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

WRIT PETITION NO. 987 OF 2015

Jagannath s/o Sandu Shelke,
Age: Major, Occ: Agri.,
R/o. Manur Bd., Tq. Bodwad,
Dist. Jalgaon. ...Petitioner

versus

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.

2. The Additional Divisional Commissioner,
Nashik.

3. The Additioinal Collector,
Jalgaon.

4. The Sub Divisional Officer,
Bhusawal.

5. The Tahsildar, Bodwad. ...Respondents

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Mr. Chandrakant P. Patil, Advocate for petitioner.
Mr. D.R.Korde, A.G.P. for respondent/State.

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CORAM : N.W. SAMBRE, J.

DATE : 6TH APRIL, 2015

ORAL ORDER :

Heard learned Counsel for the petitioner. With the consent of learned Counsel for the parties, the petition is taken out for final disposal at admission stage.

2. The petitioner claims that he purchased the sand from authorized sand supplier for construction of his own house, which stock was inspected by the revenue authorities, resulting into issuance of notice to the petitioner on 03/02/2011. On that day, i.e. 03/02/2011 the revenue authorities noticed 22 brass sand stock with the petitioner in his field and the petitioner was called upon to remain present in the office of Tahsildar for further inquiry on 04/02/2011 i.e. next day.

3. The petitioner produced 17 royalty receipts of the sand in question i.e. to the extent of 17 brass sand, however, the petitioner since has failed to give any account of 5 brass sand, the Tahsildar has proceeded to pass an order dated 04/02/2011 levying Rs. 33,000/- towards penalty on the petitioner for being in possession of unauthorized stock of the sand to the extent of 5 brass.

4. The said order came to be passed by Tahsildar, Bodwad in exercise of powers under Section 48(7) of the Maharashtra Land Revenue Code, 1966 (hereinafter shall be referred to 'the Act' for sake of brevity), which was the subject matter of challenge before the Additional Collector, Jalgaon, who by an order dated 28/02/2012 confirmed the same. In Revision, the Additional Commissioner, Nashik Division, Nashik, by an order dated 28/03/2012 confirmed the order passed by the Additional Collector, Jalgaon. As such, present

writ petition.

5. Mr. Patil, learned Counsel for the petitioner made two-fold contentions that there was denial of opportunity of hearing to the petitioner, as according to him, the alleged visit in the field of the petitioner, where the stock was noticed was on 03/02/2011 and the order impugned was passed against him on 04/02/2011. He would further alleged that he has produced royalty passes of 17 brass sand, failure to produce royalty passes for 5 brass of sand, according to him, is also incorrect observations, as he has produced royalty passes for the same, however, latter in point of time. Those passes were either in the name of vehicle owner or driver. He would further urge that penalty that is imposed upon the present petitioner to the tune of Rs.33,000/- is contrary to the scheme of sub section (7) of Section 48 of the Maharashtra Land Revenue Code, 1966 as according to him, the penalty is not based on the market rate. Even the authority himself has not recorded his satisfaction as regards drawing conclusion about market rate of the said sand. He would further urge that no proper reasons are recorded by the Tahsildar or higher authorities. In support of his contention, he has relied upon the judgment of this Court in the matter of ***Hari Construction vs. State of Maharashtra and others*** reported in ***1995(1) Mah.L.R. 679*** so as to canvass that the authority while imposing penalty should armed with the proper material, such as quantity of the material, the date on

which excavation was made, basis of which the market value on the date of excavation was arrived at and the reason for imposing penalty.

6. Learned A.G.P. has sought to rely upon the provisions of sub section (7) of Section 48 of the Act to support the orders impugned. He would urge that the authorities below have concurrently held against the petitioner and this Court should be slow in interfering in its extraordinary jurisdiction. He further urged that the authority has taken into account the market value as is reflected in the order impugned while imposing the penalty and prayed for dismissal of the petition.

7. *Prima facie* perusal of sub section 7 of Section 48 of the Act provides that same is applicable to unlawful excavation, such as extraction, removal, collection, replacement, picks up or disposition of any mineral from working or derelict mines, quarries, old dumps, fields etc.

8. So far as the above referred aspect is concerned, the order impugned is silent as to source from which the said sand stock was removed and stock by the petitioner in his field. It is also required to be noted that the petitioner though has produced the

royalty passes of 17 brass sand, however subsequently he has produced passes for 5 brass sand, which were not taken into account by the first authority. The Additional Collector while rejecting the said piece of evidence has given findings that those are in the name of some third person and not in the name of petitioner.

9. What is required to be noted here is that the Tahsildar has carried out visit on 03/02/2011 and noticed the alleged illegal stock, proceeded to pass the order on 04/02/2011 against the petitioner. Passing of the order by the Tahsildar on the very next date cannot be reason for doubting the very intention of the Tahsildar, however, it is required to be noted that such order must be passed on the considerations which are provided under sub section (7) of Section 48 of the Act.

10. Perusal of the orders passed by the Tahsildar, Additional Collector and the Additional Commissioner, which are impugned in the present petition, lacks considerations, which are prescribed in the said sub section, such as satisfaction of the Tahsildar and other authorities before imposing penalty as regards source of material, date on which excavation was made, the basis qua forming an opinion as regards market value of the said material and reason for imposing the penalty. Sufficient support can be drawn from relevant

portion of paragraph-10 of the judgment in ***Hari Construction*** (supra), which reads thus :

> 10. In the present case, it is not necessary to examine the above contentions at this stage of the matter. As stated hereinabove, the Petitioners were not given proper opportunity to put-forth their case. Further none of the above contentions have been discussed by the Collector. In matters of levy of penalty certain Well-settled principles of Adjudication are required to be followed. The Collector is required to fix the penalty on the basis of proper material viz the quantity of excavated material, the date on which the material was excavated, the basis on which the market value on the date of excavation is arrived at, the reason for imposing maximum penalty and all other contentions regarding the merits of the case. These factors have not been considered by the Collector. The Petitioner are faced with a very heavy penalty. In the circumstances we are of the view that one more opportunity may be given to the Petitioners directing the Petitioners to appear before the Collector and submit the relevant particulars on the basis of which the amount could be calculated. It will also be open to the petitioners to advance all the contentions raised in the Petition except the contention regarding validity of the said Code 1966. It is clarified that we are not expressing any opinion with regard to the merits of the case and above observations are made only in support of our Judgment.

11. In that view of the matter, in my opinion, the orders dated 04/02/2011 passed by the Tahsildar, Bodwad in case No.

Kr./Jamin/Gaukhani/kavi/125/11, dated 28/02/2012 by the Additional Collector, Jalgaon in Appeal No. 01/2011 and dated 28/03/2012 by Additional Commissioner, Nashik Division, Nashik in R.T.S./Revision No. 149/2012 are not sustainable. As such, the writ petition is allowed by setting aside those orders. The matter is restored to the file of Tahsildar, who is directed to take decision afresh after hearing the petitioner and after taking into account the material, which will be submitted by the petitioner in support of his claim.

12. The said authority shall also decide the applicability of the provisions of sub section (7) of Section 48 of the Act to the facts in hand.

13. The petitioner undertakes to appear before the Tahsildar on 20/04/2015 with written notes of arguments, evidence and Tahsildar, as such, is directed to hear him and decide such issue within period of four weeks thereafter.

14. The writ petition is allowed in above terms.

[**N.W. SAMBRE, J.**]

Tupe/06.04.15