

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APPW) NO.118/2015
IN
CRIMINAL WRIT PETITION NO.621/2015

Bhimrao s/o Shankarrao Gajbe and others

...Versus...

State of Maharashtra Through the Collector, Bhandara, District – Bhandara
and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri T.H. Bewali, Advocate for petitioners
Shri S.M. Ukey, APP for respondent nos.1 to 4
S/Shri S.P. Bhandarkar, S.J. Khandalkar, Advs. for intervenors

CORAM : A.B. CHAUDHARI AND
P.N. DESHMUKH, JJ.

DATE : 13.08.2015

Heard.

Criminal Application for intervention is allowed.

CRIMINAL WRIT PETITION NO.621/2015

The learned Additional Public Prosecutor has filed affidavit-in-reply on behalf of the respondent nos.1, 2 and 4 in the Court today. The same is taken on record.

This petition is required to be heard in detail. However, on the question of interim order, we have heard the learned Counsel for the parties including the intervenors.

The learned Additional Public Prosecutor pointed out to us the Ordinance issued by the Government by way of amendment to Section 48 Sub Sections 7 and 8 (1) and (2) of

the Maharashtra Land Revenue Code, 1966. We quote the Sub Section 8 (2) hereunder :

“8 (2) Such machinery or equipment or means of transport, used for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals or transportation thereof, which is seized under sub-section (1), shall be produced before the Collector or such other officer not below the rank of Deputy Collector authorised by the Collector in this behalf, within a period of forty-eight hours of such seizure, who may release such seized machinery, equipment or means of transport on payment by the owner thereof of such penalty as may be prescribed and also on furnishing personal bond of an amount not exceeding the market value of the seized machinery, equipment or means of transport, stating therein that such seized machinery, equipment or means of transport shall not be used in future for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals and transportation of the same.”

Perusal of the above Sub Section shows that by Ordinance the provision is made for payment of penalty as may be prescribed and also upon furnishing personal bond of an amount not exceeding the market value of the seized machinery, vehicle etc.

However, the Collector, Bhandara issued an order seeking bank guarantee in place of personal bond and that is

why the transport vehicles of the petitioners were not released. We find that if the Ordinance does not stipulate furnishing bank guarantee but it stipulates furnishing personal bond, there is no reason to retain the vehicles, when there is a compliance of payment of penalty and furnishing of personal bond as required. We, therefore, find that a *prima facie* case is made out by the petitioners for release of all the trucks, subject to fulfilling conditions in amended Sub Section 8 (2) of the Code.

We are then astonished to see that in case the personal bond is breached in the sense that again unauthorized extraction, removal, collection, replacement, picking up or disposal of minor minerals and transportation of the same is made no consequences are provided. We think provision should have been made for consequences but then that is the realm of the Government.

The learned Additional Public Prosecutor submits that the Ordinance has now become the Law.

Stand over to 10.09.2015 for further affidavit/reply, if any.

JUDGE

JUDGE

Wadkar