



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 4420 OF 2011

Shri Uttam s/o Kaniram Rathod,
aged about 48 years, Occ. Agriculture,
R/o Dhamangaon Deo, Tq. Darvha,
District – Yavatmal.

...PETITIONER

Versus

- 1] The Additional Collector, Yavatmal.
- 2] Sub-Divisional Officer, Darvha.
- 3] Tahsildar, Darvha.
- 4] Shri Suryakant Pralhad Giri,
aged – major, Occ. Agriculture,
R/o Daheli, Tq. Darvha, District – Yavatmal.

...RESPONDENTS

Ms S.W. Deshpande, Counsel for the petitioner.
Shri S.C. Joshi, A.G.P. for respondent nos. 1 to 3.
Shri Chaitanya Kulkarni h/f Shri Anand Deshpande, Counsel for
respondent no.4.

CORAM : ANIL L. PANSARE, J.

DATE : OCTOBER 25, 2024

ORAL JUDGMENT :

The petitioner is aggrieved by the stand taken by the authorities below in imposing penalty on two frivolous grounds. One is that the petitioner has, by constructing fishing tank and house in his agricultural field, has converted the user

of land to non-agricultural purpose. According to the authorities below, by constructing fishing tank and house in agricultural field, the petitioner has converted the use to agricultural land for industrial purpose. Accordingly, penalty has been imposed. The other ground is that while digging tank, the petitioner has excavated murum (minor mineral) and spread it on the approach road to the petitioner's field.

2] Having heard both sides and having gone through the orders passed by the authorities below, it appears to me that it was nobody's case that the petitioner has excavated murum from the land belonging to the Government or any other land, rather the orders passed by the authorities below itself indicate that the petitioner, while having construction of fishing tank, has excavated the land wherefrom murum has been taken out. When enquired as to under which provision the authorities below could impose penalty for doing such act, the learned A.G.P, though made an attempt to justify the cause, failed to show any provision that would enable the authorities below to impose such penalty.

3] On the point of industrial use of the land, the stand taken by the petitioner was that he has constructed farmhouse for which permission is not required. The learned A.G.P. could not show, in this regard as well, under which provision and from whom the petitioner is supposed to take permission for constructing house in his own agricultural land.

4] The learned Counsel for the petitioner submits that excavation of tank for fishing is a work which is encouraged by the Government and various schemes have been floated in this regard. The petitioner has constructed tank under the Government Scheme and, therefore, could not be blamed for having converted the user of the land. I find substance in the petitioner's submission.

5] Thus, it appears that the authorities below have, under misconception, imposed penalty of Rs.18,358/- against the petitioner. The learned A.G.P. failed to show any supporting provision for passing such orders. The impugned orders are unsustainable.

6] Accordingly, the writ petition is allowed.

7] Order dated 24/8/2005 passed by the Additional Collector, Yavatmal, in R.A. No. NAA-48/5/2004-05, order dated 15/2/2005 passed by the Sub-Divisional Officer, Darvha, in C.No./1/N.A.A.48/2003-2004 and order dated 13/1/2004 passed by the Naib Tahsildar, Darvha, in R.C. No. N.A.A. 48/2003-2004, are quashed and set aside.

8] Rule is made absolute in the aforesaid terms. No order as to costs.

9] At the stage, the learned Counsel for the petitioner submits that vide order dated 25/1/2012, the petitioner has deposited Rs.10,000/- in this Court. She makes a request to permit the petitioner to withdraw the said amount.

10] Permission is granted. The petitioner may withdraw the amount, so deposited, along with interest accrued thereon, if any.

JUDGE

Sumit