

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2011 OF 2022

Babanrao Dagdu Shelke

.. Petitioner

Versus

The Tahasildar, Karmala and Ors.

.. Respondents

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- Mr. G.S. Godbole, Senior Advocate a/w. Ms. Kavita P. Shinde, Advocate i/by Mr. Ashok B. Tajane for Petitioner.
- Ms. Tejas Kapre, AGP for Respondent No.1 – State.
- Mr. V. S. Tadake, Advocate for Respondent No.2.
- Ms. Chaitali A. Deshmukh, Advocate for Respondent Nos.4 and 5.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 03, 2025

P. C.:

1. The present Writ Petition is filed by the sole proprietor of 'M/s. Shelke Construction' to challenge the order dated 03.01.2022 passed by Respondent No.1 – Tahasildar, Karmala confirming the previous order dated 07.06.2018 passed by the then Tahasildar, Karmala despite the said order dated 07.06.2018 having been specifically set aside by this Court by allowing Writ Petition No.9238 of 2018.

2. Petitioner's case is that *prima facie* there is a clear overreaching of the order passed by this Court apart from the fact that the said order is completely unsustainable. The facts leading to passing

of the impugned order relevant for deciding the Writ Petition are as under:-

2.1. On 03.08.2009, Petitioner was awarded a contract by the Maharashtra Krishna Valley Development Corporation, Pune (A Government of Maharashtra Undertaking) for raising the height and width of the road from village Kondhar Chincholi, Taluka Karmala, District Solapur to village Diksal, Taluka Indapur, District Pune. One of the condition in the tender awarded to Petitioner pertained to payment of royalty by the Petitioner to the Government for the aforesaid contractual work undertaken pertaining to excavation. Contract was duly completed by the Petitioner however during the said work, Petitioner raised several running bills intermittently for the work completed which were sanctioned by the Government.

2.2. After complying with the inbuilt condition royalty was recovered by the Government from the said running bills raised by Petitioner from time to time. Petitioner thus paid full royalty charges for the excavation undertaken in respect of the minor minerals which was deducted from the monies due and payable to the Petitioner by the Government which was duly acknowledged by letter dated 21.08.2010 addressed by the Petitioner. Most importantly Respondent No.5 - Executive Engineer of the Irrigation Department of Government of Maharashtra filed Application confirming payment of royalty with

the Tahasildar, Indapur stating that royalty in respect of minor minerals in the aforesaid contract awarded to Petitioner was recovered by the Maharashtra Krishna Valley Development Corporation, Pune (MKVDC) and it was deposited with the Tahasildar, Manglvedha. The entire contract was successfully executed by the Petitioner and the project was handed over to the State Government of Maharashtra – Irrigation Department officials.

2.3. On 07.06.2018, Respondent Nos.2 and 3 i.e. two private individual – residents of Village Kondhar filed a complaint with Respondent No.1 – Tahasildar, Karmala acting upon which Respondent No.1 passed order dated 07.06.2018 imposing penalty on the Petitioner without issuing notice or hearing the Petitioner and levying a liability to the tune of Rs.3.04 crores for non-payment of royalty and carrying out excavation of minor minerals without permission from the Competent Authority.

2.4. Petitioner filed Writ Petition No.9328 of 2018 in this Court to challenge the demand order dated 07.06.2018. By order dated 08.02.2019 this Court allowed the Petition and set aside the demand order dated 07.06.2018.

2.5. On 19.12.2019, Tahasildar, Karmala issued show cause notice to the Petitioner and Respondent No.5 – Executive Engineer

Ujani Canal, Division No.9, Mangalwedha calling upon them to show cause as to why action under Section 48 of the Maharashtra Land Revenue Code, 1966 should not be taken against them in respect of removal of minor minerals. In response to the show cause notice petitioner demanded documents on the basis of which such show cause notice was issued whereas by reply dated 26.12.2019, Respondent No.5 submitted its reply, *inter alia*, stating that royalty to the tune of Rs.60.84 lakhs was already recovered from the contractual amounts payable to the Petitioner raised through running bills during completion of the contractual work.

2.6. In addition to the above Deputy Executive Engineer of Ujani Canal, Division No.9, Mangalwedha filed a detailed reply dated 24.02.2021 reiterating the fact that Petitioner had already deposited royalty to the tune of Rs.60.84 lakhs which was recovered from the Petitioner against his running bills submitted by him from time to time and also referred to the order dated 08.02.2019 passed by this Court in Writ Petition No.9238 of 2018.

2.7. The Executive Engineer namely Respondent No.5 filed a detailed reply dated 15.03.2021 appended at page No.158 of the Petition, with the office of Respondent No.1 furnishing the details of Rs.60.84 lakhs paid towards royalty amount by Petitioner and reiterating that the subject land in which the contractual work was

carried out by the Petitioner belonged to the State Government and therefore provisions of Section 48 (7) of the Maharashtra Land Revenue Code, 1966 cannot be applied to the said case despite which amount of Rs.60.84 lakhs was recovered towards royalty by deducting the same from the running bills and inform the Tahasildar that as per the Rules, Petitioner paid the royalty as per Market Rate and was not liable for any penal action.

2.8. On 29.11.2021, Respondent No.1 submitted the documents demanded by Petitioner on the basis of which the impugned demand was raised afresh. In those documents there was a panchanama shown to have been prepared of inspection of the land bearing Gat No. 179 of village Kaman, Taluka Karmala, District Solapur which was relied upon by the Tahasildar, which did not indicate any excavation nor as to how the said panchanama could lead to levy of alleged demand from the Petitioner. According to Petitioner he was not even informed about preparation of the panchanama nor was he aware about the same.

2.9. In December 2021, Respondent No.1 concluded the hearing and reserved the case for orders and on 03.01.2022 he passed a cryptic 8 line order without giving any reasons and only referring to the previous order dated 07.06.2018 and confirming the same while calling upon the Petitioner to deposit the amount of Rs.3.04 crores

within 90 days, despite being made aware of the fact that the order dated 07.06.2018 was set aside by this Court.

3. Hence the present Writ Petition.

4. Mr. Godbole, learned Senior Advocate for the Petitioner would submit that the Respondent No.1 Tahasildar Karmala has not only abused the due process of law but has shown blatant disregard to the judgment / order of this Court dated 08.02.2019 passed in Writ Petition No. 9328 of 2018. He has drawn by attention to Exhibit 'T' appended to page No. 177 of the Petition, to contend that order dated 07.06.2018 which has been set aside by this Court in the previous Writ Petition has been confirmed by Respondent No.1 without giving any reasons whatsoever.

4.1. He would submit that the impugned order is a far reaching order, passed arbitrarily and in the most high-handed fashion, without reasons and it over reaches the judgment / order passed by this Court. That apart, he would submit that the impugned order does not take into account the detailed explanation and details placed on record by Respondent No.5 - Executive Engineer of the State Government of Maharashtra with regard to recovery of royalty amount from the Petitioner which disregards the documentary evidence referred to in the Reply to the show-cause-notice filed by Respondent

No.5 and his subordinate officer pertaining to recovery of Royalty to the tune of Rs.60.84 lakhs from the Petitioner. He would submit that no reasons are given in the impugned order for arriving at the penalty amount of Rs.3.04 crores, that no particulars about quantum of unauthorized excavation of minor minerals and price thereof or royalty prescribed is elucidated in the impugned order and most importantly non-consideration of the panchanama carried out behind Petitioner's back which does not even remotely indicate any link of Petitioner to have carried out excavation in the lands situated at village Kaman are all grounds which *prima facie* show that the impugned order is perverse and illegal in the aforesaid facts. He would submit that the period of contract was from 2009 – 2010 and 2011 – 2012 and therefore even otherwise the said rule could not have been invoked after a period of 10 years on a private complaint of Respondent Nos.2 and 3. He would therefore persuade the Court to set aside the impugned order and allow the present Writ Petition.

5. ***PER CONTRA***, Respondent No.1 has filed Affidavit dated 06.05.2022 to oppose the Writ Petition to contend that the Tahasildar, Karmala was not made a party to the Writ Petition with an ulterior motive. However, this contention appearing in paragraph No.8 is *prima facie* incorrect when the cause title of the judgment dated 08.02.2019 is seen. From the record, it is seen that the Writ Petition

was heard by this Court on 24.08.2018, 30.11.2018, 18.01.2019 and disposed off on 08.02.2019 when on all dates of hearing the learned AGP has appeared on behalf of the State Government of Maharashtra. All these orders are appended to the Writ Petition.

6. Respondent No.1 – Tahasildar, Karmala is the Statutory Officer of State of Maharashtra. By merely referring to the cause title of the orders passed on the aforesaid dates, a lame ground has been taken by the Tahasildar in paragraph No.8 of his Reply. When the AGP appearing before me was confronted with this position, she has no answer whatsoever rather than concede with the correct position and reality at hand as can be seen from the orders appended to the Petition.

7. Though the learned AGP has persuaded me to consider the Reply and argued that liability of Petitioner is humongous, that by itself cannot be a ground for considering the case of the Tahasildar, Karmala. Rather it is seen that case of the Tahasildar is preposterous and an extortionist attempt disregarding the previous order having been set aside by this Court. It clearly borders on contempt. Orders of this Court cannot be treated with disdain. It is further seen that Affidavit-in-Reply proceeds on the basis that the Tahasildar, Karmala did not get the opportunity to file his Reply in the previous Petition. However in the Reply filed before me, in paragraph Nos.13 and 14 the

Tahasildar, Karmala has himself confirmed and acknowledged the fact that it was necessary for Petitioner to deposit the Royalty amount of minor minerals of Rs.60,84,529/- before handing over the project to Government by Petitioner on or before 18.06.2015 on its completion. Even according to the Tahasildar, he acknowledges categorically that Petitioner deposited an amount of Rs.44,26,204/- before he received the complaint from Respondent Nos.2 and 3 and Petitioner deposited the balance royalty amount of Rs.16,58,531/- on 07.05.2018. Once this position is confirmed and clarified by the Tahasildar himself nothing remains in the alleged impugned action invoked by Respondent No.1 and the said action is *prima facie* illegal and extortionist.

8. In this regard, attention is invited to Affidavit-in-Reply dated 15.03.2021 appended at Exhibit "P" – page No.158 of the Petition filed by Respondent No.5 previously wherein the Officer of the Government has infact supported the Petitioner's case stating that Petitioner has deposited the royalty amount as required under the tender contract. Ms. Deshmukh appearing for Respondent No.5 has drawn my attention to the said Affidavit which is placed on record. This is why I say that action by the Tahasildar to reiterate the same demand once again is extortionist and reeks of overreaching the order of this Court. One arm of the State Government admits payment of

Royalty and places documentary evidence on record and the other arm of the Government refuses to accept and levies penalty for the same despite being informed.

9. I have heard Mr. Godbole, learned Senior Advocate on behalf of Petitioner and Ms. Kapre, learned AGP appearing on behalf of Respondent No.1 – State and its Officers/ functionaries namely – Respondent Nos.1 and 3, Mr. Tadake, learned Advocate for private Respondent No.2 who is the original complainant and Ms. Deshmukh, learned Advocate for Respondent Nos.4 and 5 and with their able assistance perused the record of the case. Submissions made by them have received due consideration of the Court.

10. It is seen that there is substantial material placed on record by Petitioner which is appended to the Petition in the form of Government documents from page Nos.31 onwards upto page No.100 in the form of all running bills, *inter alia*, pertaining to the tender contract in question to *prima facie* prove payment of Royalty charges by deduction of the same from the said running bills by the State Government of Maharashtra alongwith a summary of the entire details of the royalty paid by Petitioner / proprietor appended at page No.89 of the Petition. It is seen that Royalty amount was recovered from Petitioner on a regular basis through the running bills raised by the Petitioner from 2010 onwards until the year 2014 as the excavation

work was undertaken while completing the tender contract and the balance royalty of Rs.16,58,331/- was recovered from the final running bill raised by Petitioner under the provisions of Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013. Once this is the admitted position on record duly supported by the running bills and summary appended to the Writ Petition which is accepted by Respondent No.1 in his Affidavit-in-Reply in paragraph Nos.13 and 14, Petitioner cannot be saddled with the ignominy of being told that he has not paid the Royalty amount and he therefore has to pay 5 times penalty which is the action invoked by the impugned order.

11. I am also not inclined to accept the submissions contained in the Affidavit-in-Reply of Respondent No.1 that Petitioner had paid balance amount of royalty that is Rs.16.58 lakhs after handing over of the project to the Government in the year 2015 on the ground that the Government document namely the summary of Royalty paid is appended at page 89 of the Petition reflects that the final amount was due and payable by deduction from the final bill which was submitted to the Government by the Petitioner. Nothing can be held against Petitioner in the present case and in the above facts. The impugned order dated 03.01.2022 suffers from a serious infirmity rather

bordering on complete arbitrariness and illegality and is therefore not sustainable in law.

12. In the aforesaid facts and *prima facie* documentary evidence placed on record in the form of Government documents which was duly explained by Respondent No.5 in its various communication / replies to the Tahasildar, Karmala, invocation of the impugned action on the same ground without considering the documents placed on record by the Tahasildar is an illegal and overt action of the Tahasildar concerned which cannot be sustained.

13. The impugned order therefore deserves to be quashed and set aside. In the present case, it is seen that the previous order of Tahasildar dated 07.06.2018 was a detailed order which was quashed and set aside by this Court whereas the impugned order is a cryptic order of merely 8 lines without giving any reasons whatsoever. It is further seen that order dated 08.02.2019 passed by this Court was never challenged by the State Government of Maharashtra or the Tahasildar, Karmala. Therefore in this background, passing of the impugned order dated 03.01.2022 is clearly unsustainable not only in the facts and circumstances of the present case, but also in law. Once it is acknowledged by the Tahasildar himself that Petitioner have paid Royalty charges, invocation of any penalty against him on the ground that he has not paid the charges is impermissible in law.

14. In view of my above observations and findings, impugned order dated 03.01.2022 is quashed and set aside. Resultantly the Petition succeeds.

15. Writ Petition stands allowed in terms of prayer clauses (a) and (b).

16. Liberty is given to Petitioner to take out appropriate proceedings, if he so desires for seeking costs and damages in terms of prayer clause (e) in accordance with law in the appropriate forum / Court against the Tahasildar and the State Government.

17. Writ Petition is allowed and disposed in the above terms.

Ajay

[MILIND N. JADHAV, J.]

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