
(2016) 06 BOM CK 0191
In the Bombay High Court
Case No : Writ Petition No. 3256 of 2016

M/s. J.K. Traders

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-06-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226
Maharashtra Land Revenue Code, 1966 — Section 48(7), Section 48(8)

Citation : (2017) 3 AIRBomR 271

Hon'ble Judges : Smt. Vasanti A. Naik and Mrs. Swapna Joshi, JJ.

Bench : Division Bench

Advocate : Shri V.S. Kukday, Advocate, for the Petitioner; Shri S.M. Ghodeswar, AGP, for the Respondent

Final Decision : Allowed

Judgement

Smt. Vasanti A. Naik, J.(Oral) - Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned Counsel for the parties.

2. By this writ petition, the petitioner had challenged the order of the respondent No. 2 ? District Collector, Bhandara, dated 25.4.2016 forfeiting the security deposit and the bank guarantee of the petitioner, as also the order of the Tahsildar, dated 17.5.2016 imposing penalty of Rs.2,06,02,400/- on the petitioner.

3. In pursuance of a tender floated by the respondents for excavation of the sand from the Sand Ghat at Pauni, the petitioner participated in the tender and was allotted the Sand Ghat. The petitioner deposited the entire amount as per the bid and was excavating the sand, when it was informed by the respondent No. 4 that the petitioner was found to be illegally excavating the sand by poclain machine and therefore, it was liable for action. The petitioner was asked to show cause by the notice, dated 4.4.2016 as to why the security deposit should not be forfeited and why the allotment of the Sand Ghat should not be cancelled. The petitioner furnished its explanation denying the allegations levelled against it. By an order,

dated 25.4.2016 the Collector forfeited the security deposit of Rs.6,72,570/- and the bank guarantee of Rs.1,60,000/-. By the said order, the Collector also directed the respondent No. 3 ? Sub Divisional Officer, Bhandara to release the JCB machine seized by him and to grant permission to the petitioner to operate the Sand Ghat after the petitioner furnishes a fresh bank guarantee and security deposit. It is the case of the petitioner that though the petitioner was ready to furnish a fresh bank guarantee and also deposit the amount towards security deposit again, the respondent ? Tahsildar without issuance of show-cause-notice to the petitioner and without granting an opportunity of hearing to it, by the impugned order, dated 17.5.2016 imposed a penalty of Rs.2,06,02,400/on the petitioner under the provisions of Section 48 (7) of the Maharashtra Land Revenue Code.

4. Shri Kukday, the learned Counsel for the petitioner submitted that though the petitioner had challenged the order of the Collector, dated 25.4.2016, forfeiting the bank guarantee and the security deposit and asking the petitioner to redeposit the said amount, in the writ petition, the petitioner gives up the said prayer and the grievance of the petitioner would stand redressed, if the impugned order of the Tahsildar, dated 17.5.2016 under Section 48 (7) of the Maharashtra Land Revenue Code, is quashed and set aside. It is stated that the petitioner is ready to refurnish the bank guarantee. It is stated that the security amount is again deposited by the petitioner in terms of the order of the Collector, dated 25.4.2016 and the said order is implemented as far as the petitioner is concerned, though the Sub Divisional Officer has not permitted the petitioner to operate on the Sand Ghat by accepting a fresh bank guarantee. It is stated that though the petitioner has given up the challenge to the order of the Collector, dated 25.4.2016, the petitioner has seriously challenged the order of the Tahsildar, dated 17.5.2016, under Section 48 (7) of the Maharashtra Land Revenue Code. It is stated that the impugned order of the Tahsildar is clearly illegal, inasmuch as, the Tahsildar did not grant any opportunity whatsoever to the petitioner before imposing a huge amount on the petitioner towards penalty. It is stated that it was necessary for the Tahsildar to have, at least issued a show-cause-notice to the petitioner. It is stated that the order of the Tahsildar is passed in violation of the principles of natural justice and the same is liable to be set aside.

5. Shri Ghodeswar, the learned Assistant Government Pleader appearing on behalf of the respondents, on instructions from the Tahsildar, fairly admits that before passing the order imposing the penalty, dated 17.5.2016, the petitioner was not served with a show-cause-notice. It is stated that the petitioner was not granted any opportunity before passing the impugned order of imposition of penalty. It is stated that an appropriate order may be passed, in the circumstances of the case.

6. On hearing the learned Counsel for the parties, we find that the order of the Tahsildar, dated 17.5.2016 is clearly illegal and cannot be sustained. Before

imposition of penalty under Section 48 (7) of the code, it would be necessary for the authority to at least issue a show-cause-notice to the person concerned. It is held by this Court time and again that before passing an order under Section 48 (7) and (8) of the Maharashtra Land Revenue Code in regard to the imposition of penalty, it would be necessary for the revenue authorities to at least serve a show-cause-notice. Admittedly, since the Tahsildar had not served a show-cause-notice on the petitioner before imposition of the penalty, the impugned order is liable to be quashed and set aside. In the circumstances of the case, it would be necessary for the Sub Divisional Officer to implement the order of the respondent No. 2 ? District Collector, dated 25.4.2016. The said order still subsists and it would be necessary for the Sub Divisional Officer to release the JCB machine of the petitioner and permit it to operate on the Sand Ghat (without the help of the JCB machine), as the petitioner is ready to refurnish the bank guarantee.

7. Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order of the Tahsildar, dated 17.5.2016 is quashed and set aside. The Tahsildar is free to take appropriate action against the petitioner, in accordance with law. The concerned respondent should immediately accept the fresh bank guarantee from the petitioner and ensure that the order of the Collector is implemented immediately.

8. Rule is made absolute in the aforesaid terms with no order as to costs.

9. Steno copy of this judgment is granted.