IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

18 WRIT PETITION NO.5778 OF 2023

BABAJI NAMDEO GADAKH
VERSUS
STATE OF MAHARASHTRA,
THROUGH PRINCIPAL SECRETARY AND OTHERS

...

Advocate for Petitioner : Mr. Rajendra L. Kute.
AGP for Respondent/State : Mr. A. V. Deshmukh.

...

CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 31st May, 2023.
(Vacation Court)

P.C.:

. Heard the learned Advocate appearing for the petitioner. Issue notice to respondents. The learned A.G.P. waives service for the respondents - State.

2. The learned Advocate for the petitioner would submit that, by an order dated 10.2.2017, the Additional Collector at Ahmednagar had granted permission for excavation of the Murum in favour of the petitioner out of Gat No.189/2/3, Gat No.209/2 and Gat No.324 of village Pimpale, Taluka Sangamner, District Ahmednagar. He would submit that, the Tahsildar - respondent No.3 issued show-cause notice dated 29/11/2022, calling explanation why penalty of Rs.18,16,18,100/- shall not be imposed against the petitioner. The petitioner replied the said show-cause-notice. However, without giving further opportunity of

hearing, the Tahsildar - respondent No.3 passed the order dated 1/12/2022 and imposed the penalty of the like amount. The learned counsel for the petitioner would submit that, the petitioner approached the appellate authority by filing appeal bearing No.400/2022, which is pending before the Sub-Divisional Officer, Sangamner for hearing. However, during pendency of such appeal, the petitioner has been served with the demand notice dated 4/5/2023. In that view of the matter, the learned counsel for the petitioner submits that, unless the statutory appeal is decided by the appellate authority, the respondents be restrained from taking any coercive action against him.

3. The learned A.G.P. appearing for the respondents opposes such prayer.

4. After considering the arguments advanced by the respective Advocates appearing for the parties, it appears that, *prima facie* the respondent No.3 has passed the order without giving sufficient opportunity to the petitioner and even his appeal which is filed before the Sub-Divisional Officer is kept pending without further decision. In that contingency, it is improper on the part of respondents to execute the order passed by the Tahsildar, which is subject matter before the appellate authority and further serve the demand notice against the petitioner.

5. Considering the totality of circumstances, it would be appropriate to direct the respondent No.2 Sub-Divisional Officer, Sangamner, Taluka Sangamner, District Ahmednagar to expeditiously hear and decide the appeal filed by the petitioner, in any case on or before 12th June, 2023. Till the appeal is finally decided, no coercive action shall be taken against the petitioner in pursuance of the demand notice dated 4/5/2023.

6. Writ Petition is disposed of with the aforesaid directions.

[SANJAY A. DESHMUKH, VJ.]

nga