



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3774 OF 2022
WITH CA/6178/2022

Kalabai Ambadas Gaikwad

...Petitioner

Versus

1. State of Maharashtra
2. The Tahsildar

...Respondents

...

Mr. N. S. Jaju, Advocate for the Petitioner.

Mr. S. B. Narwade, AGP, for the Respondents.

...

CORAM : RAVINDRA V. GHUGE &
R. M. JOSHI, JJ

DATE : FEBRUARY 27, 2024

ORDER (PER: R. M. JOSHI, J)

1. By consent, heard finally at the stage of admission.

2. This Petition takes exception to the order 04.02.2022 passed by Tehsildar, Shevgaon directing Talathi to create charge over Petitioners property for recovery of penalty amount imposed upon Balasaheb A. Gaikwad, son of the Petitioner, in relation with alleged illegal extraction of sand.

3. It is the case of the Petitioner that she is the owner of the said 80R land from land bearing Gut

No. 177 situated at Sonvihir, Tq. Shevgaon, Dist. Ahmednagar, which is her self acquired property purchased vide registered sale deed dated 06.09.2017 for valuable consideration. To support this claim, photocopy of sale deed and 7/12 extract are relied upon. It is further case of the Petitioner that on 13.06.2021 an offence came to be registered against her son – Balasaheb and three others under Section 379 read with Section 34 of the Indian Penal Code and under Sections 3 and 15 of the Environment Protection Act, 1986.

4. Respondent No. 2 imposed fine/penalty of Rs. 7,50,000/- on Balasaheb i.e., son of the Petitioner, who challenged the said order before the Sub-Divisional Officer, Pathardi. Tehsildar, Shevgaon. On 07.01.2022 issued demand notice to the son of the Petitioner calling upon him to deposit the fine amount within the period of 7 days and in failure thereof, action was sought to be initiated under provisions of Sections 178 to 184 of the Maharashtra Land Revenue Code, 1966 (for short 'MLRC'). A valuation report was called on 15.02.2022 in respect of the land of the Petitioner

from the Sub Registrar of Assurances. An order of attachment came to be passed in respect of the said property.

5. Learned Counsel for the Petitioner submits that action of authority to attach and to create charge on property of Petitioner is null and void and as such, the Petitioner is not required to challenge the order passed by the Tahsildar under the provisions of MLRC. It is submitted that the exclusive property of the Petitioner cannot be attached for the purpose of recovery of the alleged penalty imposed on her son. To counter the submissions made by learned AGP with regard to the maintainability of the Petition for the reason of availability of alternate remedy available under MLRC against the said order, it is contended that since the Petitioner is not party to any proceeding before Revenue Authority, said remedy is not required to be exhausted. To support his submissions, reliance is placed on judgment passed by Division Bench of this Court in case of Kirti Trambaklal Shah vs. Collector of Mumbai District and Ors, 2006 (1) LJSOFT 73.

6. Learned AGP opposed the said contentions

relying upon the affidavit-in-reply filed by the Respondent No. 2. The sum and substance of the said reply is that son of the Petitioner was found involved in theft of sand and hence, offence came to be registered against him and pursuant to an enquiry conducted by the competent Authority penalty of Rs. 7,50,000/- is imposed upon him. Reply specifically states that after due search and verification of the revenue record, no immovable property was found in the name of son of the Petitioner and therefore, the Tahsildar has proceeded further under the provisions of MLRC for recovering the amount of penalty.

7. There is no dispute about the fact that the Petitioner is the sole owner of the property in question and that no offence is registered against her in respect of any alleged illegal excavation of the sand. Petitioner is not party to the proceedings before the authority under the MLRC. Division Bench of this Court in case of Kirti (supra) has observed that the order passed against the person, who is not party to the proceeding, cannot be compelled to exhaust alternate remedy. It is further held that this Court is

not debarred from exercising extraordinary jurisdiction in appropriate cases. As similar facts are involved in instant case, Petition is held maintainable.

8. Since no offence has been registered against the Petitioner and no penalty is imposed upon her, it would not be open for the Respondents to attach the property belonging to the Petitioner or to create any charge thereon. Merely because, Petitioner happens to be mother of Balasaheb, against whom an offence is registered and penalty is imposed, her individual property cannot be subjected to the charge for recovery of the said penalty. Even from the affidavit-in-reply, it does not appear to be a case of the Respondents that Balasaheb had any existing right, title or interest in the said property or any part thereof in order to create a charge against the same.

9. At this stage, it would be relevant to take note of Section 176 to 182 of MLRC, which deal with the process of recovery of arrears of land revenue. Section 176 prescribes a process, which would apply only in respect of defaulters property. Section 180 deals with distrained and sale of movable property of defaulter.

Power of attachment and sale of immovable property as contemplated by Section 181 and 182 applies to the property of defaulter only. Thus, in order to initiate any action with regard to any property for recovery of arrears of land revenue, it must be shown that the property sought to be attached/sold/charged etc is of defaulter or he has any right or interest therein, which can be subjected to attachment or sale thereof. From reply filed on record, no such case is sought to be made out by Respondents. Merely because no immovable property of Balasaheb is found, his mother's property is sought to be attached, which is wholly impermissible in law. The impugned order, therefore, cannot be sustained.

10. In the result, this Writ Petition is allowed in terms of prayer clause 'B'. Pending Civil Application stands disposed off.

(R. M. JOSHI, J)

(RAVINDRA V. GHUGE, J)

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