
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3022 OF 2026

VIREN BUILDCON LLP

A Partnership Firm registered under the provisions of Indian Partnership Act, 1932 having its office at Plot No. 28, Opposite to Gate No. 10, Near Union Bank, Marketyard, Pune-411 037.

THROUGH PARTNER MR. SAURABH SURANA,
Age 38 years, Occ.:Business.

...PETITIONER

Versus

1. THE STATE OF MAHARASHTRA

Through the Secretary,
Revenue and Forest Department, Mantralaya,
Mumbai-400 032.

2. THE TEHSILDAR, HAVELI

Tehsil Haveli, District-Pune.

...RESPONDENTS

Mr. S. S. Patwardhan i/b Mr. Harshad Sathe a/w Ms. Harshada Shrikhande, learned counsel for the Petitioner.

Ms. Savina R. Crasto, learned AGP for the State-Respondent.

CORAM : ARUN R. PEDNEKER, J.

DATE : 28th SEPTEMBER, 2026.

ORAL JUDGMENT :

1. Rule made returnable forthwith and by consent of learned counsel appearing for the parties heard finally.
2. Learned counsel for the Petitioner submits that they have permission to construct on Survey Nos. 44/1/2 and 44/1/3, Plot No. 28 and that they had paid royalty for excavation of earth of 897 brass and paid royalty on the same. The Revenue Authorities have found that there was excavation in addition of 3216.4 brass of soil/earth/murum from the construction site and accordingly, have imposed the penalty of Rs. 1,21,05,180/- for the excavated material.
3. Learned counsel for the Petitioner submits that the excavation while construction is a natural part of construction activity and that the excavated mineral has to be refilled in the same site, except certain portion in which the RCC component is filled in. Learned counsel submits that the royalty was paid on 897 brass of murum.
4. Learned counsel for the Petitioner also submits that in view of the judgment of Hon'ble Supreme Court in the case of ***Promoters and Builders Association of Pune v/s. State of Maharashtra and Others***¹, the loose soil/excavated earth does not become a minor mineral unless it is removed and utilized for the purposes mentioned in the notification issued under Section 3(e) of the Mines and

¹ 2015(1) Bom.C.R. 26.

Minerals (Development and Regulation) Act, 1957, i.e. for the purpose of route laying, roads, embankments, railways, buildings to be a minor minerals in addition to the minerals already declared as minor minerals. The excavated earth becomes a minor mineral only when it is used for the purposes mentioned in the said notification. The Hon'ble Supreme Court in paragraph 11 of the said judgment has held that,

“11. What is a mineral is not defined either under the MRTP Act or the Code. The said expression is however defined by section 2(j) of the Mines Act, 1952 and section 3(a) read with section 3(e) of the Act of 1957. As mining activities and operations are regulated by the provisions of the Act of 1957, it is the definition contained in the said Act, which will be more relevant for the present. Section 3(a) and Section 3(e) is in the following terms :

“Section 3.-In this Act, unless the context otherwise requires,-

(a) “minerals” includes all minerals except mineral oils:

(b) xxxxx xxxx xxxxx

(c) xxxxx xxxx xxxxx

(e) “minor minerals” means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral.

[(ea) “notified minerals” means any mineral specified in the Fourth Schedule;]”

5. In the instant case, the end user is not established. Learned counsel also submits that the panchanama reflects that the murum was on the site and in any event, the same has to be refilled into the soil.

6. Learned AGP opposes the submissions of learned counsel for the Petitioner. Learned AGP submits that there is excess excavation of mines and minerals and the Petitioner is liable to make payment of the royalty. Learned AGP submits that the order passed under Section 48(7) of the Maharashtra Land Revenue Code, 1966 can be challenged before the appropriate Appellate Authority and that this Court's jurisdiction may not be exercised. Learned AGP also submits that sufficient opportunity of hearing was given to the Petitioner and that thereafter the order of paying royalty is passed. Learned AGP also submits that the issue is not covered under the judgment in the case of ***Promoters and Builders Association of Pune*** (*supra*). The Petitioner has excavated the excess material. It is submitted that the excavated material is not found nearby the site and hence, it has become clear that the same has been transported by the Petitioner and used as minor mineral.

7. In the judgment of the Hon'ble Supreme Court in the case of ***Promoters and Builders Association of Pune*** (*supra*), the earth excavated is a minor mineral only when it is used for the end products, as mentioned in the said notification. In any construction activity, an excavation is a natural part of construction activity.

Certain extent of the excavated material is also required to be refilled. However, unless it is positively demonstrated or clear inferences are drawn that the material is used for the purposes as mentioned in the notification, royalty cannot be imposed on the excavated soil/earth, as the same cannot be quantified as minor mineral. Extra excavation alone is not sufficient to hold that the extra excavated material is a minor mineral as the excavation being a natural part of the construction activity.

8. In view of the same, impugned order passed by the concerned authority is quashed and set aside.
9. Writ Petition stands allowed and disposed of accordingly.
10. Rule made absolute in the above terms.

[ARUN R. PEDNEKER, J.]

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