IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7390 OF 2010

P. S.C. Pacific
A Registered Partnership Firm having its
registered office at PSC House,
CTS No. 111 + 112, Anand Colony,
Dr. Ketkar Road, Pune 411 004
Through Partner,
Paranjape Scheme Construction Ltd.
A Registered Company, having its
registered office at PSC House,
CTS No. 111 + 112, Anand Colony,
Dr. Ketkar Road, Pune 411 004
through its Director
Shri. Shrikant Purshottam Paranjape
Address - PSC House,
CTS No. 111 + 112, Anand Colony,
Dr. Ketkar Road, Pune 411 004

.. Petitioner

Versus

1. The State of Maharashtra,
   Through its Principal Secretary to thereafter
   Ministry of Revenue, Mantralaya,
   Mumbai - 400 032.

2. The Divisional Commissioner, Pune
   Division, Pune, having office
   at Raj Bhavan, Pune.

3. The Collector, Pune, having office
   at Pune, Dist. Pune.

4. Sub-Divisional Officer, Mulshi Subdivision,
   Dist. Pune, having office at Mulshi.

5. Tahsildar, Taluka - Mulshi, Dist. Pune.
   having office at Mulshi.

6. Circle Officer, Mulshi, Taluka Mulshi.
   Dist. Pune. .. Respondents

.....

- Mr. Girish S. Godbole a/w. Drupad S. Patil for the Petitioner.
- Ms. M.P. Thakur, AGP for the Respondents - State.

.....

CORAM : S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.

RESERVED ON : 23 NOVEMBER, 2021
PRONOUNCED ON : 09 DECEMBER, 2021

JUDGEMENT (PER : S.J. KATHAWALLA & MILIND N. JADHAV, JJ.)

. By the present Writ Petition, the Petitioner has prayed for the following reliefs:

> "(a) That this Hon'ble Court may be pleased to issue a Writ of Mandamus or any other Writ, Order or direction in the nature of Mandamus thereby directing the Tahsildar, Taluka Mulshi Respondent No.5 herein to forthwith withdraw and / or cancel the impugned order 11/8/2010 issued to the Petitioner in purported exercise of powers conferred by section 48 of the M.L.R. Code, 1966 being Exhibit Q to this Writ Petition;
>
> (b) That this Hon'ble Court may be pleased to issue a Writ of Certiorari or any other Writ, Order or Direction in the nature of Certiorari thereby quashing and setting aside the impugned order dated 11/8/2010 issued by the Tahsildar Mulshi, Respondent No.5 herein to the Petitioner in purported exercise of powers conferred under Section 48 of the M.L.R.Code, 1966; being Exhibit Q respectively to this Writ Petition;
>
> (c) That it be held and declared that the Tahasildar, Taluka Mulshi, Respondent No.5 herein does not have any authority and jurisdiction to levy and demand royalty and / or penalty for the material excavated from the lands of Village Hinjewadi, Taluka Mulshi, District Pune for the purpose of laying down foundation and / or plinth and construction of basement when such work is being undertaken pursuant to the valid Development Permission issued by the Planning Authority u/s. 18 of the Maharashtra Regional & Town Planning Act, 1966 and after obtaining permission for NA use u/s. 44 of the M.L.R. Code, 1966 being permission dated 14/5/2008 which is at Exhibit 'L' to this Writ Petition.

C(I) This Hon'ble Court may be pleased to issue a Writ of Certiorari and / or any other Writ, Order or direction in the nature of Writ of Certiorari thereby quashing and setting aside the impugned order purportedly dated 31.1.2011 passed by Circle Officer, Mulshi being Exh. "T" to this Writ Petition;

C(II) "This Hon'ble Court may be pleased to issue Writ of Mandamus and / or any other Writ, Order or direction in the nature of Writ of Mandamus thereby directing Respondent No. 6 herein, Circle Officer, Mulshi to forthwith withdraw and / or cancel the impugned order purportedly dated 31.1.2011 being Exh. "T" to this Writ Petition."

2. The Petitioner is challenging the show-cause notices dated 14.03.2009 and 23.12.2009 and order dated 11.08.2010 issued by the Respondent No.5 - Tahsildar, Mulshi, *inter alia*, calling upon the Petitioner to pay royalty and penalty of Rs. 1,36,33,194.00 for excavating minor minerals while laying down foundation of the building and construction of basement and plinth undertaken by the Petitioner pursuant to valid development permission issued by the planning authority. The Petitioner has also challenged the order dated 31.01.2011 passed by the Respondent No. 6 Circle Officer, Mulshi cancelling Mutation Entry No. 7741 recording the name of the Petitioner as owner of land which is the subject matter of the present petition.

3. Briefly stated the facts are as under:

3.1. On 14.05.2008, the Collector, Pune being the planning authority granted development permission under Section 18 of the

Maharashtra Regional and Town Planning Act, 1966 (for short "**the said Act**") to the Petitioner along with permission for Non-Agricultural user under Section 44 of the Maharashtra Land Revenue Code, 1966 (for short "**the MLR Code, 1966**") in respect of lands bearing several survey numbers totally admeasuring 35750 sq. mtrs. situated at village Hinjewadi , Taluka Mulshi, District Pune (for short "**the said lands**").

3.2. On 13.08.2008, the Petitioner submitted an application before the Tahsildar, Mulshi to seek permission for commencement of excavation on the said lands in terms of the building permission granted to the Petitioner. However, the Petitioner received no reply from the Respondent No.5 - Tahsildar.

3.3. Petitioner commenced development / construction work on the said lands in accordance with the development permission granted on the said lands.

3.4. On 14.03.2009, Respondent No.5 - Tahsildar issued a show-cause notice to the Petitioner stating that the Petitioner had allegedly excavated minor minerals amounting to 12183 brass without valid permission. This show-cause notice was based upon panchnama dated 22.01.2009 prepared by the Circle Officer, Thergaon. The Petitioner replied to the show-cause notice on 01.04.2009. On

23.12.2009, Petitioner received a second show-cause notice dated 23.12.2009 for alleged excavation of minor minerals pursuant to panchanama dated 01.09.2009 prepared by the Circle Officer, Male. The Petitioner filed reply dated 22.02.2010 to the second show cause notice. On 11.08.2010, after hearing the Petitioner, Respondent No.5 Tahasildar passed an order directing the Petitioner to pay an amount of Rs. 1,36,33,194.00 towards royalty, penalty, TDS, education taxes and rent for alleged excavation of minor minerals amounting to 12183 brass without valid permission.

3.5. On 06.09.2010, the Petitioner filed the present Writ Petition to challenge the two show-cause notices and order.

3.6. On 31.01.2011, the Respondent No.6, Circle Officer, Mulshi passed an order directing cancellation of Mutation Entry No. 7741 in the record of rights standing in the name of the Petitioner *qua* the said lands.

3.7. On 13.04.2011, this Court admitted the present Petition and granted ad-interim order in terms of prayer clause 'e' restraining the Tahsildar from enforcing the impugned notices and order.

3.8. On 03.12.2014, the Apex Court allowed Civil Appeal No.

10717 of 2014 filed by the Promoters and Builders Association, Pune against the State of Maharashtra.

3.9. On 11.05.2015, the State Government notified an amendment to the Maharashtra Minor Mineral Extraction (Development and Regulation) (Amendment) Rules, 2015 by introducing a proviso to Rule 46(a)(i), *inter alia*, providing that no royalty shall be required to be paid on earth which is extracted while developing a plot of land and if utilized on the very same plot for land levelling or any work in the process of development of such plot.

4. Shri. G.S. Godbole, learned counsel appearing for the Petitioner has submitted that in the present case the Petitioner has excavated the minor minerals and used the same on the said lands for development / while developing the said lands; Respondent No.5 - Tahsildar, Mulshi has not disputed the above stand of the Petitioner in his Affidavit-in-Reply; thus if the extracted minor minerals are used on the same plot while developing the said plot, then no royalty is payable by the Petitioner; hence the impugned show-cause notices / demand order issued by the Tahsildar are bad in law and deserve to be set aside. He submitted that the Supreme Court in the case of ***Promoters and Builders Association of Pune vs. State of Maharashtra***[1]

1 (2015) 12 SCC 736

has held that the purpose of excavation of minor minerals is required to be looked into by the authority and if the excavation is merely for construction / formation of plinth, it cannot be termed as mining activity and the developer cannot be forced to pay royalty for the same. He submitted that the Government of Maharashtra vide notification dated 11.05.2015 amended the Minor Mineral Extraction (Development and Regulation) Rules, 2013 and as per the amended Rule No.46 royalty is not payable for excavation of earth while developing a plot of land if the said earth is utilized on the very same plot for land levelling or any work in the process of development of such plot. He submitted that even though the impugned show-cause notices were issued prior to the enactment of the above amended Rule, by order dated 13.04.2011 this Court had stayed the impugned action.

4.1. Shri. Godbole submitted that the impugned action of levying royalty and penalty on the Petitioner for excavation of minor minerals for the purpose of laying down the foundation / plinth and construction of basement is clearly illegal in as much as the said activity of construction was carried out pursuant to grant of valid building permission under the provisions of the said Act by the planning authority.

4.2. Shri. Godbole further submitted that the applicability of the provisions of Section 48(7) of the MLR Code, 1966 is in respect of lands vested in the Government which are used for the purpose of mining operations, similarly placed allied operations; excavation of digging up of land for the purpose of laying down foundation of a building and/or construction of plinth or basement cannot be considered as mining activity if the said excavated material is used on the same plot for levelling and development and consequently no royalty is payable. Shri. Godbole submitted that Section 48 of the MLR Code, 1966 deals with lands, the title of which is vested in the Government and cannot apply to privately owned lands which are developed under valid development permission granted by the planning authority under the provisions of the said Act; the words ".....or such other place wherever situate....." as appearing in sub-section 7 of Section 48 of the MLR Code, 1966 will have to be read "ejusdem generis" with the words "Mines, quarries" etc.; the provisions of Section 48 apply only in the case of excavation or disposal of any minerals from such mines, quarries and not to excavation on the surface of the land in the case of development / construction; provisions of sub-section 2 of Section 48 clearly reflect the intention of the legislature that the words "right to all mines and quarries" is related to the principal activity of mining and quarrying; excavation of land temporarily for the purpose of laying down foundation and

development cannot amount to excavation of minor minerals especially if the same are used on the same plot as in the present case and there is no material evidence to show that there is any transportation of minor minerals after excavation from the said lands so as to pay the requisite royalty and penalty under the said Rules. He submitted that after the Petition was filed, solely relying on the order dated 11.08.2010, the Respondent No.6, Circle Officer, Mulshi by order dated 31.01.2011 cancelled the Mutation Entry No. 7741 recording the name of the Petitioner as owner of the said lands; such action of the Respondent No.6 being patently illegal and deserves to be set aside.

5. Ms. M.P. Thakur, learned AGP appearing for the Respondent(s) - State has referred to the affidavit-in-reply dated 04.09.2021 filed by Shri. Abhay Shivajirao Chavan, Tahsildar, Taluka Mulshi, District Pune and contended that the Petitioner has illegally excavated sand and murum to the extent of 12183 brass without prior permission as can be seen from the panchnamas carried out by the Circle Officers of Thergaon and Male on 27.01.2009 and 01.09.2009; in view thereof, action under the provisions of sub-section 7 of Section 48 of the MLR Code, 1966 has been initiated.

5.1. Advocate Ms. Thakur submitted that in the present case the Petitioner has been heard by the appropriate authority and a speaking order has been passed which is appellable under the MLR Code, 1966**;** the Petitioner ought to exhaust the appellate remedy available under the statute rather than press the present Petition under Article 226 of the Constitution of India.

5.2. Advocate Ms. Thakur has referred to the judgment of the Apex Court in the case of ***United Bank of India Vs. Satyawati Tondon and Others***[2] and contended that the Petitioner can be directed to exhaust the alternate remedy of going before the appellate authority. She has also attempted to distinguish paragraph No.16 of the judgment in the case of Promoters and Builders Association of Pune (supra) passed by the Apex Court along with the provisions of sub-section 7 of Section 48 of the MLR Code, 1966 and submitted that the action initiated by the Respondent No.5 - Tahsildar under the said provisions was correct in law. She has therefore prayed for dismissal of the present Writ Petition.

6. We have perused the Writ Petition as well as the affidavit-in-reply filed on behalf of the Respondent - State, considered the submissions made by the learned Advocates for the parties and the

2 (2010) 8 SCC 110

case law relied upon by them.

7. Admittedly in the present case, the Petitioner has been granted a composite permission dated 14.05.2008 by the Collector, Pune acting as Planning Authority under Section 18 of the said Act whereby the Petitioner has been granted development permission and permission for non-agricultural user under the provisions of Section 44 of the MLR Code, 1966. There is no dispute in respect of this permission. Further in paragraph 3(a), the Petitioner has made the following averments:-

> " (a) 14/5/2008 - The Collector, Pune who acts as Planning Authority under 18 of MR & TP Act, 1966 granted a Development Permission to the Petitioner under section 18 of the MR & TP Act, 1966. Said permission is composite permission also granting permission for N.A. User under section 44 of Maharashtra Land Revenue Code 1966 in respect of an area admeasuring 35750 Sq mtrs. Hereto annexed and marked **Exhibit 'L'** is a copy of the said Order dated 14/5/2008. According to the said Development Permission the Petitioner has undertaken the work of Construction. For the purpose of the laying down foundation and / or plinth and for the purpose of construction of basement, the Respondent was required to excavate the plinth areas in the plot. Said work of excavation of plinth areas is done by using machineries / equipment without using any explosives or special mining machines upto the requisite depth, the foundation is laid by using steel and RCC and thereafter the excavated material remains, the said is used within the same plot or for the purpose of landscaping and / or land filling activity."

7.1. In paragraph 5(a) of the Petition, the Petitioner has stated thus:-

> "5(a) The Petitioner states that Petitioner has been carrying on construction activities of laying down foundation and / or plinth and construction of basement after obtaining the requisite permission for non-agricultural use as contemplated by Section 44 of the M.L.R. Code, 1966 and Building / Development Permission u/s 18 of the Maharashtra Regional & Town Planning Act, 1966. The Petitioner states that pursuant to such valid Development Permission and for construction of Roads for the purpose of implementation of the sanctioned layout, Petitioner is required to excavate the surface of the land to some extent. The said activity does not involve any activity of mining and does not amount to "winning" or "mining" the minor minerals. The Petitioner has never sold the said excavated material. In any case, the activity of excavation of surface of land for the purpose of landscaping, levelling, laying down foundation and / or plinth and construction of basement, which amounts to the activity of Development of land pursuant to a valid permission can never be construed to be a mining activity nor can be construed as excavation of minor minerals u/s 48 of the M.L.R. Code, 1966 or Mines and Minerals Act, 1957 or Rules framed under the M.L.R. Code, 1966."

7.2. The case of the Petitioner in the aforesaid paragraphs of the Writ Petition has not been controverted in the affidavit-in-reply filed by the Tahsildar. It is also not the case of the Respondents that the Petitioner is guilty of transportation of the excavated earth / minor minerals and as such is therefore liable to pay royalty and penalty under the provisions of sub-section (7) of Section 48 of the MLR Code, 1966 or Rules framed thereunder read with the Mines and Minerals Act, 1957. The order dated 11.08.2010 does not refer to or gives any

finding based on evidence that the Petitioner has transported the excavated minor minerals from the site.

8. We may usefully quote the findings of the Supreme Court in the case of Promoters and Builders Association of Pune (supra) which squarely cover the facts of the present case. Paragraphs 12 to 15 of the said judgment are relevant and read thus:-

> "12. It is not in dispute that in the present appeals excavation of ordinary earth had been undertaken by the appellants either for laying foundation of buildings or for the purpose of widening of the channel to bring adequate quantity of sea water for the purpose of cooling the nuclear plant. The construction of buildings is in terms of a sanctioned development plan under the MRTP Act whereas the excavation/widening of the channel to bring sea water is in furtherance of the object of the grant of the land in favour of the Nuclear Power Corporation. The appellant-builders contend that there is no commercial exploitation of the dug up earth inasmuch as the same is redeployed in the construction activity itself. In the case of the Nuclear Power Corporation it is the specific case of the Corporation that extract of earth is a consequence of the use of the land for the purposes of the grant thereof and that there is no commercial exploitation of the excavated earth inasmuch as "the soil being excavated for "Intake Channel" was not sent outside or sold to anybody for commercial gain".
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> 13. None of the provisions contained in the MRTP Act referred to above or the provisions of Rule 6 of the Rules of 1968 would have a material bearing in judging the validity of the impugned actions inasmuch as none of the said provisions can obviate the necessity of a mining license/permission under the Act of 1957 if the same is required to regulate the activities undertaken in the present case by the appellants. It will, therefore, not be necessary to delve into the arguments raised on the aforesaid score. Suffice it would be to say that unless the excavation undertaken by the appellant-builders is for any of the purposes contemplated by the Notification dated 3.2.2000 the liability of such builders to penalty under Section 48(7) of the Code would be in serious doubt.

> 14. Though Section 2(j) of the Mines Act, 1952 which defines 'mine' and the expression "mining operations" appearing in Section 3(d) of the Act of 1957 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 embankment, 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 Act of 1957.
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> 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 Act of 1957 read with the Notification dated 3.2.2000."

8.1. In the present case, it is clearly not in dispute that the Petitioner has undertaken excavation of the earth on the said lands for laying foundation of the buildings i.e. for development and construction. The construction of buildings is in terms of the

sanctioned development permission dated 14.05.2008 under the provisions of Section 18 of the said Act read with permission for non-agricultural user under the provisions of Section 44 of the MLR Code, 1966. The Respondents have also not alleged that there is commercial exploitation of the excavated earth / minor minerals i.e. the earth being excavated was sent outside or sold to anybody or transported by the Petitioner. As held by the Supreme Court, the purpose of excavation therefore needs to be considered. Any liability under the provisions of Section 48(7) of the MLR Code, 1966 for excavation of ordinary earth would truly depend on determination of the use / purpose for which the excavated earth has been put to. An excavation undertaken to lay the foundation of a building would therefore ordinarily carry the intention to use the excavated earth / material for the purpose of filling up or levelling as has been done in the present case.

8.2. As observed by us, in the present case the excavated material has been used by the Petitioner for the purposes of filling up and levelling**;** digging of the earth is inbuilt in the course of building operations**;** the activity so undertaken, therefore, cannot be characterized as one of excavation of minor minerals as contemplated under the Mines and Minerals (Development and Regulation) Act, 1957. We have considered and followed the decision pronounced by

the Supreme Court in the case of Promoters and Builders Association of Pune (*supra*) which has held that mere extraction of earth does not invite the levy of royalty. In the said case, Promoters and Builders Association of Pune had urged that the earth which is dug up for the purposes of laying of foundation of buildings is intended for filling up or levelling purposes as digging of the earth is inbuilt in the course of building operations, the said activity cannot be characterized as one of excavation of minor minerals and more particularly there was no commercial exploitation of the excavated earth involved; neither there was any sale or transfer of the excavated earth and the same was incidental to the purpose of development / construction under a valid development permission. The Supreme Court after analyzing the provisions contained in Section 48(7) of the MLR Code, 1966 in unequivocal terms held that the 'ordinary earth' used for filling or levelling purposes in construction of embankments, roads, railways, buildings though is a minor mineral, the liability under Section 48(7) for excavation of ordinary earth would truly depend on a determination of the use / purpose for which the excavated earth had been put to. 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 would be required on the stand of the builders that the extracted earth was not used

commercially but was indeed redeployed in the building operations on the same plot.

8.3. We may also state that the aforesaid decision of the Supreme Court has been followed by a coordinate Bench of this Court in the case of ***BGR Energy System Ltd, Khaparkheda Vs. Tahsildar, Saoner*** [3] wherein the Petitioner had challenged the order of the Tahsildar directing the Petitioner to pay royalty and penalty for illegal excavation of earth while executing the work of construction of a thermal power project at Khaparkheda. This Court after following the decision in the case of Promoters and Builders Association of Pune (*supra*), quashed and set aside the order of the Tahsildar holding, *inter alia,* that use of the excavated earth to fill up the dug pits and any construction of the project did not fall within the ambit of the Notification dated 03.02.2000 and thus, the Tahsildar could not have passed the order under Section 48(7) of the MLR Code, 1966. It is, therefore, evident that the Supreme Court had enunciated in clear and unambiguous terms that excavation of ordinary earth for construction of building purposes / development would not attract levy of royalty and penalty under the provisions of Section 48(7) of the MLR Code, 1966, especially when the excavated earth has been used for levelling and development on the same plot.

3 2018(1) Mh.L.J. 332

9. Respondent(s) have failed to place on record any panchnama / evidence in order to justify the charge / claim made in the notices dated 14.03.2009 and 23.12.2009 which state that the Petitioner has unauthorizedly removed 12183 brass of earth, exploited it commercially and transported the same. In the written submissions filed on behalf of the State, the learned AGP in paragraph No.6 has stated that the impugned notice dated 14.03.2009 clearly specified that the Petitioner has not only excavated but also illegally transported the excavated material which meant that the excavated soil / murum was not utilized by the Petitioner to lay down the foundation of the building. Therefore, according to the learned AGP, the ratio of the Apex Court judgment in the case of Promoters and Builders Association of Pune (s*upra*) was not applicable to the Petitioner's case.

10. We have carefully perused the pleadings and annexures placed before us by the parties. We do not find any evidence pertaining to the Petitioner illegally transporting the excavated minor minerals / materials from the construction site. Though it is alleged that the Petitioner has excavated 12183 brass of minor minerals, positive evidence is required to be placed on record to show that the Petitioner has illegally transported the said minor minerals. The two panchnamas dated 22.01.2009 and 01.09.2009 prepared by the Circle Officer, Thergaon and the Circle Officer, Male have not been produced

before us. There is no material evidence on record to show that the Petitioner has transported or removed any earth / minor minerals from the construction site. The Authorities, it appears have proceeded on the premise that the very excavation of ordinary earth by the Petitioner was subject to levy of royalty *de-hors* the use for which it was put to. In view of the judgment of the Supreme Court in the case of Promoters and Builders Association Pune (*supra*) we are not inclined to accept the submissions made on behalf of the Respondent(s).

11. In so far as the grievance of the Petitioner in respect of challenge to the impugned order dated 31.01.2011 is concerned, though it may be stated that the Petitioner has alternate efficacious remedy to challenge the said order passed by the Circle Officer, Mulshi before the Appellate Authority under the MLR Code, 1966, according to us no purpose shall be served to relegate the Petitioner to the Appellate Authority in the facts and circumstances of the present case. We have perused the order dated 31.01.2011 which is annexed at Exhibit "T" to the Writ Petition. The said order has been passed solely relying on the order dated 11.08.2010 passed by the Respondent No. 5 Tahsildar, Mulshi, *inter alia*, levying royalty, penalty and other charges against the Petitioner despite the fact that the present petition was pending on the date of passing of the said order. Though it is seen

that ad-interim order was granted in the petition on 13.04.2011, the act of cancellation of mutation entry by order dated 31.01.2011 recording the name of the Petitioner as owner of the said lands by solely relying on the impunged order dated 11.08.2010 is not justified.

12. In view of the above discussion and findings, the impugned show-cause notices dated 14.03.2009 and dated 23.12.2009 and the impugned order dated 11.08.2010 need to be interfered with and deserve to be quashed and set aside. Since the order dated 11.08.2010 deserves to be quashed and set aside, the subsequent order dated 31.01.2011 passed by the Respondent No.6 Circle Officer, Mulshi solely relying upon the order dated 11.08.2010 also needs to be interfered with and is required to be quashed and set aside. Therefore, the Petition deserves to be allowed.

13. In view of the above, we pass the following order:

(i) The impugned show-cause notices dated 14.03.2009 and 23.12.2009 and order dated 11.08.2010 (being Exhibit Nos. "M", "O" and "Q" to the Petition) issued / passed by the Respondent No.5 Tahsildar, Taluka Mulshi, District Pune are hereby quashed and set aside;

(ii) The order dated 31.01.2011 (Exhibit "T" to the Petition) passed by Respondent No.6 Circle Officer, Mulshi is also quashed and set aside. The Mutation Entry No. 7741 is directed to be restored in the Record of Rights within a period of 4 weeks from the date of this order being uploaded;

(iii) However, there shall be no order as to costs.

14. The above Writ Petition stands allowed in the above terms.

[MILIND N. JADHAV, J.] [S.J. KATHAWALLA, J.]