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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7390 OF 2010

P.S.C. PACIFIC

.... Petitioner

vs

The State of Maharashtra & ors.

.... Respondents

ALONG WITH

WRIT PETITION NO. 8019 OF 2010

Flagship Infrastructure Pvt.Ltd.

.... Petitioner

vs.

The State of Maharashtra & ors.

... Respondents

WITH

WRIT PETITION NO.8020 OF 2010

Matrix Developers Pvt. Ltd.

.... Petitioner

vs.

The State of Maharashtra & ors.

... Respondents

AND ALONG WITH

WRIT PETITION NO.8023 OF 2010

Eiffel Developers and Realtors Ltd.

.... Petitioner

vs.

The State of Maharashtra & ors.

... Respondents

Mr. G.S. Godbole with Mr. D.S. Patil for the petitioners.

Mr. S.N. Patil, AGP for respondent in Writ Petition No.7390/2010.

Mr. S.R. Nargolkar, Addl. G.P. For respondents in Writ Petition No. 8019/2010, 8020/2010 and 8023/2010.

**CORAM: D. K. DESHMUKH &
ANOOP V. MOHTA, JJ.**

DATE : April 13, 2011

P.C.:

In all these Petitions, notices were issued under Section 48(7) of the Maharashtra Land Revenue Code, 1966 have been challenged. Those notices have been issued and proceedings have been taken up by the Authorities of the State Government against the Petitioner, because the Petitioners are digging the land which is granted to the Petitioner for construction of building for the purposes of laying foundation and for levelling the land.

2 The learned counsel appearing for the Respondent pointed out to us that in Writ Petition No.785/2008 – **Promoters and Builders Association vs. State of Maharashtra** and other connected Writ Petitions, the notices issued under Section 48(7) of the Maharashtra Land Revenue Code were challenged and a Division Bench of this

Court by its judgment dated 8 October 2010 has held that all those notices were valid. The learned counsel for the Petitioner states that that judgment has been challenged before the Supreme Court in Petition for Special Leave (Civil) No.33002/2011 and in that Petition on 24 October 2011 the Supreme Court has issued a notice and has granted “interim stay of the operation of the impugned judgment of the High Court”.

3 We have also been pointed out that the Division Bench while deciding those Writ Petitions has not considered the provisions of Section 43 of the Maharashtra Land Revenue Code as also the provisions of the Rules framed under that provision. It was submitted that when land is granted for a particular purpose, then the grantee has implied authority to do everything on the land which is necessary for using the land for the purpose for which it has been granted. It is submitted that the land which is granted for the purposes of building site, can be excavated for erection of a building as also for digging of a well. We were taken through the provisions of the Maharashtra Land Revenue (Restrictions on use of Land) Rules, 1968, particularly, Rule 6 of those Rules, which lays down “no un-alienated land within the site of any village, town or city shall be excavated without the previous

written permission of the Collector for any purpose except for laying of foundation for buildings, the sinking of well and making of grain-pits. If excavation is to be done for any purposes other than laying foundation for building sinking of well, or making of grain-pits, then an application is to be made to the Collector for permission and under sub-rule (2) of Rule 6 of the said Rules of 1968. That application is to be considered by the Collector keeping in view the provisions of the Mines and Minerals (Regulations and Development) Act, 1957. It was submitted that these provisions clearly bring out that when land is granted for erection of building then statutory permission to dig the land for the purposes of laying of foundation for building, the sinking of well and making of grain-pits is granted. If the land is to be excavated for any other purpose then permission of Collector is necessary and then in granting that permission, the Collector has to have regard to the provisions of the Mines and Minerals Rules. It was submitted that under Section 48 (7), penalty can be levied by the Collector when any minor mineral is extracted from the land without lawful authority. It was submitted that when the land granted for building site is excavated for laying foundation, then that activity is with lawful authority and, therefore, there is no question of levying of any penalty for carrying out that activity. It was also submitted

before us that this aspect of the matter was pointed out to the Division Bench and that written submissions were also filed. However, the judgment of the Division Bench shows that these aspects have not been considered. In this situation, in our opinion, it will be appropriate to admit these Petitions for final hearing.

4 Hence, Rule.

5 Ad-interim order in terms of prayer (e).

(ANOOP V. MOHTA, J.)

(D. K. DESHMUKH, J.)