

Royalty

SECTION. IX

IN THE SUPREME COURT OF INDIA

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2014  
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Petition(s) for Special Leave to Appeal (Civil) No(s).33002/2010

(From the judgement and order dated 08/10/2010 in WP No. 785/2008 of The  
H  
IGH COURT OF BOMBAY)

PROMOTERS & BUILDERS ASSN.OF PUNE

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent(s)

OFFICE REPORT

The matters above-mentioned were listed before the Hon'ble Court on 23rd August, 2012, when the court was pleased to pass the following order:-

"The respondents, who have so far not filed counter affidavit in the connected SLPs., may do so or may adopt the counter affidavit filed in the lead matter.

List after six weeks."

Thereafter, the matters above-mentioned were listed before the Hon'ble Court on 02nd January, 2013, when the court was pleased to pass the following order:-

"List these matters in March, 2013."

It is submitted for the information of the Hon'ble Court that pursuant to the aforesaid order, the Counsel for the Respondent has not filed Counter Affidavit in SLP (Civil) No. 4571 of 2011 and SLP (Civil) No. 13828 of 2011.

Service of notice is complete in all the matters.

The matters above-mentioned are listed before the Hon'ble Court with this report.

Dated this the 06th day of July, 2013.

ASSISTANT REGISTRAR

DISCLAIMER

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## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO. 7390 OF 2010

P.S.C. PACIFIC .... Petitioner  
 vs.  
 The State of Maharashtra & ors. .... Respondents

ALONG WITH  
 WRIT PETITION NO. 8019 OF 2010

Flagship Infrastructure Pvt.Ltd. .... Petitioner  
 vs.  
 The State of Maharashtra & ors. ... Respondents

WITH  
 WRIT PETITION NO.8020 OF 2010

Matrix Developers Pvt. Ltd. .... Petitioner  
 vs.  
 The State of Maharashtra & ors. ... Respondents

AND ALONG WITH  
 WRIT PETITION NO.8023 OF 2010

Eiffel Developers and Realtors Ltd. .... Petitioner  
 vs.  
 The State of Maharashtra & ors. ... Respondents

Mr. G.S. Godbole with Mr. D.S. Patil for the petitioners.

Mr. S.N. Patil, AGP for respondent in Writ Petition No.7390/2010.

Mr. S.R. Nargolkar, Addl. G.P For respondents in Writ Petition No. 8019/2010, 8020/2010 and 8023/2010.

**CORAM: D. K. DESHMUKH &  
ANOOP V. MOHTA, JJ.**

**DATE : April 13, 2011**

**PC.:**

In all these Petitions, notices were issued under Section 48(7) of the Maharashtra Land Revenue Code, 1966 have been challenged. Those notices have been issued and proceedings have been taken up by the Authorities of the State Government against the Petitioner, because the Petitioners are digging the land which is granted to the Petitioner for construction of building for the purposes of laying foundation and for levelling the land.

2 The learned counsel appearing for the Respondent pointed out to us that in Writ Petition No.785/2008 – **Promoters and Builders Association vs. State of Maharashtra** and other connected Writ Petitions, the notices issued under Section 48(7) of the Maharashtra Land Revenue Code were challenged and a Division Bench of this

Court by its judgment dated 8 October 2010 has held that all those notices were valid. The learned counsel for the Petitioner states that that judgment has been challenged before the Supreme Court in Petition for Special Leave (Civil) No.33002/2011 and in that Petition on 24 October 2011 the Supreme Court has issued a notice and has granted "interim stay of the operation of the impugned judgment of the High Court".

3 We have also been pointed out that the Division Bench while deciding those Writ Petitions has not considered the provisions of Section 43 of the Maharashtra Land Revenue Code as also the provisions of the Rules framed under that provision. It was submitted that when land is granted for a particular purpose, then the grantee has implied authority to do everything on the land which is necessary for using the land for the purpose for which it has been granted. It is submitted that the land which is granted for the purposes of building site, can be excavated for erection of a building as also for digging of a well. We were taken through the provisions of the Maharashtra Land Revenue (Restrictions on use of Land) Rules, 1968, particularly, Rule 6 of those Rules, which lays down "no un-alienated land within the site of any village, town or city shall be excavated without the previous

written permission of the Collector for any purpose except for laying of foundation for buildings, the sinking of well and making of grain-pits. If excavation is to be done for any purposes other than laying foundation for building sinking of well, or making of grain-pits, then an application is to be made to the Collector for permission and under sub-rule (2) of Rule 6 of the said Rules of 1968. That application is to be considered by the Collector keeping in view the provisions of the Mines and Minerals (Regulations and Development) Act, 1957. It was submitted that these provisions clearly bring out that when land is granted for erection of building then statutory permission to dig the land for the purposes of laying of foundation for building, the sinking of well and making of grain-pits is granted. If the land is to be excavated for any other purpose then permission of Collector is necessary and then in granting that permission, the Collector has to have regard to the provisions of the Mines and Minerals Rules. It was submitted that under Section 48 (7), penalty can be levied by the Collector when any minor mineral is extracted from the land without lawful authority. It was submitted that when the land granted for building site is excavated for laying foundation, then that activity is with lawful authority and, therefore, there is no question of levying of any penalty for carrying out that activity. It was also submitted

before us that this aspect of the matter was pointed out to the Division Bench and that written submissions were also filed. However, the judgment of the Division Bench shows that these aspects have not been considered. In this situation, in our opinion, it will be appropriate to admit these Petitions for final hearing.

4 Hence, Rule.

5 Ad-interim order in terms of prayer (e).

(ANOOP V. MOHTA, J.)

(D. K. DESHMUKH, J. )

09  
2014  
CM

VISHAL THAKKAR  
+919892226818

**Subject: Royalty Petition W.P.No.6702 of 2011 & Civil Application No.1346 of 2014.**

Ref. No.: MCHI/CEO/14-15/022

July 16, 2014

To,  
**All Members of MCHI-CREDAI &  
MCHI-CREDAI Units.**

Dear All,

**Sub.: Royalty Petition W.P.No.6702 of 2011 & Civil Application No.1346 of 2014.**

MCHI would like to apprise its members that, State of Maharashtra had applied to the Hon'ble High Court for vacating the Interim Stay Order (dt.5<sup>th</sup> Sep.2011), granted to the members of MCHI in Royalty matter.

A Civil Application was moved on 17<sup>th</sup> June 2014, before the Hon'ble Division Bench of J. A.S. Oka & J. A.S. Chandurkar. The Hon'ble Court opined that, the show cause notices received by the members of the Petitioners (i.e. Members of MCHI) were challenged in the petition filed by them. The members can always challenge the Orders passed in the show cause notice, which has been considered and elaborated in para 4 of the Interim Order. Therefore, the Civil Application filed by the State is rejected. Also, the Hon'ble Court made it clear that this Order dt. 5<sup>th</sup> September 2011, shall stand till the outcome/disposal of the SLP No.33002 of 2010 filed by the Promoters & Builders Ass. Of Pune v/s State of Maharashtra.

Regards,  
For MCHI-CREDAI

*Builder Association of Maharashtra - MCHI*

copy of order in w.p - 3370/2010  
SLP - 33002/2010  
8019/2010

*Letter taken from Madhura*

*(m)*

*check the position of SLP no - 33002/2010. pl. find on computer. or Ask in the office of MCHI*  
~~*Also ask - Arunachal in this matter*~~  
~~*pl. send copy of this to AL*~~

*23/8/2014*

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No.1346 of 2014  
IN  
WRIT PETITION NO.6702 of 2011

The State of Maharashtra through  
Principal Secretary, Revenue Department  
and others

... Petitioners.

Vs.

Maharashtra Chamber of Housing Industry  
through Chief Manager, Mr Chandra Prakash  
Goyal and Ors

... Respondents.

Mr N.P. Deshpande, AGP for the Petitioner.  
Mr Uday P. Warunjikar, Advocate for the Respondents.

**CORAM : A.S. OKA & A.S.CHANDURKAR, JJ.**  
**DATE : 17<sup>th</sup> June 2014.**

**PC.**

1. Heard learned AGP appearing for the Applicant. Prayer in this application is for vacating interim relief granted by this Court on 5<sup>th</sup> September, 2011.

2. The submission of the learned AGP is that if the interim order is modified and authorities are allowed to pass orders on show cause notice, no prejudice will be caused to the members of the first Petitioner in the Writ Petition as the State Government is willing to make a statement that till the disposal of Special Leave Petition No. 33002/2010, the orders will not be



implemented.

3. From perusal of the order dated 5<sup>th</sup> September, 2011, we find that interim relief was granted after hearing the learned AGP. The submission of the learned AGP that challenge in the writ petition is only to the show cause notice and the Petitioners can always challenge the orders passed on the show cause notice, has been considered by the Division Bench as elaborated in paragraph 4 of the order dated 5<sup>th</sup> September, 2011. No case of any change in circumstances is made out. Hence, the civil application is rejected. However, after disposal of the Special Leave Petition No. 33002 of 2010, it will be open for the applicants to move a fresh application for grant of relief which is claimed in this application.

(A.S.CHANDURKAR, J)

( A.S. OKA, J )