

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7898 OF 2024

Eknath Shankar Tupe and Ors.

.. Petitioners

Versus

The State of Maharashtra and Ors.

.. Respondents

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- Mr. Rohan Savant a/w. Mr. Prabhakar M. Jadhav and Ms. Suchita Chavan, Advocates for Petitioners.
 - Ms. A.A. Nadkarni, learned AGP for Respondent Nos.1 to 4 – State.
-

CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 24, 2025.

P.C.:

1. Heard Mr. Savant, learned Advocate for Petitioners and Ms. Nadkarni, learned AGP for Respondent Nos.1 to 4.

2. The present Petition impugns order dated 08.01.2024 passed by learned Additional Collector, Pune whereby RTS Appeal No. 867 of 2022 filed by Petitioners under Section 48(7) of the Maharashtra Land Revenue Code, 1966 (for short '**MLR Code**') came to be dismissed. The dispute pertains to alleged extraction / excavation of earth undertaken for laying the foundation of the Building and consequential levy of Royalty and penalty charges on Petitioner.

2.1. Briefly stated, Petitioners are admittedly owners of Plot No.B admeasuring 7000 sq. mtrs., carved out of a sanctioned layout bearing

Survey No. 158/1A/1 and 158/1A/2, Plot Nos. 414 and K, situated at Hadapsar, Taluka Haveli, District Pune. Petitioners commenced development on the plot after obtaining all necessary permissions from the competent authorities. During construction the developer appointed i.e. M/s. Karia Realty undertook excavation of some portion on the plot for laying foundation. Respondent No. 2, Tahsildar, Haveli, issued notice dated 30.06.2014, enclosing a purported panchanama of the same date alleging that Petitioners unauthorisedly extracted 3000 brass of mud-murum, thereby attracting action under Section 48(7) of the MLR Code. Respondent No. 2 determined royalty liability of Rs. 1,62,24,720, along with penalty and fine.

2.2. It is case of the Petitioners that they are lawful owners of the plot and commenced construction only after obtaining all requisite permissions and the soil excavated from the building foundation was re-utilised on-site for development purposes and never removed or commercially exploited. Pursuant to notice, Petitioners appeared before Tahsildar on 08.07.2014 and submitted that provisions of Section 48(7) of the MLR Code were not attracted in cases of excavation undertaken solely for building foundations. In response to show-cause notice dated 28.12.2015 Petitioners submitted detailed replies dated 14.01.2016 and 21.01.2016, along with a certificate from Architect affirming that Petitioners not only utilised the entire

excavated murum for development on the plot itself but in fact procured additional murum from the market.

2.3. Respondent No. 2, by order dated 12.07.2018 held Petitioners liable under Section 48(7) of MLR Code. Being aggrieved Petitioners preferred RTS Appeal No. 37 of 2020 before SDO which was dismissed on 03.03.2020. RTS Appeal No. 867 of 2022 before Additional Collector, Pune was also dismissed by order dated 08.01.2024.

2.4. Hence, the present Writ Petition.

3. Mr. Savant, learned Advocate for Petitioners would submit that the plot in question is ancestral property of Shri Eknath Shankar Tupe and his other family members, who executed registered Development Agreement and Power of Attorney in favour of M/s. Karia Realty to undertake development therein. He would submit that after obtaining requisite sanctions, construction commenced and excavation was carried out for laying the building foundation. He would submit that excavated material being ordinary earth was redeployed and reutilised on-site and no portion thereof was transported or sold.

3.1. He would submit that panchanama report prepared by the Circle Officer on the date of issuance of show cause notice is infact false and fabricated since no legal procedure was followed. He would

submit that though Respondent No. 2 directed preparation of a re-panchanama, the subordinate officers deliberately failed to comply with the same.

3.2. He would submit that in response to the show-cause notice dated 28.12.2015, Petitioners submitted detailed replies dated 14.01.2016 and 21.01.2016 along with certificate from Architect affirming that Petitioners did not utilise the excavated murum and infact procured additional murum from the market which was used. He would submit that Appeals before SDO dated 03.03.2020 and the Additional Collector dated 08.01.2024 were also dismissed without proper appreciation of the material on record and facts of the case and therefore in view of the facts and circumstances of the Petitioner's case the order impugned deserve to be set aside and quashed.

3.3. In support of his submissions, he has referred to and relied upon the following decision of the Supreme Court and this Court passed in identical circumstances:-

(i) *Promoters and Builders Association of Pune Vs. State of Maharashtra and Ors.*¹;

(ii) *BGR Energy System Ltd. Khaparkheda Vs. Tahsildar, Saoner and Ors.*²;

(iii) *Ircon International Ltd., New Delhi and Ors. Vs. State*

¹ (2015) 12 SCC 736

² W.P. No.3383 of 2011 – Decided on 05.07.2017 (Nagpur Bench)

*of Maharashtra and Ors.*³; and

(iv) *Ikea India Private Limited and Anr. Vs. State of Maharashtra, Through Revenue and Forest Department and Ors.*⁴.

(v) *AIGP Developers (Pune) Private Limited Vs. The State of Maharashtra.*⁵

3.4. He would urge this Court that the impugned orders be quashed and set aside and the Petition be allowed.

4. *PER CONTRA*, Ms. Nadkarni, learned AGP appearing for Respondent Nos.1 to 4 would draw my attention to the Affidavit-in-Reply on behalf of Respondent Nos. 2, 3 and 4, dated 24.11.2025 of Mr. Kiran Magan Survase, Tahsildar, which has been taken on record. She would submit that the Circle Officer filed a spot inspection report dated 30.06.2014 recording excavation of approximately 3000 brass of “mines and mineral” by Petitioner without obtaining prior permission of the Government.

4.1. She would submit that royalty has been correctly imposed as its computation is strictly based on directions contained in Government Resolutions dated 14.06.2017 and 05.01.2018 which have been duly applied while determining the charges.

4.2. She would submit that although Petitioners may have

3 2019 SCC OnLine Bom 544 : (2019) 5 Mah LJ 592

4 2024 SCC OnLine Bom 1029

5 2024 SCC OnLine Bom 762

obtained sanctioned plans and Non-Agricultural permission for construction, such permission do not exempt Petitioners from securing a separate mandatory permission for excavation of mines and minerals under Section 48(7) of the MLR Code. She would submit that no such permission was obtained by Petitioners. She would submit that Petitioners have not produced any evidence explaining the use, disposal or utilisation of the excavated material.

4.3. Accordingly, she would submit that Petitioners have failed to comply with the mandatory statutory requirements under Section 48(7) of MLR Code and therefore the action taken and royalty levied is legal, justified and liable to be upheld.

5. I have heard Mr. Savant, learned Advocate for Petitioners and Ms. Nadkarni, learned AGP for Respondent Nos.1 to 4 and perused the record of the case. Submissions made by both the learned Advocates at the bar has received due consideration of the Court.

6. *Prima facie* on the factual aspect, case of Respondents is primarily based upon the notice dated 30.06.2014 issued by the Tahasildar, Haveli to the original owner and the Developer appended at Exhibit 'B' – page No.44 of the Petition alleging that based on the panchanama prepared by the Mandal Officer / Talathi. Petitioners are held to be guilty of unauthorized excavation of mineral soil of approximately 3000 brass and therefore liable for payment of royalty

and penalty under Section 48(7) of the MLR Code read with Mines and Minerals (Development and Regulation) Act, 1957.

7. *Prima facie* reading the impugned notice dated 30.06.2014 shows that the notice merely states that Petitioners have carried out unauthorized excavation of 3000 brass of mineral soil. There is nothing further stated therein. Appended to the notice is the panchanama of the same date at page No.45 of the Petition. Reading of panchanama also reflects the same position but in respect of how much brass the mineral soil has been unauthorizedly excavated or transported or sold by Petitioners has not been mentioned. All that is stated in the panchanama is the average length, breadth and depth of the excavation pit and nothing more. Therefore computation of 3000 brass mineral soil in the impugned notice is not reflected in the panchanama. Next it is seen that Pune Municipal Corporation has duly sanctioned the building layout and plans for construction of buildings for residential units on Plot No.B, ad-measuring 7000 square meters out of sanction layout bearing Survey No.158/1A/1, 158/1A/2, Plot No.K and 414.

8. The Collector, Pune vide order dated 23.01.2014 has granted Non-Agricultural use permission of the said plot for residential purposes under Section 44 of the MLR Code. The Planning Authority namely Pune Municipal Corporation has issued Commencement

Certificate (CC) dated 20.11.2013. Petitioners' case before me is that for carrying out the aforesaid development, excavation was carried out for the purpose of laying foundation of the building for which mineral soil was excavated and after preparing the foundation, the same mineral soil was reploughed and reutilised back into the same excavated site by Petitioners. Neither it is the case of Respondents that Petitioners have sold or transported any of the alleged excavated soil. *Prima facie*, on the face of record the panchanama which is referred to and relied upon is thoroughly inadequate since it does not prove that the Petitioners are guilty of having been removed the mineral soil from the site at which it was excavated. Infact on the face of record, the impugned notice dated 30.06.2014 and panchanama which is also dated 30.06.2014 are issued stating merely that Petitioners excavated mineral soil. The volume of the soil excavated is not stated in the panchanama as noted above.

9. In that view of the matter, the findings which are recorded by the Sub-Divisional Officer and the Additional Collector that the Petitioners have carried away the excavated material and disposed of the same outside is *prima facie* not proved even on the strength of the documents relied upon by Respondent No.1 itself. For determining excavation *per se* illegal and leviable for royalty and penalty, it was incumbent upon Respondents to prove that Petitioners transported the

excavated mineral soil and/or sold the same from the site at which the construction was going on. Merely alleging that excavation was carried out cannot take the case of Respondents to the extent of proving that Petitioners were liable of transporting or selling the minerals excavated and therefore liable for payment of royalty when it is Petitioners' case that the same mineral soil was reploughed back into the excavated site. There is not an iota of evidence whatsoever to substantiate the case of the Respondents.

10. There is one more issue which has been observed by the Court. The original order of Tahasildar was challenged by Petitioners before SDO. The Tahasildar while upholding royalty and five times penalty @ 1,000/- per brass on the ground that Petitioners had not taken prior permission and the soil was transported to some other place has not given any further reasons before arriving at the above findings. Save and except this statement which is completely unsubstantiated even till today, I do not find any other material to implicate the Petitioners.

11. Affidavit-in-Reply filed by the learned AGP is also bereft of any material and/or cogent evidence to indict the Petitioners of having transported or sold mineral soil elsewhere.

12. Record in the present case *prima facie* shows that after excavation was carried out and reutilisation of the minerals, additional

murrum of 210 brass was purchased by landlord through the Developer for completing the filling and a Licensed Architect's Certificate to that effect has also been placed on record.

13. It is also seen that the case of Petitioners is squarely covered by the decision of the Supreme Court in the case of *Promoters and Builders Association of Pune (supra)* referred to and relied upon by Mr. Savant. There is a specific reference to the case of the learned Single Judge of this Court in the case of *Rashtriya Chemicals and Fertilizers Ltd. Vs. State of Maharashtra*⁶ of which paragraph No.14 has been upheld by the Supreme Court. For the purpose of reference, paragraph No.14 which is reproduced and upheld by the Supreme Court in the aforesaid case namely *Promoters and Builders Association of Pune (supra)* is reproduced below:-

“14. *If it were a mere question of Mines and Minerals Act, 1957 covering the removal of earth, there cannot be possibly any doubt whatever, now, in view of the very wide definition of the term contained in the enactment itself, and as interpreted by the authoritative pronouncements of the Supreme Court. As noted earlier, the question involved in the present case is not to be determined with reference to the Central enactment but with reference to the clauses in the grant and the provisions in the Code. When it is noted that the Company was given the land for the purpose of erecting massive structures as needed in setting up a chemical factory of the designs and dimensions of the company, the context would certainly rule out a reservation for the State Government of the earth that is found in the land. That will very much defeat the purpose of the grant itself. Every use of the sod, or piercing of the land with a pick-axe, would, in that eventuality, require sanction of the authorities. The interpretation so placed, would frustrate the intention of the grant and lead to patently absurd results. To equate the earth removed in the process of digging a foundation, or otherwise, as a mineral product, in that context, would be a murder of an*

6 1992 SCC OnLine Bom 248 : AIR 1993 Bom 144

alien but lovely language. The reading of the entire grant, would certainly rule out a proposition equating every pebble or particle of soil in the granted land as partaking the character of a mineral product. In the light of the above conclusion, I am clearly of the view that the orders of the authorities, are vitiated by errors of law apparent on the face of the record. They are liable to be quashed. I do so.”

14. From the above, it is *prima facie* clear that digging ordinarily the earth for laying foundation of the building and redeployment of the same earth in laying foundation of the building would not attract any penalty under Section 48(7) of the MLR Code, unless it is proved to the contrary that the excavated mineral soil has been transported and sold and moved for any other commercial purposes from the site.

15. Two separate Division Benches of this Court have also reiterated the same view in the cases of *Ircon International Ltd., New Delhi and Ors. (supra)* and *Ikea India Private Limited and Anr. (supra)*.

16. In view of the above observation and findings, the impugned notice and order are unsustainable in law and therefore deserve to be interfered with. Petition succeeds.

17. Impugned order dated 08.01.2024 is quashed and set aside.

18. Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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