

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CA/11055/2016 IN WP/12116/2015
THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
DADA RAKHAMJI AWARE

.....
GP for Applicant: Mr. A.B. Girase
Advocate for respondent : Mr. K.S. BHORE

...
WITH

22 CONT. PETITION NO. 514 OF 2016
IN WP/7757/2016 WITH CP/515/2016 IN WP/7775/2016 WITH
CP/516/2016 IN WP/7774/2016 WITH CP/517/2016 IN WP/7772/2016
WITH CP/518/2016 IN WP/7771/2016 WITH CP/519/2016 IN
WP/7770/2016 WITH CP/520/2016 IN WP/7755/2016 WITH CP/521/2016
IN WP/7773/2016 WITH CP/522/2016 IN WP/7572/2016 WITH
CP/523/2016 IN WP/7756/2016 WITH CP/524/2016 IN WP/7575/2016
WITH CP/525/2016 IN WP/7580/2016 WITH CP/526/2016 IN
WP/7573/2016 WITH CP/527/2016 IN WP/7574/2016 WITH CP/528/2016
IN WP/7579/2016 WITH CP/529/2016 IN WP/7577/2016 WITH
CP/530/2016 IN WP/7578/2016 WITH CP/531/2016 IN WP/7576/2016

...

Dada Rakhamaji Aware & others
versus
The State of Maharashtra and others

.....

Advocate for petitioners: Mr. A.B. Kharosekar
GP for respondents: Mr. A.B. Girase

CORAM : R. M. BORDE & K.L. WADANE, JJ.
Date: August 08, 2016

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PER COURT :-

1 The petitioners are alleging violation of the orders passed by
this Court on 16.12.2015 and 21.7.2015. This Court has disposed
of the petitions with following directions:-

1. Grievance of the petitioner in the instant petition is in respect of seizure of the vehicle bearing registration No.MH 15 CK 9084 by the revenue authorities on 25.6.2015 in contravention of provisions contained in section 48 of the Maharashtra Land Revenue Code, 1966. It is contended that though the vehicle is seized on 25.6.2015, the same was not produced before the Collector or the Deputy Collector having jurisdiction in that regard but the said vehicle was handed over to the police authorities under panchanama drawn on the said date. It is contended that in view of provisions of section 48(8)92) of the Code, the machinery or the equipment or the 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 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.

2. Since the respondent authorities have not observed the procedure prescribed as above, we direct the respondent authorities to produce the vehicle before the Deputy Collector authorised by the Collector in that behalf on 12.10.2015. It would be open for the petitioner to apply for release of the vehicle and, on making such application, the concerned Deputy Collector shall direct release of the vehicle on acceptance of bond for an amount not exceeding the market value of the seized vehicle, forthwith. The petitioner shall also, at the time of release of the vehicle, give an undertaking that the vehicle in question will not be used by him in future for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals and transportation of the same. It would be open for the Collector to determine the amount of penalty, if any,

in observance of the procedure prescribed under the Code and, pass appropriate order in that regard, separately.

3. With the directions as above writ petition is disposed of.

2 The petitioners contend that, in spite of issuance of directions and in spite of expressing willingness to execute bonds, the respondent authorities have not released the vehicles. The petitioners contend that, there is willful disobedience on the part of the respondents in their failure to release the vehicles, as directed by this Court.

3 Learned Government Pleader has presented Civil Application No.11055/2015, seeking certain clarification. It is contended that, in view of subsection 8(2) of section 48 of the Maharashtra Land Revenue Code, 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 subsection (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.

4 It is the contention of the state Government that, the authorities have prescribed penalty which is liable to be recovered from the writ petitioners. They are bound to pay the amount at the time of release of the vehicles.

5 The petitioners contend that there is a remedy available under section 247 of the Maharashtra Land Revenue Code to challenge the order passed by the Tahsidlar, directing imposition of penalty.

6 If the writ petitioners present appeal and secure appropriate interim order, the respondent authorities are bound to obey the directions of the appellate authority. It would be open for the respondents to insist for payment of penalty it is clarified that, this Court has not dispensed with the observance of legal provisions in respect of imposition and recovery of penalty amount

under the order quoted as above. However, the recovery of amount towards penalty, shall be subject to the directions of the appellate forum or any other order by the superior authority or of this Court in that regard.

7 With the clarification as above, the Civil Application stands disposed of.

8 In view of the reasons recorded above, the Contempt Petitions also do not survive and stand disposed of.

(K.L. WADANE, J)

(R.M.BORDE, J)

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