**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

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**WRIT PETITION NO. 3024 OF 2015**

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Manoj S/o Vijaysingh Jadhav
Age: 29 years, Occu: Agril
R/o Vasram Tanda, Tal. Mahur,
Dist : Nanded
Through power of attorney Holder
Vijay S/o Kasalsingh Jadhav
Age: 58 Years, Occu. Agril,
R/o Vasram Tanda, Tal. Mahur,
Dist: Nanded. … Petitioner

Versus

01. The State of Maharashtra,
Through Collector,
Collector Office,
Nanded.

02. Sub Divisional Officer,
Sub Division Kinawat,
Dist : Nanded.

03. Sub Divisional Police Officer,
Sub Division Mahur,
Dist : Nanded.

04. Assistant Police Inspector,
Police Station Sindhakhed,
Dist : Nanded.

05. Tahasildar,
Tahasil Office, Mahur,
Tal. Mahur,
Dist : Nanded. … Respondents

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**WITH**
**WP/3666/2015**

Vijay S/o Kasalsingh Jadhav
Age: 58 Years, Occu. Agril,
R/o Vasram Tanda, Tal. Mahur,
Dist: Nanded. … Petitioner

Versus

01. The State of Maharashtra,
Through Collector,
Collector Office,
Nanded.

02. Sub Divisional Officer,
Sub Division Kinawat,
Dist : Nanded.

03. Sub Divisional Police Officer,
Sub Division Mahur,
Dist : Nanded.

04. Assistant Police Inspector,
Police Station Sindhakhed,
Dist : Nanded.

05. Tahasildar,
Tahasil Office, Mahur,
Tal. Mahur,
Dist : Nanded. … Respondents

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Mr. V. P. Latange, Advocate a/w Mr. S. B. Choudhari,
Advocate for petitioner in both petitions.
Smt. M.A. Deshpande, A.G.P. for respondent Nos. 1 to 5

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**CORAM : R. M. BORDE & V.K. JADHAV, JJ.**
**Dated: April 30, 2015**

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**JUDGMENT** :- (Per V.K.Jadhav, J.)

1. The petitioners in both writ petitions are seeking

directions to Respondents No.4 and 5 to release the motor vehicles owned by them respectively, which are lying in the custody of Respondent No.4. Further, the petitioners also seek to set aside and quash the order dated 4.2.2015 (7.7.2014) passed by Respondent No.4. The petitioners are also seeking direction against Respondents No.4 and 5 to pay compensation towards loss of income and towards loss of property.

2. Brief facts giving rise to the present writ petitions are as follows :-

The petitioners are the agriculturists by occupation. The petitioner in Writ Petition No.3024/2015 owned and possessed the Tractor bearing Registration No.MH-26/E-3670 and Trolley bearing registration No.MH-26/E-4591, whereas the petitioner in Writ Petition No.3666/2015 owned and possessed the Tractor bearing registration No.MH-26/C-9217 and Trolley bearing registration No.MH-26/C-8657. The petitioners are father and son *interse* owned and possessed the said vehicles for carrying out agricultural activities. According to them, in the month of June-July, they have started constructing cattle shed in the field and wanted to put an acne in the cattle shed to avoid the mud. They have further made it clear that on 7.7.2014 they brought some acne in the trolley attached to the Tractor bearing registration No.MH-26/C-9217 and the another tractor was empty coming from the same side alongwith another tractor. It is further case of the petitioners that, squad formed by Respondent No.5 Tahsildar has illegally seized the said vehicles under the pretext that the petitioners, without any lawful authority, were transporting the minerals in their respective vehicles. The petitioner further contends that respondent no.5 Tahsildar has seized and confiscated the said material and further directed the petitioners to pay penalty and till the penalty is paid, said vehicles were kept in the custody of Respondent No.4, without any order. The petitioners have tried their level best to convince the authorities to the effect that there is no provision to detain the vehicles unlawfully without their being any registration of crime. However, the authorities have not paid any heed towards their request. The petitioners have, therefore, approached this Court by filing these two writ petitions.

3. The learned counsel appearing for the petitioners submits that, there is no provision under the

Maharashtra Land Revenue Code, 1966, most particularly under section 48, thereby authorizing the Respondent No.5 to detain the vehicles in which minerals were being transported. The learned counsel further submits that, under the Right to Information Act, the petitioners were informed by the concerned police station that on the basis of oral directions given on phone by Respondent No.5, the vehicles are detained and kept in the premises of the police station until the penalty as imposed by respondent No.5 is paid by the petitioners. Learned counsel thus submits that the vehicles owned by the petitioners are seized unlawfully and detained by the concerned police station without there being any registration of crime. Learned counsel also submits that the said vehicles were neither seized by the Revenue Authorities nor by the police upon the complaint lodged by Respondent no.4. Learned counsel thus lastly submits that for last 10 months the said vehicles owned by the petitioners are detained and kept idle in the premises of the concerned police station, unlawfully. Consequently, the petitioners are entitled for release of the vehicles forthwith and also entitled for compensation on account of loss of income and loss of property.

4. The learned AGP appearing for Respondents submits that on 7.7.2014 squad established under Talathi Sajja Karanji found two Tractors illegally carrying minor minerals and therefore, those tractors came to be attached and kept at police station Sindkheda and panchanama to that effect was also drawn. Learned AGP further submits that there is no permission issued by the Tahsil office for transporting the said minerals. The said vehicles are lying at police station Sindkheda. Learned AGP further submits that action is taken under section 48 of the Maharashtra Land Revenue Code, 1966 against the petitioners and fine is also imposed against them for carrying and transporting the minor minerals illegally. Petitioners have not deposited the fine amount. The learned AGP further submits that order passed by the Revenue Officer is appeallable under section 247 of the Maharashtra Land Revenue Code,1966 and thus, there is an alternate efficacious remedy available to the petitioner. Petitions are, therefore, not maintainable. Learned AGP further submits that the petitioners have not paid fine and, therefore, said vehicles are detained and kept in the premises of Sindkheda Police Station. Learned AGP lastly submits that, there is no merit and substance in the Writ Petitions and same deserve to be dismissed.

5. This is a classic example of high handedness of the Revenue Authorities and utter dis-regard to the rule of Law by the Police Authorities.

6. It appears that the impugned order dated 7.7.2014 which was in fact communicated on 4.2.2015 came to be passed by the Respondents Revenue Authorities under the provisions of Section 48 (7 and 8) of the Maharashtra Land Revenue Code, 1966. The relevant provisions of Section 48 (7 and 8) of the Maharashtra Land Revenue Code, 1966 reads as under :-

> *"S. 48 (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 construction of bunds of the fields or on 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, to pay penalty not exceeding a sum determined, at three times the market value of the minerals so extracted, removed, collected,*

*replaced, picked up or disposed of, as the case may be:*

*Provided that, if the sum so determined is less than one thousand rupees the penalty may be such larger sum not exceeding one thousand rupees as the Collector may impose.*

*(8) Without prejudice to the provision in sub-section (7), the Collector may seize and confiscate any mineral extracted, removed, collected, replaced, picked up or disposed of from any mine, quarry or other place referred to in sub-section (7) the right to which vests in, and has not been assigned by, the State Government.”*

7. In the affidavit-in-reply filed on behalf of the respondents No.1 and 2, it is stated that the tractors were illegally carrying minor minerals (stones) and therefore, said tractors were attached and kept at police station Sindkheda. It has further stated that the petitioners were informed that on payment of the fine, said tractors can be released. It is also admitted in the reply that, the tractors are still lying at police station Sindkheda, however, offence is not registered in this regard. It is further stated in the affidavit-in-reply that, since the vehicles were illegally carrying minor

minerals, such action is taken. It has also clarified that fine is imposed on the ground of illegal transportation of minor minerals. It is theft of the Government property and offence also could have been registered, however, only fine is imposed against the petitioners which is not yet deposited.

8. We have carefully gone through the provision of sub-section 7 and 8 of Section 48 of the Maharashtra Land Revenue Code, 1966 as reproduced herein before. It appears that, the action to pay penalty at three times the market value of the minerals so extracted is contemplated. It is not brought to our notice any other provisions under the Maharashtra Land Revenue Code, 1966 or any other rules in this regard that in addition to such penalty as imposed, seizure of the vehicles transporting such minerals is also contemplated. Furthermore, it also appears from the contents of the communication made by the Deputy Superintendent of Police to the petitioner that, out of two seized tractors, one tractor was found empty and another tractor was carrying stones. The petitioners have come with a case that they were carrying the stones for the purpose of construction of cattle shed. It is also shocking to note that, the concerned police station has kept the said vehicles in the

premises of the police station under the oral directions of revenue authorities without there being any crime registered against the petitioners. Even there is no formal order of seizure made under the provisions of any other law. We are also shocked to note that the revenue authorities by letter dated 7.7.2014 directed the petitioners to pay a penalty as contemplated under section 48 (sub-section 7,8) of The Maharashtra Land Revenue code, 1966 and said notice was served on the petitioners on 4.2.2015. Thus, the only irresistible conclusion could be drawn that said vehicles were seized for some extraneous reasons and with malafide intentions. The authorities, as it appears from the record, had seized the vehicles belonging to the petitioners, without creating any record. Even directing the petitioners to pay penalty first and then they would take away vehicles lying in the premises of the police station, is illegal and without jurisdiction. We, therefore, express our displeasure in the manner in which the action has been taken by both the authorities in the matter of seizure of the said vehicles. Said action, therefore, is required to be termed as most highhanded, arbitrary and illegal. We, therefore, deem it appropriate to direct the revenue authorities and police department to take corrective measures forthwith. Learned counsel for the petitioners submits that the vehicles are lying idle since 10 months in the premises of the concerned police station.

9. In the light of the above discussion, we also deem it appropriate to direct the respondents/revenue authorities and the police authorities to pay certain token amount as a compensation to the petitioners by granting liberty to the petitioners to initiate appropriate proceedings before the appropriate forum seeking compensation for the loss incurred by them. We make it clear that, we have not expressed our opinion as regards the illegal excavation of so called minor minerals and transportation of the same, but, limiting ourselves only to the seizure of the said vehicles. The petitioners would have an alternate efficacious remedy under the provisions of Minor Mineral Rules or the Maharashtra Land Revenue Code, 1966, if aggrieved by the demand raised or in respect of penalty. Hence, we proceed to pass the following order.

**O R D E R**

1. Writ Petition is hereby partly allowed.

2. The respondents No.4 and 5 are hereby directed to release the Tractor bearing Registration No.MH-26/E-3670 and Trolley bearing Registration No.MH-26/E-4591 in **Writ Petition No.3024 of 2015** and Tractor bearing Registration No.MH-26/C-9217 and Trolley bearing Registration No.MH-26/C-8657 in **Writ Petition No.3666 of 2015**, forthwith.

3. We direct the respondents Revenue Authorities to pay Rs.10,000/- (Rs. Ten Thousand) each as token amount and the Respondent Police Authorities to pay Rs.5,000/- (Rs. Five Thousand) each as a token amount, towards compensation to the petitioners.

4. Writ Petition is disposed of. Rule is accordingly made absolute.

5. In the circumstances there shall be no order as to costs.

**( V.K. JADHAV, J. )** **( R. M. BORDE, J. )**

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