of unearned income was Rs.26,32,200/- while the petitioners had paid an amount of Rs.17,83,132/- towards unearned income. There being a deficit of Rs.8,49,068/- a notice was issued by the Additional Collector to the Tahsildar seeking explanation of the said office in the matter of proper valuation of the said land. It appears that the Tahsildar on receiving this communication, issued a notice to the petitioners on 09.07.2021 calling upon them to pay the deficit amount towards unearned income. The petitioners submitted their explanation on 12.07.2021 denying any liability to pay such excess amount as demanded. Notwithstanding that, the Tahsildar proceeded to pass the order dated

20.07.2021 requiring the petitioners to pay deficit amount towards unearned income.

4. We have heard the learned counsel for the petitioners as well as the learned Assistant Government Pleader for the respondents and we have perused the documents on record. Undoubtedly, during the course of audit, the Accountant General(AG) opined that the market value of the land was higher than what was communicated by the Tahsildar while granting permission to purchase the said land. For that reason an explanation was sought by the Additional Collector in the matter of proper valuation of the said land. Acting on such communication, the Tahsildar had proceeded to demand the deficit amount in question. It is urged by the learned counsel for the petitioners that the reply furnished by them to the Tahsildar dated 12.07.2021 has not been considered. The market value of the said land was rightly determined by the Additional Collector at Rs.23,77,510/- and there was no opportunity to the petitioners to justify the same before passing of the impugned order.

5. We find that pursuant to the audit objection as raised, an explanation was called by the Additional Collector from the Tahsildar with a view to respond to the audit objection. Without any further process being undertaken, the Tahsildar straightway proceeded to issue a notice to the petitioners and thereafter passed the impugned order. As a result, there has

been no effective consideration of the aspect of proper market value of the said land. Whether the valuation as determined by the Additional Collector in the order dated 08.11.2016 or the market value as determined by the AG is to be accepted requires due consideration. The same can be decided by granting the petitioners an opportunity to substantiate the correct market value in terms of the order passed by the Additional Collector dated 08.11.2016.

6. In these facts, therefore the interest of justice would be met by passing the following order:

(i) In the light of the communication issued by the Additional Collector to the Tahsildar dated 03.11.2020 as well as in the light of the explanation submitted by the petitioners on 12.07.2021 and 22.07.2021, the Tahsildar, Bhadrawati shall hear the parties and pass a fresh order if it is found that the market value determined by the AG is correct.

(ii) To enable such consideration the order dated 20.07.2021 passed by the Tahsildar, Bhadrawati, is set aside on the ground that sufficient opportunity was not granted to the petitioners to substantiate their stand.

(iii) To facilitate re-consideration of the matter, the petitioners shall appear before the Tahsildar, Bhadrawati on 29.03.2023. The Tahsildar, Bhadrawati shall pass a fresh order after considering the entire record and the observations made in this order. Based on such adjudication further steps in accordance with law be taken.

(iv) The amount of Rs.8,49,068/- deposited by the petitioners shall continue to remain in deposit subject to final adjudication of the matter.

(v) The writ petition is allowed in aforesaid terms. Rule accordingly. No costs.

(M. W. CHANDWANI, J.) **(A.S.CHANDURKAR, J.)**

Andurkar..