

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 10465 OF 2015**

Shri Arun Mahadev Rokade ... Petitioner
vs.
The Additonal Commissioner, Pune Division
Pune & Ors. ... Respondents

WITH
WRIT PETITION NO. 10466 OF 2015

Vijay K. Gavali ... Petitioner
vs.
The Additonal Commissioner, Pune Division
Pune & Ors. ... Respondents

WITH
WRIT PETITION NO. 10467 OF 2015

Ramdas K. Khade ... Petitioner
vs.
The Additonal Commissioner, Pune Division
Pune & Ors. ... Respondents

WITH
WRIT PETITION NO. 10468 OF 2015

Omkar N. Sangle Patil ... Petitioner
vs.
The Additonal Commissioner, Pune Division
Pune & Ors. ... Respondents

WITH
WRIT PETITION NO. 10469 OF 2015

Jameer H. Mulla ... Petitioner
vs.
The Additonal Commissioner, Pune Division
Pune & Ors. ... Respondents

**WITH
WRIT PETITION NO. 10470 OF 2015**

Baban N. Dhanawade ... Petitioner
vs.
The Additonal Commissioner, Pune Division
Pune & Ors. ... Respondents

**WITH
WRIT PETITION NO. 10471 OF 2015**

Kiran V. Patil ... Petitioner
vs.
The Additonal Commissioner, Pune Division
Pune & Ors. ... Respondents

**WITH
WRIT PETITION NO. 10472 OF 2015**

Rajaram P. Ghatage ... Petitioner
vs.
The Additonal Commissioner, Pune Division
Pune & Ors. ... Respondents

**WITH
WRIT PETITION NO. 10473 OF 2015**

Arun M. Gadade ... Petitioner
vs.
The Additonal Commissioner, Pune Division
Pune & Ors. ... Respondents

**WITH
WRIT PETITION NO. 10474 OF 2015**

Satish A. Rape ... Petitioner
vs.
The Additonal Commissioner, Pune Division
Pune & Ors. ... Respondents

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Mr. Amit Sale for the petitioners in all the matters.
Ms. M.S. Bane 'B' Panel Counsel for the respondents in all the matters.

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**CORAM : M.S. SONAK, J.
DATE : 18th NOVEMBER, 2015.**

P.C.:

1. Rule. By consent and at the request of the learned counsel for the parties, rule is made returnable forthwith.
2. The challenge in each of these petitions is to the order dated 09/09/2015 made by the Additional Commissioner, Pune division, Pune rejecting petitioners application for interim relief pending hearing and final disposal of the Revision Petition instituted by them questioning inter alia the levy of penalty and confiscation vehicles for having allegedly extracted and transported sand in breach of the provisions contained in the Maharashtra Land Revenue Code 1966 (Said Code).
3. The Tahsildar has confiscated petitioners vehicles and further imposed penalty under the provisions of section 48 of the said code at base rates ranging between Rs.6,000/- to Rs.10,000/- per brass. As against such imposition and confiscation the petitioners instituted first appeals and second appeals before the Sub Divisional Officer and Collector respectively. The same were however dismissed. As against such dismissals, the petitioners have preferred revision applications before the Additional Commissioner, which are presently pending.
4. During the pendency of the revision applications the petitioners applied for interim relief seeking stay on the recovery of penalty amount and further the release their vehicles. By impugned

orders dated 09/09/2015 the applications for interim relief have been rejected. Hence the present petition.

5. Mr. Amit Sale, learned counsel appearing for the petitioners in each of these petitions has submitted that the provision contained in section 48 of the code make it clear that there is no direct linkage between the issue of levy of penalty and confiscation of vehicles. He submits that even where there is some dispute pending with regard to levy or payment of penalty, the authorities are duty bound to release the confiscated vehicles upon furnish of personal bond in an amount equivalent to the market value of the vehicle alleged to have been involved for the purpose of illegal sand mining. Mr. Amit Sale submitted this is clear upon reading the provision of section 48(8) (ii) of the said code. He urged that, in the present case, the Additional Commissioner by linking the two issues has exceeded his jurisdiction. The petitioners vehicles stand confiscated since last five months and despite the petitioners offering to furnish personal bonds the same are being unduly detained. Mr. Sale further submits that the disposal of the revision application may involve considerable time and severe prejudice will occasion the petitions if the confiscation of the petitioners vehicle continues. Mr. Sale, learned counsel for the petitioner pointed out that even as per the government schedule of rates as 2014-2015 (GSR) the

rates in respect of sand would be in the range of Rs.2858/- per brass. The authorities have therefore acted in excess of the jurisdiction vested in their by imposing the penalties on the basis of the value of the sand is in the range of Rs. 6,000/- to Rs. 10,000/- per brass. Mr. Sale on basis of instructions from the petitioners and without prejudice to the petitioners contentions, petitioners offered to pay penalty at the rate of Rs.3,000/- per brass, in order to show petitioners bonafides.

6. This court, in the case of *Hari Constructions v/s. State of Maharastra & Ors.* 1995 of MLR 679 has already upheld the constitutional validity of section 48(7) of the code. Further this court, in the case of *Vijay Dashrath Shirbhate v/s. State of Maharashtra* in Writ Petition No. 3296 of 1993 decided on 17/09/2009 has rejected the challenge with regard to legislative competence of the Sate of Maharashtra in enacting the provisions of Section 48 (7) of the said code. The said provisions of the code apply to a situation that there is illegal sand mining undertaken or where sand mining is undertaken over area which may not be leased to the concerned party. This court has held that recovery of penalty in such circumstances is due to breach of propriety rights of the state and the reference to market value of the extracted mineral for computation of penalty is an incident of ownership. On this basis, the argument seeking to import the doctrine

of double jeopardy was also rejected.

7. In the present case the issue of levy to penalty and confiscation is writ large before the revisional authority. As such, it is too premature to decide the issue as to whether the penalty and confiscation can be linked with each other. Similarly, it is too premature to decide as to whether the quantum of penalty levied is appropriate in the facts and circumstance of the present case. These are all matter which will be looked into and decided by the revisional authority. The short issue which arises is whether the petitioner vehicles must remain confiscated during the pendency of the revision application before the Additional Commissioner.

8. The impugned order contain no reasons. However, rather than set aside the impugned orders and remand the matter for fresh consideration by the revisional authority, it would be appropriate if directions are issued to the revisional authority to dispose of the revision application as expeditiously as possible in any case within a period of four months from today. During the pendency of revision application however no useful purpose would be served by retaining the petitioners vehicles particularly where the petitioners without prejudice to right and contentions have offered to pay penalty at the base rate of Rs. 3,000/- per brass. This means that the penalty per brass would be Rs. 15,000/-.

In terms of section 48(8) (ii) the petitioners shall have to furnish necessary personal bonds in amounts equivalent to market value of confiscated vehicles and further comply with the other predicates of the said subsection. The vehicles have remained confiscated for the last five months and there is substance in the contention of Mr. Sale that issues of security and maintenance of the said vehicles are writ large. In view of the offer to pay penalty at the rate of Rs.15,000/- per brass as aforesaid, it would be appropriate if the petitioners vehicles are released.

9. The petitioners have provided chart which indicates the registration numbers number of the confiscated vehicles, the quantity of sand which was being transported and quantum of penalty at the base rate of Rs.3,000/- per brass. The chart reads thus:

<i>Writ Petition</i>	<i>Vehicle No.</i>	<i>Brass Qty.</i>	<i>Market Value</i>	<i>Per Brass Penalty</i>	<i>5 Times Total Penalty</i>
Wp/10465/15	MH-14-CP-9069	5 Brass	3,000/-	3000x 5=15,000/-	75,000/-
Wp/10466/15	MH-09-CA-2547	8 Brass	3,000/-	3000x 5=15,000/-	1,20,000/-
Wp/10467/15	MH-31-W-8569	6Brass	3,000/-	3000x 5=15,000/-	90,000/-
Wp/10468/15	MH-04-EY-2794	5 Brass	3,000/-	3000x 5=15,000/-	75,000/-
Wp/10469/15	MH-10-Z-831	3. 5 Brass	3,000/-	3000x 5=15,000/-	52,500/-
	MH-10-Z-1620	8.5 Brass	3,000/-	3000x 5=15,000/-	1,27,500/-
Wp/10470/15	MH-10-BR-4359	5.5Brass	3,000/-	3000x 5=15,000/-	82,500/-
Wp/10471/15	MH-10-AQ-6351	5 Brass	3,000/-	3000x 5=15,000/-	75,000/-
Wp/10472/15	MH-09-BA-4032	5 Brass	3,000/-	3000x 5=15,000/-	75,000/-
Wp/10473/15	MH-10-Z-4775	5 Brass	3,000/-	3000x 5=15,000/-	75,000/-
Wp/10474/15	MH-12-FC-7791	5 Brass	3,000/-	3000x 5=15,000/-	75,000/-

10. The authorities are directed to verify whether the details set out in the aforesaid chart are proper or not. Each of the petitioners are directed to pay penalty at the base rate of Rs.3,000/- per brass i.e. penalty of Rs. 15,000/- per brass within a period of two weeks from today. Such payment to be made with the respondent no.4. Once such payment is made, the respondent no.3 is directed to release the petitioners vehicles upon compliance with predicates of section 48(8) (ii) of the said code including in particular, the predicates concerning furnish of personal bonds etc. This exercise shall be completed by the respondent no.3 within a period of one week from the date the

petitioners produce necessary proof with regard to payment with respondent no.4.

11. It is made clear that the direction for payment of penalty to the petitioners is without prejudice to the rights and contentions of the petitioners in the pending revision application. It is further made clear that there shall be no stay in so far as recovery of the balance amount of penalty from the petitioners is concerned. The directions for payment of penalty in terms of the offer of the petitioners is basically in the context of release of the petitioners vehicle by the respondent no.3

12. It is further made clear that this court has not examined the merits of the matter and therefore, all contentions of all the parties are left open for decision by the Additional Commissioner in the pending revision application. As directed earlier, Additional Commissioner is directed to dispose of the petitioners pending revision applications as expeditiously as possible in any case within a period of four months from today.

13. Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

14. All concerned to act on the authenticated copy of this order.

(M.S. SONAK, J.)