



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.10895 OF 2025

Shree Sonigara Realcon through ... Petitioner  
Partner

V/s.

The State of Maharashtra through ... Respondents  
Revenue Dept and Ors.

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Mr. Prathamesh Bhargude with Sumit Sonare, Vinayak Pandit and  
Sufyaan Munsuri i/by Ajinkya Udane, for the petitioner.

Smt. R.M. Shinde, AGP, for the State.

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CORAM : N.J. JAMADAR, J.

DATE : 18<sup>th</sup> AUGUST 2025

**ORAL ORDER:**

1. Heard the learned counsel for the parties.
2. Rule. Rule made returnable forthwith and, with the consent of learned counsel for the parties, heard finally.
3. The challenge in this petition is to an order dated 8<sup>th</sup> July 2025 passed by the Tahsildar, Mulshi Paud, Tal- Mulshi, Dist-Pune, whereby the Tahsildar had determined that the petitioner has excavated 15,676 brass minor minerals and the total unauthorised excavation of the minor minerals was 9,577 brass, and, accordingly, penalty of Rs. 5,65,04,300/- has been imposed on the petitioner under Section 48(7) of the Maharashtra Land

Revenue Code, 1966.

4. Mr. Prathamesh Bhagurde, the learned counsel for the petitioner, submitted that the Tahsildar has not considered the documents tendered by the petitioner, especially the map indicating the exact excavation of the minor minerals from the lands and its utilisation at site itself for the purpose of development. It was submitted that since the petitioner is utilising minor minerals at site itself, for the purpose of development, the petitioner was not required to pay any royalty thereon.

5. Moreover, according to Mr. Bhagurde, the record would indicate that the quantity of minor minerals allegedly excavated by the petitioner varied from time to time. In the notice dated 13<sup>th</sup> December 2021, it was alleged that the petitioner had excavated 6,616 brass minor minerals. In the panchnama, which was drawn on 6<sup>th</sup> December 2022, it was claimed that around 900 to 950 brass minor minerals was stored at the site. In the panchnama which was drawn on 10<sup>th</sup> January 2024, it was alleged that the total excavation was 6,989 brass.

6. It was further submitted that despite the categorical contention in the reply to the show cause notice that excavated miner minerals was used for the development at site, the impugned order came to be passed without adequate consideration of the said contention.

7. Miss Shinde, the learned AGP supported the impugned order. It was submitted that the impugned order has been passed

in conformity with the principles of natural justice and after following the procedure prescribed for the determination of the amount of royalty and the penalty for non-payment. Therefore, no interference is warranted in the impugned order, submitted the learned AGP.

8. From the perusal of the material on record, it appears that the panchnamas were drawn at different points of time and, accordingly, varying quantity of the minor minerals were noted to have been allegedly excavated by the petitioner. In the reply filed on behalf of the petitioner to the show cause notice dated 13<sup>th</sup> December 2021, there are categorical contentions that the excavated minor minerals have been used for the purpose of development at site and the petitioner has neither used the same for commercial purpose nor transported the same. Therefore, the petitioner was not liable to pay the royalty as assessed.

9. In the case of *Ircon International Ltd, New Delhi and Ors. Vs State of Maharashtra and Ors*<sup>1</sup>, a Division Bench of this Court, had an occasion to consider the import of the provisions contained in Section 48 of the Maharashtra Land Revenue Code, 1966 in the context of the liability to pay the royalty. This Court referred to judgment of the Supreme Court in the case of *Promoters and Builders Association of Pune Vs. state of Maharashtra and Ors*<sup>2</sup>, and observed as under:

“15. At this juncture, reference to the decision of the Supreme Court in the case of Promoters and Builders

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1 (2019) SCC online Bom 544

2 (2015) 12 SCC 736

Association of Pune Vs. State of Maharashtra & Ors. (Supra) may be apposite. In the said case, the Promoters and Builders Association of Pune-appellants therein, had urged that the earth which is dug for the purposes of laying of foundation of building is not intended for filling up or levelling purposes; digging the earth is inbuilt in the course of building operations. The activity undertaken, therefore, cannot be characterised as one of excavation of a minor mineral. In the connected appeal, preferred by the Nuclear Power Corporation, in addition to above contention of the builders, it was contended that no commercial exploitation of the excavated earth was involved in the process of repair/widening of the water channel; there was no sale or transfer of the excavated earth and the same was the incidental result of the process of repair/widening of the channel which is an activity in consonance with the grant of the land to the appellant by the State Government.

“16. As against this, it was the contention of the State, before the Supreme Court, that after the inclusion of ordinary earth in the definition of "minor minerals" by the Notification under [Section 3\(e\)](#) of the 1957 Act, excavation of ordinary earth without authorisation under the said Act, would make the appellants liable not only to payment of penalty under the Code but also for criminal prosecution under the said Act.

17. Allowing the appeals, the Supreme Court, after analysing the provisions, contained in [Section 48\(7\)](#) of the Code of 1966 and the aforesaid Notification whereby the ordinary earth was declared as a minor mineral, observed in unequivocal terms that, "ordinary earth" used for filling or levelling purposes in construction of embankments, roads, railways, buildings to be a minor mineral in addition to the minerals already declared as minor minerals."

(emphasis in original).

18. The observations of the Supreme Court in paragraphs 14 and 15 of the aforesaid judgment are instructive in nature. Thus, they are extracted below :-

"15. Though [Section 2\(j\)](#) of the Mines Act, 1952 which defines 'Mine' and the expression "mining operations" appearing in [Section 3\(d\)](#) of the Act of 1957 may contemplate a somewhat elaborate process of extraction of a mineral, in view of the Notification dated 3-2-2000, insofar as ordinary earth is concerned, a simple process of excavation may also amount to a mining operation in any given situation. However, as seen, the operation of the said Notification has an inbuilt restriction. It is ordinary earth used only for the purposes enumerated therein, namely, filling or levelling purposes in construction of an embankments, roads, railways and buildings which alone is a minor mineral. Excavation of ordinary earth for uses not contemplated in the aforesaid notification, therefore, would not amount to a mining activity so as to attract the wrath of the provisions of either the Code or the 1957 Act.

16. As use can only follow extraction or excavation it is the purpose of the excavation that has to be seen. The liability under [Section 48\(7\)](#) for excavation of ordinary earth would, therefore, truly depend on a determination of the use/purpose for which the excavated earth had been put to. An excavation undertaken to lay the foundation of a building would not, ordinarily, carry the intention to use the excavated earth for the purpose of filling up or levelling. A blanket determination of liability merely because ordinary earth was dug up, therefore, would not be justified; what would be required is a more precise determination of the end use of the excavated earth; a finding on the correctness of the stand of the builders that the extracted earth was

not used commercially but was redeployed in the building operations. If the determination was to return a finding in favour of the claim made by the builders, obviously, the Notification dated 3-2-2000 would have no application; the excavated earth would not be a specie of minor mineral under Section 3(e) of the Act of 1957 read with the Notification dated 3-2-2000."

(emphasis supplied)

19. The aforesaid judgment of the Supreme Court, was followed by a Division Bench judgment of this Court in the case of BGR Energy System Ltd, Khaparkheda Vs. Tahsildar, Saoner & Ors. 2. In the said case, the petitioner therein had challenged the order of the Tahasildar directing the petitioner to pay the royalty and penalty for the illegal excavation of the earth while executing the work of construction of thermal power project at Khaparkheda. This Court, after following the aforesaid judgment, quashed and set aside the order of the Tahasildar holding, inter-alia, that the use of the excavated earth to fill up the dug pits and in construction of the project did not fall within the ambit of the aforesaid Notification, and, thus, the Tahasildar could not have passed the order under Section 48(7) of the Land Revenue Code, 1966.

20. It is evident that the Supreme Court has enunciated in clear and explicit terms that excavation of ordinary earth for uses not contemplated in the aforesaid Notification would not amount to a mining activity so as to attract the wrath of the provisions of either the Maharashtra Land Revenue Code or the Act 1957. The Court further ruled that a blanket determination of liability for the mere fact that ordinary earth was dug up would not be justifiable. What is of determinative significance is the more precise determination of the end use of the excavated earth. If the end use of the extracted earth falls within the tentacles of the purposes specifically mentioned in the aforesaid Notification, then it would fall within the ambit of the Code of 1966 or the said Act,

**1957. It is implies that the question of liability to pay the royalty hinges more on the end use of the extracted ordinary earth than the mere factum of extraction.”**

(emphasis supplied)

10. Re-adverting to the facts of the case, on the one hand, it appears that the petitioner had categorically asserted that the minor minerals excavated from the subject land were used for development of the property, at site. The said claim of the petitioner was required to be examined in the light of the documents submitted by the petitioner, especially the maps which are annexed at page 82 and 83 of the petition.

11. Secondly, prima facie there is variance in the various panchnamas as regards the quantity of the unauthorisedly excavated minor minerals. The said discrepancies might be on account of the fact that those panchnamas were drawn at different points of time. However, the determination of exact quantify of minor minerals unauthorisedly extracted is imperative for arriving at the amount of royalty and penalty, if any, thereon.

12. Thus, the question of of exact quantity of minor minerals unauthorisedly extracted and whether the minor minerals so excavated by the petitioner has been used at site itself are required to be determined afresh by the Tahsildar, after providing an opportunity of hearing to the parties.

13. In view of the above, the petition deserves to be partly allowed.

14. Hence, the following order:

**ORDER**

- a) The Petition stands partly allowed.
- b) Impugned order dated 8<sup>th</sup> July 2025 passed by the Tahasildar, Mulshi (R.2) stands quashed and set aside.
- c) The proceeding for determination of the royalty along with penalty, if any, i.e. Gau.Kha/SR/01/2025 stands remitted back to the Tahsildar for determination afresh.
- d) The Tahsildar is requested to hear and decide the said proceeding in light of the aforesaid material on record, including the maps (Exhibit-82 and 83) tendered by the petitioner, after providing an opportunity of hearing to all the concerned parties.

Rule is made absolute to the aforesaid extent.

Petition disposed.

(N.J. JAMADAR, J)