IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13593 OF 2016

1. M/s. Ramky Infrastructure Ltd.
A Company registered under the provisions of the Companies Act, 1956, having address at 120, MLD, STP, Kanayanagar, Near MJP Office, Kopari, Thane (East), Dist. Thane.

2. Mr. K. Chandra Shekhar Reddy,
Aged about : 43 years
Occupation : FA & Admin
And auhtorized signatory of Company
Having his office at 120, MLD, STP, Kanayanagar, Near MJP Office, Kopari, Thane (East), Dist. Thane. **..Petitioners**

Versus

1. The State of Maharashtra
Through the Principal Secretary
Revenue and Forest Department
Mantralaya, Mumbai – 400 032.

2. The Collector at Thane,
District – Thane.

3. The Tahasildar at Thane,
District – Thane.

4. The Circle Officer,
District – Thane.

5. The Municipal Corporation,
Municipal Corporation Bhavan,
Dr. Almeda Road, Panchpakhadi,
Thane, District-Thane-400 602.

6. Vishal Madhukar Jadhav,
Aged : 33 years,

Occ :
Having address at :
307/A, Nagesh Tower CHS Ltd,
LBS Road, Naupada, Thane-400 602. **..Respondents**

Dr. Uday Warunjikar, *Advocate for Petitioners.*

Mr. A.I. Patel, Addl.GP., *a/w Tanaya Goswami, AGP, for State-Respondent Nos.1 to 4.*

Mr. Jagdish Aradwad (Reddy)*, Advocate for Respondent No.5.*

Mr. Rajesh Bindra, *a/w Bharti Sharma, Advocates for Respondent No.6.*

CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.
RESERVED ON : March 18, 2024
PRONOUNCED ON: March 28, 2024

JUDGMENT: (*Per Somasekhar Sundaresan, J.*)

1. Rule. With the consent of the parties, rule is made returnable forthwith and the writ petition is taken up for final disposal.

2. This writ petition challenges the imposition of penalty and charge of royalty by revenue officials of the State of Maharashtra, under Section 48(7) of the Maharashtra Land Revenue Code, 1966 (**"*MLRC*"**), in connection with the alleged unauthorized excavation of earth during implementing a sewerage pipeline network in Thane. For the reasons

set out in this judgment, we have no hesitation in allowing the writ petition.

Factual Matrix:

3. A brief overview of the facts relevant for the effective disposal of these proceedings is summarized below:

a) Petitioner No.1 is a company and Petitioner No.2 is a shareholder of Petitioner No.1. For the sake of convenience, they are hereinafter referred to as the "***Petitioner***". The State of Maharashtra is Respondent No.1. The Collector, the Tahsildar, and the Circle Officer; are Respondent Nos.2 to 4 respectively. The Thane Municipal Corporation ("***TMC***") is Respondent No.5. After filing of the above Petition, one Mr. Vishal Madhukar Jadhav was joined as Respondent No.6 pursuant to an amendment directed by this Court *vide* its order dated 3rd May, 2017.

b) The Petitioner was the successful bidder in a tender floated by the TMC to implement an underground sewerage pipeline network in Thane. A contract for laying pipelines was awarded to the Petitioner in February 2009. Under this contract, the Petitioner was required to dig and excavate the earth; store the

excavated earth in a designated spot; lay reinforced concrete pipes for carrying the sewerage; thereafter refill the land with the excavated earth; and dump the excess soil in a location designated by the TMC;

c) In 2011, one Mr. Vishal Madhukar Jadhav (Respondent No.6) filed an application under the Right to Information Act, 2005 seeking information about the earth excavated by the Petitioner and thereafter made complaints about alleged violation of the provisions of the MLRC on account of non-payment of royalty for excavation of "minor minerals" (allegedly the earth removed for purposes of laying the sewerage pipeline);

d) Eventually, on 13th October, 2011, the Circle Officer of Thane issued a notice to the Petitioner stating that approximately 21,222 brass[1] of earth was excavated without authority, and consequently asked the Petitioner to show cause as to why proceedings under Section 48(7) of the MLRC must not be initiated ("***SCN***");

[1] *A "brass" is a unit of measure for volume of mineral excavated – essentially, 100 cubic feet constitutes 1 "brass".*

e) On 17th October, 2011, the Petitioner wrote to the revenue officials asserting that it was merely implementing a public works project, and that the excavated earth was being used for refilling the trenches. The letter also stated that the estimation of the earth excavated appeared to be erroneous.

f) Despite this letter of the Petitioner, on 29th November, 2011, the Tahsildar, Thane, passed an order stating that a penalty of Rs.1.47 Crores and royalty of Rs.49.18 Lakhs (aggregating to Rs.1.96 Crores), would be payable by the Petitioner in respect of the earth excavated;

g) On 2nd March, 2013, Respondent No.3 issued a notice demanding that the royalty amount claimed must be paid within seven days. This led to Writ Petition No. 5775 of 2013 being filed before this Court impugning imposition of penalty and charge of royalty. *Vide* order dated 28th January, 2014, the said writ petition was disposed of granting liberty to avail of the statutory remedies under the MLRC, keeping all contentions on merits open;

h) Thereafter, the Sub-divisional Officer, Thane passed an order dated 3rd November, 2014 dismissing the Appeal under Section 247 of the MLRC. On 30th July, 2015, the Second Appeal of the Petitioner also came to be rejected. Further round of an unsuccessful Appeal followed. It is in these circumstances, the present writ petition was filed assailing the original order dated 29th November, 2011 passed under Section 48(7) of the MLRC, which had imposed penalty and charged royalty, and Appeals against which under the MLRC have consistently failed.

4. This writ petition was originally filed on 18th November, 2016 and was amended twice - first, pursuant to an order dated 3rd May, 2017 directing that Mr.Vishal Madhukar Jadhav be added as Respondent No.6; and second, pursuant to an order dated 6th March, 2023 (with a further extension of a week granted by order dated 10th April, 2023) permitting the Petitioner to add new grounds and bring other contemporaneous judgments on record. By this time, the Hon'ble Supreme Court had rendered a comprehensive judgment in *Promoters and Builders Association of Pune vs. State of Maharashtra*[2] ("***Promoters and Builders***"). So also, another Division Bench of this Court had

[2] *2015 (12) SCC 736*

disposed of Writ Petition No. 1429 of 2020 and Writ Petition No. 1430 of 2020 *vide* a judgment dated 13th February, 2020 in respect of other contractors involved in the very same sewerage network project in Thane. These judgments were brought on record and submissions based on them were included in the amended grounds.

5. As mentioned earlier, the public works project in question commenced way back in 2009. The SCN under the MLRC issued to the Petitioner was on 13th October, 2011 and the impugned order was passed on 29th November, 2011. Though the Petitioner has made extensive pleadings on interpretation of the law, a very clear crystallization of the law took place during the pendency of this writ petition, and which inexorably leads us to hold that the penalty imposed, and royalty charged by the State is untenable. Therefore, we are not delving into whether it is the TMC (as the principal) or the Petitioner (as the contractor-agent) who had the responsibility, if any, under the MLRC to pay royalty for the excavated earth.

6. At the threshold, it would be instructive to notice the provisions of Section 48(7) of the MLRC, extracted below:

> *S. 48. Government title to mines and minerals :*
> *(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 this 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:*
>
> ***[Emphasis Supplied]***

7. The judgment of the Hon'ble Supreme Court in ***Promoters and Builders*** (rendered on 3rd December, 2014) squarely dealt with how to interpret Section 48(7) of the MLRC in connection with excavation of earth. The judgement dealt with not only an Appeal filed by builders and developers in Pune, but also dealt with an Appeal filed by Nuclear Power Corporation ("***NPC***") which had been visited with penalty and a demand of royalty by the State. It is ***NPC***'s case that is relevant for our purposes since it resembles the position of the Petitioner before us. ***NPC*** had excavated earth in the course of repair and widening of a water intake channel connected to a nuclear power station. ***NPC*** contended that there was no commercial exploitation of the earth excavated by it. The excavation was incidental to the repair and widening of the water channel, which was in consonance with the land

granted by the State on a freehold basis to set up an atomic power station. The Hon'ble Supreme Court noticed and upheld ***NPC***'s contention with the following findings:

> *"14. Though Section 2(1)(j) of the Mines Act, 1952 which defines "mine" and the expression "mining operations" appearing in Section 3(d) of the 1957 Act may contemplate a somewhat elaborate process of extraction of a mineral,* ***in view of the Notification dated 3-2-2000, insofar as ordinary earth is concerned, a simple process of excavation may also amount to a mining operation in any given situation****. However, as seen,* ***the operation of the said notification has an inbuilt restriction. It is ordinary earth used only for the purposes enumerated therein, namely, filling or levelling purposes in construction*** *of embankments, roads, railways and buildings* ***which alone is a minor mineral****.* ***Excavation of ordinary earth for uses not contemplated in the aforesaid notification, therefore, would not amount to a mining activity so as to attract the wrath of the provisions of either the Code or the 1957 Act.***
>
> *15.* ***As use can only follow extraction or excavation it is the purpose of the excavation that has to be seen****. The liability under Section 48(7) for excavation of ordinary earth would, therefore,* ***truly depend on a determination of the use/purpose for which the excavated earth had been put to****.* ***An excavation undertaken to lay the foundation of a building would not, ordinarily, carry the intention to use the excavated earth for the purpose of filling up or levelling****. A blanket determination of liability merely because ordinary earth was dug up, therefore, would not be justified;* ***what would be required is a more precise determination of the end use*** *of the excavated earth;* ***a finding on the correctness of the stand of the builders that the extracted earth was not used commercially but was redeployed in the building operations****. If the determination was to return a finding in favour of the claim made by the builders,* ***obviously, the Notification dated 3-2-2000 would have no application****; the excavated earth would not be a specie of minor mineral under Section 3(e) of the 1957 Act read with the Notification dated 3-2-2000.*
>
> *16.* ***Insofar as the appeal filed by Nuclear Power Corporation is concerned, the purpose of excavation, ex facie, being relatable to the purpose of the grant of the land to the Corporation by the State Government, the extraction of ordinary***

> ***earth was clearly not for the purposes spelt out by the said Notification dated 3-2-2000***. *The process undertaken by the Corporation is to further the objects of the grant in the course of which the excavation of earth is but coincidental. In this regard* ***we must notice with approval the following views expressed by the Bombay High Court, in Rashtriya Chemicals and Fertilizers Ltd. v. State of Maharashtra while dealing with a somewhat similar question****: (1992 SCC OnLine Bom para 14)*
>
> > *"14. If it were a mere question of the Mines and Minerals Act, 1957 covering the removal of earth, there cannot be possibly any doubt whatever, now, in view of the very wide definition of the term contained in the enactment itself, and as interpreted by the authoritative pronouncements of the Supreme Court.* ***As noted earlier, the question involved in the present case is not to be determined with reference to the Central enactment but with reference to the clauses in the grant and the provisions in the Code****. When it is noted that* ***the Company was given the land for the purpose of erecting massive structures as needed in setting up a chemical factory*** *of the designs and dimensions of the company,* ***the context would certainly rule out a reservation for the State Government of the earth that is found in the land****. That will very much defeat the purpose of the grant itself.* ***Every use of the sod, or piercing of the land with a pick-axe, would, in that eventuality, require sanction of the authorities****. The interpretation so placed, would frustrate the intention of the grant and lead to patently absurd results.* ***To equate the earth removed in the process of digging a foundation, or otherwise, as a mineral product, in that context, would be a murder of an alien but lovely language****. The reading of the entire grant, would certainly* ***rule out a proposition equating every pebble or particle of soil in the granted land as partaking the character of a mineral product****. In the light of the above conclusion, I am clearly of the view that the orders of the authorities, are vitiated by errors of law apparent on the face of the record. They are liable to be quashed. I do so."*
>
> *[****Emphasis Supplied****]*

8. More recently, this very Bench had the occasion to consider and apply the law declared in *Promoters and Builders in the case of AIGP*

Developers (Pune) Private Limited vs. The State of Maharashtra[3] ***("AIGP Developers").*** In ***AIGP Developers,*** this Bench, by applying the law laid down by the Hon'ble Supreme Court in ***Promoter and Builders***, stipulated that it was necessary to examine the end-use to which the excavated earth is applied, in order to determine whether such excavated earth could even be regarded as a "minor mineral" so as to attract the provisions of Section 48(7) of the MLRC. A blanket determination of liability merely because earth was dug up would not be justified. In order to invoke Section 48(7), the State would need to make a "more precise determination of the end use". For the sake of convenience, the relevant portion of the decision in ***AIGP Developers*** is extracted below:-

> *"26. It will be seen that the penalty under Section 48(7) is linked to the market value of the mineral involved.* ***The inference we would draw from the articulation in Promoters and Builders by the Hon'ble Supreme Court is that commercial exploitation in the market (as distinguished from use for oneself) would be an important factor in determining whether the excavated earth would at all constitute "minor mineral"****. This is why Promoters and Builders has placed emphasis on the need for the State to find out whether the excavated earth was re-deployed or was used commercially.*
>
> *27. As seen above,* ***the State Government is empowered to make rules under Section 15 of the Mining Act. Using this power, the Extraction Rules have been made. After the ruling in Promoters and Builders, the State Government, explicitly amended Rule 46 of the Extraction Rules, which provides for royalty on minor minerals removed from the leased area****. With effect from 11th May, 2015, Rule 46 was amended to explicitly make a conscious distinction between minor minerals extracted and used on the same land and minor minerals extracted*

[3] *2024 SCC OnLine Bom 726*

and removed from that land. The amended Rule 46(i) of the Extraction Rules provides as follows:-

> *"(i) The lessee shall pay royalty on minor minerals removed from the leased area at the rates specified in Schedule I:*
>
> *Provided that, such rates shall be revised once in every three years:*
>
> *Provided further that, no royalty shall be required to be paid on earth which is extracted while developing a plot of land and utilized on the very same plot for land levelling or any work in the process of development of such plot;*

*28. **A plain reading of the foregoing provision would show that where earth is extracted in the course of development of a plot of land and is utilised on the very same plot of land for levelling or for any other work in the course of such development, no royalty is required to be paid**. Since Promoters and Builders made it clear that re-deployment on the very same land (as opposed to commercial use after its removal from the said land) is the key jurisdictional fact to determine if the "wrath of Section 48(7)" would be attracted, the amended Rule 46(i) of the Extraction Rules has also done away with royalty being payable on the extracted earth, if it is re- deployed in the development of the same plot of land, for land levelling or any other work incidental to the process of developing the same plot of land. Therefore, where the excavated earth is removed from the plot of land, royalty would be payable but where the excavated earth is re- deployed on the very same plot of land, there would be no charge of royalty. **If there was no charge of royalty, the extraction being incidental to levelling that very land or any work relating to the development of that very plot of land, would naturally not require any separate permission. As stated by the Learned Single Judge of this Court in the judgment in Rashtriya Chemicals and Fertilizers Ltd. V. State of Maharashtra (supra), which is extracted and endorsed by the Hon'ble Supreme Court in Promoters and Builders, any other view would point to the need to get government approval for every piercing of the land with a pick-axe and equate every pebble or particle of soil as partaking the character of a minor mineral.**"*

*[**Emphasis Supplied**]*

9. The order impugned in this writ petition was passed in 2011. The declaration of the law in ***Promoters and Builders*** was on 3rd December, 2014. The consequential amendment to mining law was effected on 11th May, 2015. However, ***Promoters and Builders*** declared the law on how Section 48(7) of the MLRC should have always been interpreted. Such interpretation would squarely cover the facts at hand. Therefore, the judgement of the Hon'ble Supreme Court would indeed be the basis on which the actions impugned in this writ petition ought to be quashed. Besides, as far as public works projects were concerned, the law declared in ***Promoters and Builders*** was precisely the position of the State Government since 2011, as will be seen from the analysis of TMC's affidavit later in this judgement.

10. It is evident that the penalty under Section 48(7) is linked to the market value of the mineral involved. The evident inference from the articulation in ***Promoters and Builders*** is that commercial exploitation of the excavated earth in the market (as distinguished from use for one-self) would be an important factor in determining whether the excavated earth would at all constitute a "minor mineral". This is why ***Promoters and Builders*** has placed emphasis on the need for the State to find out whether the excavated earth was re-deployed or was used commercially.

11. The case of the Petitioner in the instant case closely resembles the stance of ***NPC*** noticed in ***Promoters and Builders***. ***NPC*** dug the earth to repair and widen a water channel whereas the Petitioner dug the earth to lay a portion of sewerage pipeline network in Thane. The need for digging up the earth in order to lay the pipeline and to use the very same excavated earth to refill the very same land after laying the pipeline was also set out in the tender document, based on which the Petitioner acted as a contractor for the sewerage network project. The Petitioner was meant to dispose of the excess soil at a designated spot instructed by the TMC. There is no evidence of the Petitioner having put the excavated earth to commercial use.

12. It is noteworthy that in ***Promoters and Builders***, the Hon'ble Supreme Court cited with approval, a judgment of a learned single judge of this High Court in the case of *Rashtriya Chemicals and Fertilizers Ltd. v. State of Maharashtra*[4] **("*Rashtriya Chemicals*")** while dealing with a similar situation in the context of Section 48(7) of the MLRC. The extracted portion of the judgement is contained in the extraction from ***Promoters and Builders***, above.

13. In a nutshell, the learned Single Judge had stated that when land was given to Rashtriya Chemicals and Fertilizers to set up a chemical

[4] *1992 SCC OnLine 248*

factory, the purpose of the grant of land subsumed the purpose for which the land was dug. Therefore, the reservation of the mineral on land that statutorily vests in the State under Section 48 of the MLRC was ruled out by the very grant of the land. The learned Single Judge ruled that any contrary construction would defeat the very purpose for which the land was provided. If the State's stance was to be accepted, said the learned Single Judge, "every use of the sod, or piercing of the land with a pick-axe, would, in that eventuality, require sanction of the authorities." The learned Single Judge ruled that the grant of the land for setting up the factory would rule out equating every pebble and particle of soil in such land as partaking the character of a mineral product. This ruling was fully endorsed by the Hon'ble Supreme Court in ***Promoters and Builders***.

TMC's Affidavit:

14. We must also note that the Petitioner was merely a contractor carrying out a sewerage network project commissioned by the TMC. In that sense, the Petitioner was an agent of the TMC. The TMC has filed an affidavit dated 2nd March, 2019 in these proceedings confirming the position adopted by the Petitioner. Paragraphs 5 to 7 of the TMC's affidavit warrant reproduction and are set out below:

> *"5. I say that thereafter* ***the Petitioner started the work as per the work order issued by the answering Respondent and it***

seems that on the basis of the complaint made by the newly added Respondent No.6 the office of the Tahsildar issued notice dated 29.11.2011 to the present Petitioner contending that while doing the work as per the work order issued by the answering Respondent, the Petitioner has excavated 24593 brass of earth and therefore the Tahsildar imposed fine/royalty of Rs.1,96,74,400/- on the present Petitioner. I say that in fact the Govt. of Maharashtra has issued G.R. dated 07.01.2011, as per which no royalty shall be required to be paid on earth which is extracted while doing the public work while developing the plot. Hereto annexed and marked as EXHIBIT-A is a copy of the said G.R. dated 07.01.2011.

6. I say that the Govt. of Maharashtra framed rules, called Maharashtra Miner Mineral Extraction (Development & Regulation) (Amendment) Rules, 2015 vide notification dated 11.5.2015, as per which also, no royalty is required to be paid on earth, which is extracted while developing the plot of land and utilized on the very same plot for land leveling or any work in process of development of such plot. Hereto annexed and marked as EXHIBIT-B is a copy of said Notification dated 11.5.2015 issued by the Govt. of Maharashtra.

7. I say that even the office of the answering Respondent by letter dated 23.7.2015 has requested the Collector, Thane that no royalty should be imposed on the Petitioner and other contractors, to whom the public work has been assigned by the TMC on earth extracted while developing the plot of land as per the work order issued by the TMC as they are doing the public work and after completion of the work the contractor is using the very same extracted earth for land leveling or any work in the process of development of such plot. Hereto annexed and marked as EXHIBIT-C is a copy of said letter of the TMC dated 23.7.2015 to the Collector/Thane.

[Emphasis Supplied]

15. It is evident from the record, that on 7th January, 2011, the State Government had passed a Government Resolution explicitly providing

for a 100% waiver of royalty payment in respect of excavation of earth involved in public projects in course of development. This was half a decade before the eventual amendment to the mining law to provide for the same position. We note that even in excavation relating to such public developmental projects, the Government Resolution provided that any commercial exploitation by deploying the earth on some other plot or by way of sale of such excavated earth for a commercial return, would lead to royalty being payable under the MLRC. The Government Resolution also explicitly resolved that any excavations after 1st November, 2006 and any proceedings in connection with public works initiated prior to said date would not be persisted with. The actions of the revenue officials of the State in the present case are in conflict with the Government Resolution, which the TMC and the Petitioner were entitled to rely on, in planning their affairs and operations.

16. There is not a whisper in the show cause notice or in the order imposing penalty and charging royalty, about any such commercial exploitation of the excavated earth by the Petitioner. In fact, the State's stance proceeds simply on the footing that the earth having been dug up, royalty must follow. Therefore, the stance of the State is directly in conflict with the State's own Government Resolution dated 7th January,

2011, the learned Single Judge's view expressed in ***Rashtriya Chemicals***, and indeed in conflict with the law declared in ***Promoters and Builders***.

Other Contractors' cases :

17. While the law has been explicitly declared by the Hon'ble Supreme Court, it is vital to note that a Division Bench of this Court has quashed identical actions against two other contractors who were involved in the same sewerage project commissioned by the TMC. Disposing of Writ Petitions filed by *M/s. Atharva Construction Vs. State of Maharashtra, Through Urban Development Department Secretary and Anr.* ***(W.P. 1429 of 2020)*** and *Shapoorji Pallonji & Co.- KIPL (JV) Vs. State of Maharashtra, Through Urban Development Department Secretary and Ors.* ***(W.P. 1430 of 2020)***, in a judgment dated 13th February, 2020[5], a Division Bench of this Court took note of ***Promoters and Builders*** and the consequential amendment to the *Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013* to quash the penalties and royalty imposed on those Petitioners. The analysis by a Division Bench in disposing of these two Writ Petitions is extracted below:

> *"11. Perusal of the amended Rules leave no doubt in our mind that the case of the Petitioners falls strictly within the second proviso which contemplate a situation where the earth*

[5] *2020 SCC OnLine Bom 3864.*

> ***extracted while developing a plot of land is utilized on the very same plot for carrying out an activity of levelling the land or any work in the process of development of such plot.*** *In such situation, the Rules contemplate that no royalty is liable to be paid.* ***The Petitioners' specific case as set out is that the material excavated while digging the land for carrying out an underground sewerage in the first case and in the second case for the construction of Sewerage Treatment Plants and Sewerage Pumping Stations involved excavation of material which was consumed by back-filling the same on the same plot.*** *The Certificate placed on record also confirms the said statement and reflect that* ***the balance quantity was transported on the plot of the Thane Municipal Corporation. Thus, the Petitioners have not used the said material by monitising the same or gainfully exploiting it.*** *The material has been used for filling or levelling while development activity was undertaken and this,* ***in our considered opinion by applying the law laid down by the Apex Court in the case of Promoters and Builders Association of Pune (supra), would not amount to a mining activity so as to attract the provisions of the Maharashtra Land Revenue Code and surely not the penalty leviable under the same.***
>
> ***[Emphasis Supplied]***

18. The Division Bench also ruled that if in any given case, the State Government is able to discern the exact quantity of excavated earth that has been commercially exploited while implementing the project, it would be at liberty to issue a fresh notice based on such discerned facts and initiate proceedings in accordance with the law. The same observation and direction would also hold good in the instant case. It would be necessary for the State to establish empirically, that the earth excavated has also been put to commercial use in order to validly initiate proceedings under Section 48(7) of the MLRC. We reiterate this to make

it clear that we are not issuing a blanket declaration of the law that there can never arise any proceedings for payment of royalty in connection with earth excavated in the course of implementing public projects, despite the excavated earth being commercially exploited, if that were the case. The Government Resolution of 7th January, 2011 in fact grants a full exemption from royalty for earth excavated in the course of developmental projects, with a caveat that if such earth were to be commercially exploited in the market, then royalty would be payable. In the instant case, the contractor was bound to dump the excess soil after refilling the earth upon installation of the sewerage pipes, in such part of the land as designated by the TMC. The TMC has confirmed that there has arisen no violation of the law and there is no scope for imposition of any royalty.

19. The onus of demonstrating any commercial exploitation of the earth would naturally have to be on the party alleging such exploitation. In the instant case, the approach of the State has been summary in nature, and in direct conflict with not just the case law, but also with the TMC, which commissioned the public work project. The facts asserted by the TMC point to no commercial exploitation of the excavated earth. At the least, to sustain proceedings in such circumstances, the revenue

authorities must bring to bear a *prima facie* iteration of facts that establish that the TMC is wrong in its reading of the facts.

Directions and Declarations:

20. In these circumstances, we have no hesitation in allowing the writ petition by quashing and setting aside the penalty imposed and the royalty charged to the Petitioner in connection with its implementation of the sewerage network project of the TMC. We, therefore, issue the following directions:

a) The penalty imposed and the royalty charged to the Petitioner under the impugned order dated 29th November, 2011, which was based on the show cause notice dated 13th October, 2011, are both hereby quashed and set aside;

b) Earth excavated to implement public works projects that entails re-filling the same plot of land in the course of the development work would not entail payment of royalty under the MLRC, by reason of the Government Resolution dated 7th January, 2011. In any case, this is the position obtaining from ***Promoters and Builders*** as well as ***Rashtriya Chemicals***. However, if there is any evidence of commercial exploitation of any part of such excavated earth, whether by way of sale in the market or sale

for building and construction on some other land, such component of excavated earth would constitute a "minor mineral" and the provisions of the MLRC would apply accordingly; and

c) The onus of bringing home a charge of commercial usage of excavated earth in order to charge royalty would be on the revenue officials alleging such usage. A *prima facie* case to show commercial use of excavated earth in the course of implementing public work projects would need to be brought to bear by the authorities alleging such commercial use of excavated earth. Orders disposing of show cause notices issued under Section 48(7) must necessarily deal with the evidence of usage, and return findings of fact on the purpose for which the excavation was made and the end-use to which the excavated earth was put, in order to conclude whether the excavated earth is a "minor mineral", and therefore, if penalty can be imposed, and whether royalty is payable.

21. Rule is made absolute in the aforesaid terms and the Writ Petition is disposed in terms thereof. However, there shall be no order as to costs.

22. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.] [B.P. COLABAWALLA, J.]