



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

945 WRIT PETITION NO.6122 OF 2024

SIDHARATH SHIVLING MASULKAR AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for petitioners

Mr. S.B. Jadhav, AGP for respondents/State

...

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 25<sup>th</sup> JUNE, 2024

**ORDER :**

1           The petitioners approach this Court impugning show cause notice dated 12.12.2023 issued by respondent No.3 – Tahsildar, alleging that petitioners excavated earth material from Sy. Nos.450 and 451. Hence proposed penalty of Rs.8,82,000/-. Mr. Mazhar Jahagirdar submits that petitioners are owner of the property bearing Village Panchayat Nos.169, 170, 178. The old construction on land has been collapsed hence, new construction work was undertaken by petitioners. For storage of the material preserved from old construction, a pit has been made. As such there was no

commercial purpose behind excavation. Relying upon the Judgment of Hon'ble Supreme Court of India in case of **Promoters and Builders Association of Pune vs. The State of Maharashtra and others** [(2015) 12 SCC 736] he would submit that Section 48(7) of the Maharashtra Land Revenue Code would not attract in the facts of the case.

2 Per contra, learned AGP submits that the petitioners are served with show cause notice. If the reply is filed that can be considered by the authority and appropriate order can be passed. Till this date no further orders are passed in pursuance of the show cause notice, therefore, the petition is premature and need not be entertained.

3 Having considered submissions advanced there appears substance in the contention of learned AGP that the authority has not arrived at any definite conclusion or no adverse order is passed against the petitioners till this date. In this background, it would be for the authority to consider the reply filed by the petitioners indicating the purpose for excavation of earth material and also law laid down by the Hon'ble Supreme Court in case of **Promoters and Builders Association of Pune** (supra).

4 The respondents authorities shall pass further orders taking into consideration the reply filed by the petitioners along with the legal position

as espoused by Hon'ble Supreme Court of India in the case of **Promoters and Builders Association of Pune** (supra).

5           The writ petition stands disposed of in the aforesaid directions.

( S.G. CHAPALGAONKAR )  
JUDGE

agd