

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5536 OF 2026

M/s. Regency Inc

.. Petitioner

Versus

Collector, Dist. Thane & Ors.

.. Respondents

.....

- Mr. G.S. Godbole, Senior Advocate a/w Ms. Druti Datar, Advocates for Petitioner
- Mr. A.I. Patel, Addl. G.P. a/w Ms. V.S. Nimbalkar, AGP for Respondent Nos. 1 to 3 - State and its functionaries

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 27, 2026

P. C.:

1. Heard Mr. Godbole, learned Senior Advocates for Petitioner and Mr. Patel, learned Addl. G.P. a/w Ms. Nimbalkar, AGP for Respondent Nos. 1 to 3 - State and its functionaries.

2. Present Writ Petition challenges the order dated 25.03.2022 passed by Respondent No. 2 - Tahsildar under Section 48(7) of the Maharashtra Land Revenue Code, 1966 (for short "**MLRC**"), Warrant of Distraint of movable property dated 27.10.2022 and order of attachment dated 29.03.2023 passed by Respondent No. 2. Petitioner also challenges communication dated 13.04.2026 passed by Respondent No. 4 - Corporation informing the Petitioner that its proposal for Occupancy Certificate (OC) has been reassigned to the Corporation due to non-submission of no objection from the Revenue

Department for non-payment of penalty for illegal excavation. Petitioner further seeks direction to Respondent No. 4 - Corporation to grant OC in accordance with law.

3. Mr. Godbole, learned Senior Advocate for Petitioner would submit that Petitioner is well known developer engaged in the business of real estate developed in and around Thane District. He would submit that Petitioner undertook construction of a building project called "Regency Palms" on Plot No. 88, R. 3A, Sector 14 situated at Nerul, Taluka & District Thane. He would submit that Commencement Certificate (CC) dated 03.11.2018 was issued by Respondent No. 4 Corporation and building certificate dated 22.12.2024 for Tower A and 20.02.2025 for Tower B has been issued by Respondent No. 4 Corporation.

3.1. It is Petitioner's case that for the purpose of construction of buildings in the said project as per the building permission obtained by Petitioner, Petitioner was required to excavate the earth and mineral soil for the purpose of preparing foundation for the buildings. He would submit that accordingly Petitioner applied for permission to excavate and transport earth and mineral soil during the course of development and it was granted permission by Respondent No. 2 - Tahsildar. He would submit that in all Petitioner obtained permissions to excavate and transfer 40000 brass earth and paid royalty for the

same to Respondent No. 2 - Tahsildar. He would submit that throughout the tenure of development, Respondent No. 2 - Tahsildar granted permission dated 20.12.2018 (500 brass), 13.02.2019 (500 brass), 18.03.2019 (500 brass), 31.05.2019 (500 brass), 07.12.2021 (1500 brass), 28.12.2021 (1500 brass), 14.01.2022 (1500 brass) and 31.01.2022 (1000 brass stones and 500 brass soil) for excavation and transport of each and mineral soil from the subject spot where the development had occurred.

3.2. As against the above, it is Petitioner's case that Respondent No. 2 has now held that Petitioner has illegally excavated 3952 brass each and mineral soil from the subject spot and has directed the Petitioner to pay the amount of Rs. 5,12,91,445/- as penalty for illegal excavation. He would submit that in furtherance of the impugned order, office of Respondent No. 2 - Tahsildar has attached and sealed one commercial shop in the building constructed by Petitioner being Shop No. 10 and Joint Sub-Registrar, Thane-13 has been called upon by Respondent No. 2 to provide the market value of the said shop and it is the Petitioner's apprehension that the said shop will be auctioned for recovery of the aforesaid amount of penalty levied for illegal excavation.

3.3. Mr. Godbole would submit that Petitioner was issued show cause notice under Section 48(7) of MLRC as far back as on

25.01.2019 to which appropriate reply was filed by Petitioner. He would submit that in the said show cause notice, it was alleged that Petitioner had excavated 4452 brass earth from the said land. He would draw my attention to the fact that first permission granted by Respondent No. 2 - Tahsildar was dated 20.12.2018 and second permission was dated 13.02.2019 and the show cause notice issued was dated 25.01.2019. He would submit that in the explanation offered by Petitioner to the show cause notice, details were submitted with respect to excavation of 500 brass earth under the permission but the said show cause notice was preceded by panchanama dated 22.01.2019 which alleged that Petitioner has excavated 4452 brass earth from the subject plot. However Petitioner by its reply dated 08.02.2019 to the show cause notice furnished all details with respect to excavation of 500 brass earth only and the fact that not a single truck carrying any earth or mineral soil had left the subject spot. Respondent No. 2 - Tahsildar was duly satisfied and no action in furtherance of the said show cause notice was thereafter taken.

3.4. Mr. Godbole would submit that pursuant to the aforesaid incident, Petitioner thereafter procured seven permissions for transportation of earth and mineral soil between February 2019 and January 2022 for the purpose of development and completed the project. He would submit that on 27.09.2021, office of Respondent

No. 2 - Tahsildar once again issued show cause notice by citing a reference to the same report and panchanama dated 23.01.2019 and invoked the earlier show cause notice and called upon the Petitioner to show cause as to whether the Petitioner had obtained prior permission for excavation of 4452 brass of earth from the subject plot of land. He would submit that such action on the part of Respondent No. 2 - Tahsildar was in the wake of permissions which were granted by its office was nothing but an extraneous action against the Petitioner for development carried out by Petitioner. He would submit that the impugned order dated 25.03.2022 passed by Respondent No. 2 - Tahsildar records perverse finding that apart from his permission for excavation and transportation of 500 brass earth, no further permissions were obtained by Petitioner and no proof thereof was also submitted and all such erroneous and incorrect findings, the penalty has been levied. He would draw my attention to the seven permissions which were obtained by Petitioner pursuant to the first permission for seeking excavation granted in the year 2018 which are all appended to the Petition and copies of which were submitted to the office of Respondent No. 2 - Tahsildar. He would submit that despite these aforesaid facts, the office of Respondent No. 2 - Tahsildar has on extraneous reasons proceeded with taking coercive action against the

Petitioner and the Petitioner's property and sealed the Petitioner's shop in the developed building.

3.5. He would submit that the office of Respondent No. 2 - Tahsildar has not stopped here but also issued Warrant of Restraint of movable property against the Petitioner to distrain the movable property unless the amount is paid. In support of Petitioner's case, he would draw my attention to the Government Resolution (GR) dated 09.05.2023 laying down a procedure for grant of permission for excavation of earth while developing a plot of land wherein it is stipulated that the amount of royalty to be paid when it is not possible to use the entire excavated earth from the plot for levelling or other purposes in the same plot. He would submit that in such case, the entire exercise of transportation rather illegal transportation of the excavated earth and mineral soil is required to be *prima facie* proved if it is alleged that the delinquent has illegally excavated the earth and mineral soil and unauthorizedly transported the same. He would submit that in the event in a given development, the entire excavated earth is not used for the same plot for the purpose of filling and levelling after the foundation is led, then the details of transportation of the earth outside the said plot is required to be uploaded on 'Mahakhanij' portal of the Government for maintenance of record. He would submit that the entire action on the part of Respondent No. 2 - Tahsildar and

officials of Government in the present case is not only high handed and arbitrary but contrary to all canons of justice.

3.6. He would submit that the impugned order dated 25.03.2022 is premised on the basis of report and the panchanama conducted on 22.01.2019 which in itself is inadequate, insufficient and *prima facie* vague. He would submit that even as per the GR dated 01.11.2021, no royalty is required to be paid for excavation of earth if the said earth is so excavated and is used for levelling and filling on the same land. He would draw my attention to the decision of the Supreme Court in the case of ***Promoters and Builders Association of Pune v. State of Maharashtra***¹ wherein it has been held that the purpose of excavation of minor minerals is required to be looked into by the Authority and if the excavation is merely for construction / formation of plinth, it cannot be termed as mining activity and the developer of the property cannot be forced to pay royalty for the same. He would therefore submit that the case of Petitioner is clearly covered by the GR dated 09.05.2023 and the decision of the Supreme Court in the aforesaid decision and the entire action on the part of Respondents is arbitrary and contrary to law. He would therefore persuade the Court to allow the Petition and set aside the impugned orders dated 25.03.2022, 27.10.2022 and 29.03.2023 passed by Respondent No. 2

¹ (2015) 12 SCC 736

- Tahsildar *qua* the Petitioner and issue mandamus to Respondent No. 4 - Corporation to grant OC to the Petitioner's project without insisting upon the condition of submission of no objection from the Revenue Department for payment of penalty for the aforesaid illegal excavation as alleged. He would also seek directions to Respondent No. 2 - Tahsildar to forthwith remove the attachment and seal on Petitioner's shop No. 10 in the development carried out on the said plot and handover vacant possession of the same to the Petitioner.

4. ***PER CONTRA*** Mr. Patel, learned Addl. G.P. along with Ms. Nimbalkar, learned AGP have vehemently opposed the Petitioner's case and submit that Respondent No. 2 - Tahsildar has taken appropriate action for levying penalty under the provisions of Section 48(7) of MLRC against the Petitioner and Petitioner deserves no reliefs whatsoever in the present case. They would submit that Petitioner is guilty of illegal and unauthorized excavation of earth and mineral soil but also equally guilty of transportation of mineral soil for which Petitioner is liable to pay royalty and penalty as levied on Petitioner. He would submit that case of the State is that Petitioner had obtained permission only for transportation of 500 brass of earth on 23.12.2018 but in fact has illegally excavated and transported 4452 brass of earth and mineral soil which is delineated in the inspection report of the Circle Officer dated 22.01.2019 which has been taken cognizance by

Respondent No. 2 - Tahsildar. They would therefore persuade the Court to uphold the impugned order and direct the Petitioner to deposit the amount of royalty and penalty under the impugned orders and in the event, if Petitioner is unable to deposit the same, permit the Respondents to take further steps for recovery of the said amount in accordance with law.

5. I have heard learned Advocates appearing for the respective parties and perused the record of the case with their able assistance.

6. At the outset, the entire premise of Respondents' case for levying penalty against the Petitioner which forms the base of impugned order dated 25.03.2022 is a report dated 21.01.2019 prepared by Respondent No. 3 - Circle Officer and panchanama dated 22.01.2019 prepared by the same officer. Copies of these two documents are appended at page Nos. 81 and 83 of Petition. It is *prima facie* seen that on 22.01.2019 in the inspection report, it is alleged that despite the Petitioner having permission for excavation of 500 brass earth and mineral soil issued on 20.12.2018, Petitioner has excavated 3952 brass of earth and mineral soil in excess thereof. The most critical issue in the said inspection report as appearing therein is that it states that the excess earth and mineral soil which has been excavated has been kept on the same plot. This inspection report is prepared on the basis of panchanama which is prepared at 1.40 p.m. in the afternoon. In the

said panchanama reiteration of the same aforesaid facts is stated and it states that though the Petitioner has been issued permission for excavation of 500 brass of earth, it has excavated excess earth of 3952 brass and the said earth is kept on the said spot itself. The panchanama very categorically records that Petitioner has not transported the said earth and the said earth has been kept on the aid plot itself. If the said inspection report and panchanama prepared by the Circle Officer is to be considered then the finding which is returned in the impugned orders passed by Respondent No. 2 - Tahsildar cannot be sustained at all. In the conclusion which is returned by Respondent No. 2 - Tahsildar in the impugned order, he has in fact not commented upon the Petitioner having transported the excavated earth / mineral soil. The entire order is based upon the allegation that the Petitioner has excavated 3952 brass extra earth and therefore Petitioner is liable to be proceeded against that for payment of royalty and penalty for unauthorized excavation. Thus from the above, it is *prima facie* proven that Petitioner has not transported any earth whatsoever from the subject spot where development has taken place.

7. Petitioner bonafides with respect to carrying out development on the subject plot are *prima facie* clear. Appended from page No. 40 (Exh. A) onwards to the Petition are seven permissions taken by

Petitioner intermittently for carrying out development on the subject plot for the purpose of excavation and transportation of the mineral soil which cannot be used in the same plot for the purpose of filling and levelling. Petitioner has between 20.12.2018 and 14.03.2022 procured permissions for excavation and transportation of 40000 brass of earth / mineral soil and has paid royalty charges for the same. Next it is seen that the inspection report prepared by Respondent No. 3 - Circle Officer on 22.01.2019 and the panchanama both do not support the case for levy of royalty and penalty because they are conspicuously silent on the aspect of unauthorized transportation of mineral soil from the subject plot by Petitioner. On the contrary, both these documents which form basis of Respondent No. 2 - Tahsildar's case support the case of Petitioner. Both these documents confirm the fact that the excavated soil was lying and kept on the same developed plot where the work was going on.

8. It needs to be reiterated that in the present case Petitioner has undertaken development and construction of a project and therefore case of the Petitioner is squarely covered by the decision of the Supreme Court in the case of *Promoters and Builders Association of Pune (supra)*. Thus unless and until Respondent No. 2 - Tahsildar or any of the Government official is able to show and prove that Petitioner has illegally excavated and transported the earth / mineral

soil from the subject plot where development had occurred, the impugned action for levying penalty on the Petitioner is bad in law.

9. Further it is seen that impugned orders dated 25.03.2022, 27.10.2022 and 29.03.2023 have not been served upon the Petitioner and the Petitioner had to obtain the same after a letter of intimation of the aforesaid orders was served upon the Petitioner. It is seen that the impugned order which have been passed do not consider the various permissions which were granted to the Petitioner at all. It merely proceeds on the basis of Respondent No. 3 - Circle Officer's inspector report and the panchanama which were carried on 22.01.2019 and confirms the same as illegality committed by Petitioner. However as delineated herein above, the said inspection report and the panchanama do not indict the Petitioner for illegal transportation of the earth / mineral soil. Hence to that extent the said inspection report and the panchanama cannot form the basis for levy of penalty under the impugned orders passed by Respondent No. 2 - Tahsildar.

10. Petitioner has been granted eight permissions for excavation and transportation of earth / mineral soil for which the Petitioner has paid royalty as specified in the said permissions and Respondent No. 2 - Tahsildar is completely aware of the same. Once there is no evidence rather *prima facie* evidence to the contrary to show that Petitioner had

illegally transported the excavated earth / mineral soil, the impugned orders for levy of penalty cannot be sustained.

11. The provisions of Section 48(7) of MLRC are succinctly clear. They state that any person who without lawful authority extracts, removes, collects, replaces, picks up or disposes of any mineral, the right to which vests in and has not been assigned by the State shall without prejudice to any other mode of action that may be taken against him be liable to pay penalty for the extracted minerals on the basis of five times of the market value of the minerals so extracted. None of these ingredients of the provisions of Section 48(7) *prima facie* apply to the present case. In the present case extraction of minerals is under lawful authority by Petitioner. Secondly there is no case made out by Respondent No. 2 - Tahsildar for disposal of the said minerals or illegal transportation of the said minerals from the subject plot where construction took place. Thirdly insofar as the extraction of minerals is concerned, Petitioner has carried out the same on the basis of valid permissions for undertaking development of the subject plot. In such strong facts and circumstances, the impugned action of Respondent No. 2 - Tahsildar and further denying the OC to the project developed by Petitioner on the ground that such royalty and penalty is liable to be paid is extremely high handed action and the same deserves to be interfered with by Court. If such actions are

allowed to be perpetrated, it will sound death nail for all developers who are undertaking development project in and around Mumbai. The Authorities will act on inadequate reports and panchanama to further their cause for collecting penalty in such matters.

12. All that is held against the Petitioner is that he has carried out excavation of the plot for the purpose of laying down foundation and he has kept the entire earth / mineral soil on the same plot itself. It is natural for the developer to keep the extracted earth / mineral soil on the same plot itself for the purpose of filling the same. Even it is assumed that the case of Respondent No. 2 - Tahsildar is required to be accepted, at the highest in the present case the inspection report prayed by Respondent No. 3 - Circle Officer and the panchanama dated 22.01.2019 should support the case of the prosecution. On the contrary, Petitioner's *bonafides* are *prima facie* clear when it addressed a letter dated 08.02.2019 to Respondent No. 2 - Tahsildar wherein it is made clear that it had already procured permission for excavation of 500 brass of earth and it has applied for further permission and as and when such permission would be received, said excavation will be carried out and accordingly until then not a single truck of earth or mineral soil would be employed by Petitioner for transportation of the same. This stand of Petitioner taken on

08.02.2019 is in fact supported by the panchanama and inspection report.

13. In view of the aforesaid observations and findings, case of the Respondents to levy royalty and penalty against the Petitioner to the extent of Petitioner having unauthorizedly excavated and illegally transported 3952 brass of earth / mineral soil which is *prima facie* and solely based upon the inspection report and the panchanama which is alluded to herein above. None of these documents show that Petitioner has been instrumental in unauthorizedly excavating and illegality transporting the alleged earth / mineral soil at any point of time. In that view of the matter, the impugned order dated 25.03.2022 is clearly not sustainable and deserves to be set aside. Hence, impugned order dated 25.03.2022 is set aside. Resultantly further action taken by Respondent No 2 - Tahsildar in passing orders dated 27.10.2022 and 29.03.2023 therefore cannot be sustained and both these orders are accordingly quashed and set aside. As a result of setting aside of the aforesaid three orders Respondent No. 2 - Tahsildar is directed to forthwith remove the seal of Shop No. 10 and handover the said shop back to the Petitioner without any charge.

14. Insofar as the letter dated 13.04.2026 addressed by Respondent No. 4 - Corporation to the Petitioner is concerned, the same stands quashed and set aside. Needless to state that Respondent No. 4 -

Corporation shall consider the Application dated 27.03.2026 filed by Petitioner for issuance of OC strictly in accordance with law but without insisting upon the condition of submission of no objection from Revenue Department for payment of penalty for illegal excavation which has been set aside by this order. Insofar as all other compliances for the purpose of granting OC are concerned, Petitioner will have to apply for the same strictly in accordance with law. The Application for OC of Petitioner shall be considered by the Corporation accordingly.

15. With the above directions, Petition succeeds and stands allowed in terms of prayer clauses (a) to (c) subject to the aforesaid conditions.

16. Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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