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**(2021) 09 BOM CK 0023**

**In the Bombay High Court**

**Case No :** Writ Petition No.6848, 8104 Of 2020, 7187 Of 2021, Civil Application No.6598, 7966 Of 2021

Montecarlo Ltd. Iron Triangle (Joint Venture) And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

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**Date of Decision :** 08-09-2021

**Acts Referred:**

Constitution Of India, 1950 — Article 226, 227

Maharashtra Land Revenue Code, 1966 — Section 48(7), 48(8), 247, 330A

**Citation :** (2021) 09 BOM CK 0023

**Hon'ble Judges :** Mangesh S. Patil, J

**Bench :** Single Bench

**Advocate :** S.P. Bhandarkar, S.B. Yawalkar, S.V. Adwant

**Final Decision :** Dismissed

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**Judgement**

Mangesh S. Patil, J

1. Heard. Rule. The Rule is made returnable forthwith. The learned AGP and the learned advocate for the contesting respondent waive service. At the request of both the sides all these three petitions are heard finally at the stage of admission.

2. The petitioner in all these Writ Petitions is a company which has been allotted work of construction of different segments of Mumbai - Nagpur Express High Way popularly known as "Samruddhi Mahamarg". The respondent Maharashtra State Road Corporation Limited is the Nodal Agency appointed by the Government for completing the project. In order to complete the project for the purpose of excavation of sand/murum/stone it entered into agreement with private persons. It applied for necessary permissions to the Collector for excavation and pursuant to the permission granted the work of excavation was undertaken.

3. It appears that the intervener who is an Ex-MLA of Badnapur filed a complaint alleging about rampant misuse of the permission granted to the petitioner company. He alleged that excess quantity was excavated and in some cases the

excavation was undertaken even without any permission. It appears that pursuant to such grievance a committee was appointed by the Additional Collector which submitted a report by undertaking ETS measurement and in its report gave details about the illegal/unauthorized excavation and the quantity of the sand/murum/stone excavated in excess and illegally.

4. Pursuant to such report the Collector authorized the Tahsildar Badnapur to undertake a proceeding under Section 48 (7) and 48(8) of the Maharashtra Land Revenue Code, 1966 (herein after the MLRC). Show cause notices were issued to the petitioner. Observing that it had not responded, by the impugned orders respondent Tahsildar directed the petitioner Company to deposit various sums mentioned in the impugned orders ranging in crores of rupees pursuant to the provision under Section 48(7).

5. The learned advocate for the petitioner would submit that it is challenging the action of Tahsildar primarily on the ground that he had no jurisdiction to initiate any proceeding and pass order under Section 48(7) of the MLRC. He would submit that the provision empowers a Collector to exercise the power and also permits him to authorize any of his subordinate officers not below the rank of Tahsildar to exercise that power. However, according to the learned advocate such delegation of power by the Collector to the Tahsildar is regulated by the provision of Section 330 A of the MLRC and which prescribes two conditions for such delegation, firstly, the approval of the State Government and, secondly, notification of such order in the Official Gazette. The learned advocate would further submit that there is absolutely no material to demonstrate that the Collector in the matter in hand had legally delegated his power under Section 48(7) to the Tahsildar and for this reason alone the impugned orders of the Tahsildar having been passed without jurisdiction are liable to be quashed and set aside.

6. The learned advocate for the petitioner, pursuant to the basic objection being raised on behalf of the respondents regarding availability of alternate and efficacious remedy of preferring appeal under Chapter XIII of the MLRC, would cite several decisions of the Supreme Court governing the field and would submit that there are well recognized exceptions to the normal rule of invoking an alternate and efficacious remedy and the petitioner's case fits in such exceptions. There is lack of jurisdiction with the Tahsildar. Principles of Natural Justice have not been followed since the inquiry has been conducted by visiting the spot behind petitioner's back. These are such exceptions recognized in following decisions:

1. Whirlpool Corporation Vs. Registrar of Trade; (1998) 8 SCC 1
2. Harbanslal Sahnia Vs. Indian Oil Corporation ; (2003) 2 SCC 107
3. State of Himachal Pradesh Vs. Gujaral Ambuja Cement Ltd.; (2005) (6) SCC 499

4. State of Madhya Pradesh Vs. Sanjay Nagayach ; (2013) 7 SCC 25

5. Maharashtra Chess Association Vs. Union of India; (2020) 13 SCC 285

The learned advocate for the petitioner would also place reliance on the decision of this Court in the case of Neha Anil Agre Vs. State of Maharashtra & Ors.; 2018 ALL MR (Cri) 484

7. The learned AGP and Mr. Girase the learned advocate for the intervener at whose behest the inquiry has been initiated submit that Section 48(7) of the MLRC does not use any words like 'delegation' of powers and uses the word 'authorization' and the two phenomena have distinct meanings as has been interpreted by Delhi High Court in the case of Deva Gir Vs. Delhi Transport Corporation; ILR (1976) I Delhi which is subsequently followed in M/s. Tobu Enterprises Ltd. Ors. V/s. The Lt. Governor, Delhi and Ors.; ILR (1994) I Delhi and the latter of which is approved by the Supreme Court in the case of Raj Kumar Gupta V/s. Lt. Governor, Delhi and Ors.; (1997) SCC 556. They would then submit that in view of such specific wording of the provision contained in Section 48(7), the provision of Section 330 A which contemplates mode for delegation of powers is not applicable. According to them Section 330 A would be applicable unless there is specific provision contained in the Code and is a general provision. According to them authorization to be given by a Collector to a Tahsildar or any of his subordinates under Section 48(7) is not regulated by Section 330 A.

8. The learned AGP and the learned advocate Mr. Girase would then submit that the impugned orders have been passed under Section 48(7) of the MLRC. The Code contains a specific Chapter XIII providing for appeals and revisions against the orders passed under it. When the MLRC is a complete Code in itself, the remedy of preferring an appeal under Section 247 is an efficacious and alternate remedy available to the petitioner and no exception can be allowed to be made. They would submit that if it is found that the Tahsildar has jurisdiction and power to pass the impugned orders under Section 48(7), the petitioner has no other alternative except to prefer an appeal under Section 247.

9. So far as principles of natural justice are concerned, the learned AGP and learned advocate Mr. Girase would submit that the petitioner was served with a show cause notice in all the three petitions, however, there was no reply from its side and it is thereafter that the impugned orders have been passed. Meaning thereby that the opportunity of being heard was extended to the petitioner but it did not avail it. If such is the state of affairs it cannot be heard to say that the principles of natural justice have not been followed.

10. The learned AGP and the learned advocate Mr. Girase would then refer to the following decisions of the Supreme Court and submit that when there is an alternate and efficacious remedy available to the petitioner, this Court should not entertain the petitions:

1. Commissioner of Income Tax and Ors. Vs. Chhabil Dass Agarwal; (2014) 1 SCC 603
2. State Bank of India Vs. Allied Chemical Laboratories and Anr.; (2006) 9 SCC 252
3. City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla.; (2009) 1 SCC 168.
4. Kanaiyalal Lalchand Sachdev and Ors. Vs. State of Maharashtra and Ors.; (2011) 2 SCC 782
5. Nivedita Sharma Vs. Cellular Operators Association of India and Ors.; (2011) 14 SCC 337

11. I have carefully considered the rival submissions, the papers as also the decisions cited at the bar. Before considering the rival submissions it would be apposite to observe that since the petitioners are invoking the powers of this Court under Articles 226 and 227 of the Constitution of India, I am not indulging into the disputed questions of fact. Rather, for want of material this Court cannot even scrutinize muchless determine all these factual disputes. Consequently I am restricting the discussion only to the couple of legal issues mentioned herein above.

12. Taking up the first question as to if the Collector has legally authorized Tahsildar to exercise the power under Section 48(7) of the MLRC, it would be apt to first of all reproduce the relevant provisions:

"Section 48(7) Any person who without lawful authority extracts, removes, collects, replaces, picks up or disposes of any mineral from working or derelict mines, quarries, old dumps, fields, bandhas (whether on the plea of repairing or constructions of bund of the fields or an any other plea), nallas, creeks, river-beds, or such other places wherever situate, the right to which vests in, and has not been assigned by the State Government, shall, without prejudice to any other mode of action that may be taken against him, be liable, on the order in writing of the Collector, or any revenue officer not below the rank of Tahsildar authorised by the collector in his behalf to pay penalty on of an amount [upto five times] the market value of the minerals so extracted, removed, collected, replaced, picked up or disposed of, as the case may be...."

"Section 330 A. Delegation of powers and duties:

Save as specifically provided in this Code, the State Government, and subject to the approval of the State Government, any Commissioner or Collector may, by notification in the Official Gazette, direct that all or any of the powers conferred or duties imposed on it or him by or under this Code, may, subject to such restrictions and conditions, if any, be exercisable also by such officers not below such rank, as may be specified in the notification."

13. At the first blush the submission of the learned advocate for the petitioner

seems attractive in as much as Section 330A apparently prescribes for the manner in which the powers given to various authorities under the MLRC can be delegated. It lays down two conditions. Firstly, approval of the State Government. Secondly, publication of the order delegating the powers in the Official Gazette by way of notification. Admittedly, no such procedure as is contemplated under Section 330A has been followed in the matter in hand.

14. But then a careful perusal of the wording of Section 330A demonstrates that it is applicable save as specifically provided in the Code. The provision begins with the words which clearly indicate that the provision is general in character and is not to be pressed into service if the MLRC in any other provision provides for delegation. Therefore when Section 48(7) specifically empowers a Collector to authorize any Revenue Officer not below the rank of Tahsildar to exercise the power under that provision, one cannot resort to the general provision contained in Section 330A. It would be applicable only if and when any provision in the MLRC does not speak about any delegation or authorization to be given by the Collector. If, still, the Collector intends to delegate the powers then only he will have to approach the State Government for approval and to issue a notification in the Official Gazette or independently even the State Government can delegate such powers and issue a notification in the Official Gazette delegating such powers. Therefore it is quite clear that the authorization to be given by the Collector under Section 48 (7) is not regulated by the prescription contained in Section 330A.

15. In this respect it is necessary to observe that following few decisions of this Court have been placed on record on behalf of the petitioners to demonstrates that this Court has already taken a view that the power of a Collector conferred on a Tahsildar also have to be in accordance with the provision prescribed under Section 330A. A Division Bench in the case of M/s. Adani Power Maharashtra Ltd. Vs. State of Maharashtra (WP No.2413/2013) dated 15.12.2017 has recorded prima facie observations in following words :

"Prima facie, we find that the argument advanced by Shri Dharmardhikari is acceptable. If the power of the Collector is to be conferred upon the Tahsildar for taking action under sub-section (7) and (8) of Section 48 of the Maharashtra Land Revenue Code, then the notification in the official gazette, as contemplated by Section 330 A of the said Code, is required to be issued. No such notification is brought to out notice by the respondents. We do not find that the order dated 30.06.1986 can substantiate the competency of the Tahsildar to pass an order under sub-sections (7) and (8) of Section 48 of the said Code, impugned in this petition."

Relying upon these observations another Division Bench in the case of Afcons Infrastructure Ltd. Vs. State of Maharashtra (Writ Petition No.415/2020) dated 21.01.2020 has proceeded to adopt the same course.

However, with respect, as can be seen from the entire order passed in the case

of M/s. Adani Power Maharashtra Ltd. (supra) the observations are merely prima facie observations made by the Division Bench while granting an adjournment on a motion moved by the State Government. The observations cannot partake a binding precedent and pressed into service when in this petitions this Court has been called upon to decide the manner in which an authorization by the Collector under Section 48 (7) can be issued, and precisely issue as to if such authorization is regulated by the= mandate of Section 330A. The Division Benches have not decide the issue finally and has merely recorded some observations and consequently the petitioner is not entitled to refer to these observations and insist for following the same interpretation even in the matter in hand were the issue is being discussed and decided elaborately.

16. Apart from the above state of affairs, as is rightly pointed out by the learned AGP and learned advocate Mr. Girase there is essentially difference in the word 'authorization' and 'delegation'. One need not delve deep into the discussion and it would be suffice to refer to the decisions in the case of Deva Gir (supra) followed in the case of M/s. Tobu Enterprises Ltd. (supra) and which is subsequently referred to with approval by the Supreme Court in the case of Raj Kumar Gupta (supra). When Section 48(7) merely uses the word 'authorize' as distinct from word 'delegate' and when Section 330A is a general provision providing for the manner in which the powers are to be 'delegated', this would be an additional reason to subscribe to the interpretation sought to be placed on two provisions discussed herein above. When Section 48(7) empowers a Collector to authorize his subordinate officers, he would be merely asking them to perform the duties having an over all supervision and control over the actions done by them pursuant to such authorization. As against this when Section 330A contemplates the procedure to be followed while delegating the powers on any authority, which is not provided for else were in the MLRC, that provision would not control the power of the Collector to authorize a subordinate officer under Section 48(7). In view of such an interpretation, when in all these petitions there is no dispute about the Collector having authorized the Tahsildar to invoke the powers under Section 48(7), it cannot be said that the Tahsildar had no jurisdiction to pass the impugned orders.

17. This takes me to the other issue regarding availability of efficacious and alternate remedy. There cannot be any dispute about the fact that Chapter XIII of the MLRC lays down various provisions for challenging the orders passed under that Code by way of Appeal and Revision. In fact provision of even Second Appeal is also available and ex facie the Code is complete in itself and replete with hierarchy of the Appellate Authorities. Right in the teeth of such fora, in the normal course the petitioner is expected to exhaust the remedy.

18. There are catena of decisions touching this aspect regarding powers of this Court under Articles 226 and 227 of the Constitution of India vis-a-vis availability of efficacious and alternate forum under different statutes. These principles can be gathered by referring to the observations of the Supreme Court in the case of

Maharashtra Chess Association :

14. While the powers the High Court may exercise under its writ jurisdiction are not subject to strict legal principles, two clear principles emerge with respect to when a High Court's writ jurisdiction may be engaged. First, the decision of the High Court to entertain or not entertain a particular action under its writ jurisdiction is fundamentally discretionary. Secondly, limitations placed on the court's decision to exercise or refuse to exercise its writ jurisdiction are self-imposed. It is a well settled principle that the writ jurisdiction of a High Court cannot be completely excluded by statute. If a High Court is tasked with being the final recourse to upholding the rule of law within its territorial jurisdiction, it must necessarily have the power to examine any case before it and make a determination of whether or not its writ jurisdiction is engaged. Judicial review under Article 226 is an intrinsic feature of the basic structure of the Constitution.

In the case of Commissioner of Income Tax and Ors. Vs. Chhabil Dass Agarwal ; (2014) 1 SCC 603 after referring to catena of decisions of the Supreme Court including those ones cited on behalf of the petitioners the Supreme Court has culled down following principles:

15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

19. Applying these principles to the matter in hand, since I have already held that the Tahsildar had the jurisdiction to pass the impugned orders and as has been already pointed out, impugned orders specifically read about show cause notices having been issued to the petitioners but there was no response, even it cannot be heard to say that an opportunity of being heard was not extended to it and that there is breach of the principles of natural justice.

20. In view of such a conclusion, the petitioner's case does not fit into the exceptions in view of availability of a statutory remedy to prefer Appeal it cannot be allowed to invoke the powers of this Court under Article 226 of the Constitution of India.

21. The decision of the Division Bench of this Court in the case of Neha Anil Agre (supra) is not relevant for decision of the Writ Petitions since the decision in that

matter revolved around the factual dispute as to if the provisions of Section 48(7) and 48(8) of the MLRC would be attracted when the minerals confiscated where excess in weight permitted to be carried by a vehicle. As I have already made it clear in the beginning that the factual disputes are not being considered while passing the judgment, if and to what extent there has been violation of the permit under which excavation was allowed is left open to be considered by the appropriate authorities.

22. In the result, all the Writ Petitions fail albeit avenue to invoke the efficacious and alternate remedy would be still open. The Writ Petitions are dismissed. The Civil Application Nos.6598/2021 and No.7966/2020 are disposed of. It is made clear that this Court has not expressed any opinion on facts in issue and the Appellate Authority shall not feel influenced by the observations made in this judgment. The Rule is discharged.

(MANGESH S. PATIL, J.)

After pronouncement of judgment the learned advocate for the petitioner submits that ad interim relief has been in operation till date and that may be extended to enable it to approach the Supreme Court.

2. Considering the nature of the dispute, and the view I have taken this is not a fit case where the interim relief can be extended beyond the lis.