



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (ST) NO. 29872 OF 2019
IN
WRIT PETITION NO. 13323 OF 2016

The State of Maharashtra through }
Additional Chief Secretary }
Revenue and Forest Department }
and }
2. The Collector, Ahmednagar, }
Dist- Ahmednagar } ...Petitioners

V/s.

Ajay Rajendra Pawar. } Respondent

WITH
REVIEW PETITION (ST) NO. 29869 OF 2019
IN
WRIT PETITION NO. 12380 OF 2016

The State of Maharashtra through }
Additional Chief Secretary }
Revenue and Forest Department . }
}
2. The Collector, Ahmednagar, }
Dist- Ahmednagar } ...Petitioners

V/s.

Fulchand Kondiba Khade } ... Respondent

Mr. A.I. Patel, Additional G.P with Ms. R.M. Shiinde AGP for the
Petitioners.

Mr. K.N. Shermale for the sole respondent.

CORAM : SUNIL B. SHUKRE &
MANISH PITALE, JJ
(IN CHAMBER)

DATE : 23rd AUGUST 2023.

ORAL JUDGMENT: (PER SUNIL B. SHUKRE,J)

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the respective parties.
2. Learned AGP has sought time to obtain necessary instructions following the order passed by this Court on 19th August 2023. In support, he has tendered across the bar a communication dated 22nd August 2023, which is taken on record and marked as 'Document-A'.
3. In normal course, we would have granted the request as made in the communication, Document-A, which seeks time of eight weeks for obtaining necessary instructions. But having regard to the peculiar facts and circumstances of this case, we are of the view that we would be doing injustice to the original petitioners, if we accede to such a request made on behalf of the State Government.
4. The peculiarity of these two review petitions arise mainly from certain facts. The order sought to be reviewed is a common order

and it is passed in three Writ Petitions namely Writ Petition No.12380, Writ Petition No. 13323 and Writ Petition (St) No. 29331 all filed in the year 2016. These three petitions sought enforcement of the order dated 9th September 2014 passed by the Hon'ble Minister of State for Revenue, thereby directing the authorities of the State to refund the amounts deposited by the three petitioners towards taking on lease three different sand ghats and it was the contention of the petitioners that due to some intervening circumstances and factors beyond their control, they were not able to work the sand ghats to their fullest capacity and before the sand ghats could be excavated fully, their lease came to an end and therefore, the proportionate amounts which these petitioners had deposited were liable to be refunded to the petitioners.

5. This contention of the petitioners was accepted by the then Hon'ble Minister of State for Revenue and therefore, by the order passed on 9th September 2014, he directed the concerned State authorities to calculate the amounts due and payable to these petitioners and release the same to them within a period of three months from the date of receipt of copy of his order. This order passed by the then Hon'ble Minister of State for Revenue was not implemented by the State authorities and therefore, the petitioners

were compelled to approach this Court seeking a mandamus to the State authorities for implementation of the said order dated 9th September 2014. This Court, after hearing both sides found substance in these petitions and therefore, allowed the petitions and directed the authorities to calculate the amounts payable to the petitioners and release the same within a period of three months from the date of receipt of copy of order of the High Court. This order came to be passed by this Court on 28th November 2017. It was, therefore, expected from the State authorities to implement the order. But, the order was not implemented and two original petitioners who have filed Writ Petition No. 12380 of 2016 and Writ Petition No. 13323 of 2016 have now filed under compulsion two separate contempt petitions against the said authorities.

6. There is one more fact, which is relevant here. The first order passed by the then Hon'ble Minister on 9th September 2014 was recalled and reviewed by another Hon'ble Minister by passing an order dated 2nd July 2019, and this was done by him even when the order dated 28th November 2017 of this Court was staring in the face of the State authorities. As, if this was not enough, the State authorities even acted arbitrarily in the matter. This can be seen from the treatment

given to the third petitioner. So, further enquiry was made by us. As informed by the learned counsel for the aforestated two petitioners, it appears that there was one more petitioner who had filed Writ Petition (St) No. 29331 of 2016 and who was also the beneficiary of the order dated 28th November 2017. But, he is not before us today.

7. Upon enquiry by us, learned counsel for the original petitioners in Writ Petition No. 12380 and Writ Petition No. 13323 both of which are of 2016 year informs that, the contempt petition was indeed filed by the third beneficiary but it was disposed of as the order dated 28th November 2017 had been implemented vis-a-vis him by them. The amount as directed by this Court was also released to him. The contention is supported by order passed in this regard by another Bench of this Court on 7th February 2020 in Contempt Petition (St) No. 35304 of 2018 which is at page no. 71 of the reply filed by the two original petitioners.

8. The aforestated facts and circumstances of this case clearly show discriminatory attitude on the part of the State authorities. While State authorities have accepted for compliance the order dated 28th November 2017 passed in Writ Petition (St) No. 29331 of 2016, the State Authorities have chosen to file review petitions in case of same

order passed in relation to the other two petitioners, which review petitions are being considered today by us.

9. We must state it here that, the material available on record before us shows that the common order dated 28th November 2017 was implemented by the State authorities insofar as it pertains to the 3rd beneficiary, Shri Santosh Sadashiv Minde, somewhere between 29th November 2019 and 7th February 2020. This would further show that the common order dated 28th November 2017 was complied with by the State authorities even after the original order dated 9th September 2014 was reviewed by another Hon'ble Minister of State for Revenue by passing a fresh order on 2nd July 2019.

10. The main ground of both these review petitions is of change in circumstances brought about by the subsequent order dated 2nd July 2019 passed by another Hon'ble Minister of State for Revenue. As stated earlier, by this subsequent order, another Hon'ble Minister recalled the first order dated 9th September 2014 and made his order subject to the result of the Writ Petitions pending in the Court. In fact, at that time no Writ Petition whatsoever was pending before the High Court in the present case. Therefore, it is quite strange to note that

Hon'ble Minister made his review order dated 2nd July 2019 subject to the decision of the High Court in pending Writ Petition / Writ Petitions. Even otherwise, the Hon'ble Minister ought not to have reviewed the earlier order dated 9th September 2014 as that order had become final already, when this Court by a common order dated 28th November 2017, directed State authorities to implement the order dated 9th September 2014, and thus he had no jurisdiction to deal with the issue already decided by the High Court by putting its seal of approval to order dated 9th September 2014, when it directed the State authorities to implement it.

11. Be that as it may, the fact remains that the Hon'ble Minister, by the order dated 2nd July 2019 reviewed and recalled the earlier order dated 9th September 2014 passed by another Hon'ble Minister of State for Revenue without having any jurisdiction to do so. The Hon'ble Minister, however, did not pass any further order rejecting the application of aforesaid two petitioners seeking refund of the amounts that they have deposited. He also did not pass any order directing holding of further hearing in respect of the issue pending before his Ministry.

12. With such facts and circumstances of this case being there on record, and also the discriminatory attitude exhibited by the State authorities in the present case, it is not possible for this Court to accept the request for grant of further time in the matter and so it is rejected.

13. Now, coming to the facts of these petitions, which we have already discussed earlier, we find that these Review Petitions ought not to have been filed by the State, especially when the order dated 2nd July 2019 is found to be an order passed without jurisdiction and the State itself has complied with order dated 9th September 2014 even after passing of another order on 2nd July 2019. The State authorities, we must say, should have realised it's mistake and graciously conceded to the position as noted above, and should have implemented the order dated 9th September 2014 in relation to these petitioners who are original petitioners, just as they have done in case of the third original petitioner. But, it has not done so, and giving discriminatory treatment to these original petitioners has denied to them the benefit of the order dated 9th September 2014 and to worsen the case it has or it's some officers have now made a brazen attempt to perpetuate inequality and arbitrariness by filing these two Review Petitions.

14. We may further add here that these petitions are filed by the State. The State is ideally a quintessence of justice and a model litigant. But these two Review Petitions filed by the State, the decision about which must have been taken by some of its officers, have become an epitome of injustice. This Court would be the last one to bear with injustice. The petitions, therefore, deserve to be dismissed.

15. The petitions stand dismissed. We would have liked to impose costs on the State but learned AGP pleads for pardon. Deferring to his submission, we may not straightway impose costs upon the State and would do so subject to some condition.

16. Accordingly, we direct the State authorities to ignore the order dated 2nd July 2019 passed by Hon'ble Minister of State for Revenue and implement the original order dated 9th September 2014 passed by the then Hon'ble Minister of State for Revenue and pay the amounts due and payable to the original petitioners namely Fulchand Kondiba Khade (Writ Petition No. 12380/2016) and Ajay Rajendra Pawar (Writ Petition No. 13323/2016), in terms of the order passed by this Court on 28th November 2017, within a period of three weeks from the date of the order, failing which, the State shall be liable to pay

interest at simple rate of 7.0 % p.a. on the amounts due and payable to the original petitioners from 28th November 2017 till release of the amounts to these petitioners and the State shall also be liable to pay of costs of Rs. 5 lakhs to each of the said petitioners, which costs, if paid, may be, at the discretion of the State, recovered from the concerned officers after fixing their accountability, in accordance with law.

17. Rule is discharged.

(MANISH PITALE, J)

(SUNIL B. SHUKRE, J)