



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

936 WRIT PETITION NO.6105 OF 2024

BABASAHEB BALASAHEB BORKAR

VERSUS

STATE OF MAHARASHTRA AND OTHERS

...

Mr. S.S. Dixit, Advocate for petitioner

Mr. P.D. Patil, AGP for respondent Nos.1 to 3

...

WITH

WRIT PETITION NO.6182 OF 2024

...

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 25th JUNE, 2024

ORDER :

1 Writ Petition No.6182 of 2024 is not on board. It is taken on board upon mentioning.

2 Heard Mr. S.S. Dixit, learned Advocate appearing for the petitioner and learned AGP for respondent Nos.1 to 3.

3 Mr. S.S. Dixit submits that order of Tahsildar passed under

Section 48(7) and 48(8) of the Maharashtra Land Revenue Code imposing penalty for illegal excavation of sand against petitioner was challenged by him in RTS appeal before Sub Divisional Officer, Sangamner under Section 247 of the Maharashtra Land Revenue Code. However, his appeal is dismissed without considering merits for the reason that petitioner failed to deposit 25% of the amount of assessed penalty.

4 Mr. S.S. Dixit would point out that there is no condition of pre deposit for entertaining appeal under Section 247 of the M.L.R. Code. Even petitioner had not filed any application for grant of stay or no directions were given by the Sub Divisional Officer to deposit such amount. According to him, dismissal of the appeal without looking to merit is gross failure to exercise jurisdiction on part of the Sub Divisional Officer.

5 Mr. S.S. Dixit, placed reliance on the Judgment of this Court in the case of **Monte Carlo Company vs. The State of Maharashtra and others** [2020 (6) All M.R. 51], wherein this Court observed that appellate authority cannot refuse to entertain appeal. No such power is vested with the appellate authority to incorporate the condition of pre deposit for entertaining the appeal.

6 The learned AGP concedes to the legal position that law do not

require pre deposit of amount for entertaining the appeal under Section 247 of M.L.R. Code.

7 Considering submissions advanced and law laid down by this court in reported judgment (supra), Writ Petitions deserve to be allowed, impugned order cannot be sustained in law, hence, same are quashed and set aside. The matters are remitted back to learned Sub Divisional Officer, Sangamner to consider and decide on its own merits, without insisting for deposit of any amount, as expeditiously as possible and preferably within the period of 10 weeks from the date of this order.

(S.G. CHAPALGAONKAR)
JUDGE

agd