

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 312 OF 2019

M/s. Puranik Builders Ltd. ... Petitioner.  
V/s.  
The State of Maharashtra and ors. ... Respondents.

Mr. P.K. Dhakepalkar, Sr. Advocate a/w. Mr. Jaydeep Deo for the  
Petitioner.

Ms P.N. Diwan, AGP for the Respondent Nos.1 to 4 – State.

**CORAM : R.M. BORDE AND V.L. ACHLIYA, JJ.**  
**DATE : 7<sup>th</sup> FEBRUARY 2019.**

P.C.:

1] The petitioner is objecting to the order passed by the Tahsildar, Thane on 10<sup>th</sup> October 2018 directing the petitioner to deposit a sum of Rs.7,44,06,400/- with the State Government within a period of seven days from the date of this order.

2] It is alleged that the petitioner has unauthorisedly excavated the earth/soil to the tune of more than 11000 brass. It is recorded in the order itself that the excavated soil/earth has been utilised for development of the property. There is no finding recorded in the order that there is commercial use of the soil/earth. The issue raised in the petition is no more *res integra* and is covered by the decision of the Hon'ble Supreme Court in case of **Promoters and**

**Builders Associations of Pune vs. State of Maharashtra reported in (2015) 12 SCC 736.** The issue before the Hon'ble Supreme Court was as to whether in terms of the provisions of Section 48(7) of the Maharashtra Land Revenue Code, 1966 (said Act), the Builders Association – petitioner before the Hon'ble Supreme Court would be liable to pay royalty and penalty although there is no allegation in respect of commercial exploitation or utilisation of the minor minerals. The issue has been considered by the Hon'ble Supreme Court in paragraphs 12 and 15 of the said judgment, which read thus :

“12. It is not in dispute that in the present appeals excavation of ordinary earth had been undertaken by the appellants either for laying foundation of buildings or for the purpose of widening of the channel to bring adequate quantity of sea water for the purpose of cooling the nuclear plant. The construction of buildings is in terms of a sanctioned development plan under the MRTP Act whereas the excavation/widening of the channel to bring sea water is in furtherance of the object of the grant of the land in favour of Nuclear Power Corporation. The appellant builders contend that there is no commercial exploitation of the dug up earth inasmuch as the same is redeployed in the construction activity itself. In the case of Nuclear Power Corporation it is the specific case of the Corporation that extract of earth is a consequence of the use of the land for the purposes of the grant thereof and that there is no commercial exploitation of the excavated earth inasmuch as the “soil being excavated for ‘Intake Channel’ was not sent outside or sold to anybody for commercial gain”.

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15. 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 1957 Act read with the Notification dated 3-2-2000."*

3] Post to the decision of the Hon'ble Supreme Court, the State Government, by way of an amendment in the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013 (for short "2013 Rules"), has directed incorporation of the proviso to Rule 46 providing that no royalty shall be required to be paid on earth which is extracted while developing a plot of land and utilised on the very same plot for land leveling or any work in the process of development of such plot. It thus appears that the order has been issued overlooking the decision of the Hon'ble Supreme Court as well as the amendment to the 2013 Rules.

4] In the reply presented by the petitioner, the relevant provision as well as decision rendered by the Hon'ble Supreme Court have been brought to the notice of the concerned Court. It was also pointed out that in an identical matter being Writ Petition No. 6702 of 2011 while dealing with Civil Application, a notice of contempt was issued which was dropped on tendering unconditional apology by the concerned Official. It could not be therefore, inferred that the concerned authority, who issued the impugned order, was not aware of the legal provisions and the consequences of issuance of such erroneous order.

5] We are therefore, of the *prima facie* opinion that it is an deliberate attempt by the authorities to cause prejudice to the petitioner. We, therefore, call upon respondent No.3 to show cause as to why appropriate action should not be taken against him for intentionally committing breach of the orders of the Hon'ble Supreme Court as well as statutory provision incorporated in Rule 46 proviso of 2013 Rules.

6] Reply shall be presented within a period of two weeks from today.

7] S.O. 21<sup>st</sup> February 2019.

**(V. L. ACHLIYA, J.)**

**(R.M.BORDE, J.)**