

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

CRIMINAL WRIT PETITION NO. 702 OF 2017

Basudev s/o Matoliram Agrawal,  
Age 39 years, Occu. Business,  
R/o Kranti Nagar, Basmat Road,  
Parbhani, District Parbhani

..Petitioner

Versys

1. The State of Maharashtra,  
through its Secretary,  
Revenue Department,  
Mantralaya, Mumbai 32
2. The Collector,  
Collector Office, Hingoli,  
District Hingoli
3. The Sub-Divisional Officer,  
Basmat, District Hingoli
4. The Tahsildar,  
Tahsil Office, Basmat,  
District Hingoli
5. The Police Station, Hatta,  
Taluka Basmat, Dist. Hingoli

..Respondents

Mr S.T. Veer, Advocate for petitioner  
Mr M.M. Nerlikar, A.P.P. for respondents

**CORAM : S.S. SHINDE AND  
A.M. DHAVALA, JJ**

**DATE OF RESERVING  
THE JUDGMENT : 27.9.2017**

**DATE OF PRONOUNCING  
THE JUDGMENT : 11.10.2017**

**JUDGMENT (Per A.M. Dhavale, J.)**

1. Rule. Rule returnable forthwith. With the consent of parties,  
heard finally at the admission stage.

2. The petitioner under Article 226 of the Constitution of India seeks following reliefs in respect of his vehicles seized by revenue Officers in connection with theft of sand.

“(B) Issue mandamus to respondent no.4 (Tahsildar) to handover custody of :

(I) Tipper bearing Registration No.MH-22-AA-2271

(II) Tractor MH-38-B-2832

(III) Trolley and tempo bearing Registration No.MH-19-J-9319 without insisting for payment of penalty

(C) Writ of certiorari for quashing letter of respondent no.4 dated 25.3.2017 demanding Rs.1,17,696/- for release of the vehicles

(D) Directions to respondent no.2 (Collector, Hingoli) to hold enquiry with regard to illegalities committed by the Tahsildar, Basmat Naib Tahsildar, Basmat, Circle Officer, Basmat, in seizing of the vehicle of the petitioner and extracting huge amount from the petitioner.

(E) Directions to Collector to pay compensation to the petitioner for loss of major parts of the vehicle like battery, jack, hydraulic jack, panel etc. and loss of business.

3. Heard learned Advocate Mr S.T. Veer for the petitioner and learned A.P.P. Mr M.M. Nerlikar for the State. Mr Veer argued that the above referred vehicles of the petitioner were seized by Naib Tahsildar and Circle Officer of Basmat on allegation that there was illegal

transportation of sand excavated from the bed of Poorna river. The petitioner paid the penalty of Rs.90,000+Rs.18,261+53,983, as directed by the Tahsildar, Basmat. Naib Tahsildar/Circle Officer had no authority to seize the vehicles under Section 48 (8) of the Maharashtra Land Revenue Code (hereinafter referred to as 'MLR Code' for brevity). Such seizure is required to be reported to the Collector within forty-eight hours and Collector has to pass necessary orders and take decision regarding release or confiscation. The petitioner had deposited penalty of Rs.90,000 + Rs.18,261 + Rs.53,983, still the vehicles were not released. There were orders passed by Sub-Divisional Officer in respect of two vehicles. Even one F.I.R. was lodged before Judicial Magistrate, First Class, Basmat and the petitioner had filed three applications for return of property. The Police gave no objection and the learned Magistrate passed orders of return of the vehicles. Still the Tahsildar was not returning the vehicles. He was demanding bribe of Rs.50,000/- and he had prepared back dated documents to make further claim of penalty of Rs.14,70,900/- in respect of alleged seizure dated 5.11.2016. The order passed by the Judicial Magistrate First Class, Basmat was not challenged. The petitioner has purchased sand from Matin Khan who was granted licence by the State and he was legally transporting the sand. There was theft of several parts of vehicle seized by revenue Officers. Therefore, the petition be allowed and the prayers as referred above be granted.

4. Naib Tahsildar Sachin Jaiswal has filed affidavit-in-reply on behalf of respondents no.2 to 4. He has denied that the petitioner

was transporting sand of Matin Khan. He stated that as per report of Naib Tahsildar letter dated 5.11.2016 was issued for illegal transport of sand of 100 brass for which penalty of Rs.14,70,900/- was imposed. The petitioner admitted by letter dated 25.11.2016 that he had transported 60 brass of sand. The petitioner deposited only Rs.90,000/- as a part of said penalty. The remaining penalty was not paid.

5. Vehicle Tractor bearing Registration No.MH-38-B-2832 was seized on 9.11.2016 and penalty of Rs.18,261/- was imposed for illegal transport of sand of 1 brass. On payment of the said penalty, the tractor was released on 7.12.2016.

6. On 5.12.2016, petitioner's vehicle MH-22-AA-290 and MH-22-A-2271 were seized for illegal transport of sand of 2.5 brass and 2 brass respectively. For shortage of infrastructure, vehicle bearing No.MH-22-AA-2271 was kept in the custody of Talathi while vehicle bearing No.MH-22-AA-290 was given in the custody of Police for protection. Penalty of Rs.36,122/- and Rs.45,052/- was imposed on the petitioner by the Tahsildar by order dated 7.12.2016. Rs.36,122/- was paid, but Rs.45,052/- was not paid.

7. Vehicle bearing No.MH-22-AA-2271 was taken away by the petitioner from the custody of Talathi illegally, on 10.12.2016. The same was again seized on 11.12.2016 while transporting sand. The penalty of Rs.53,983/- was imposed and the same was paid. This material fact has been suppressed by the petitioner.

8. Vehicle bearing No.MH-19-J-9319 and MH-38-B-2832 were again seized on 29.12.2016 and 21.1.2017 for illegally transporting sand. Penalties were imposed on the petitioner but he did not pay the penalty.

9. The vehicles were not seized in a case of theft as represented by the petitioner before the learned Judicial Magistrate, First Class, so as to obtain orders under Section 457 Cr.P.C. The Investigating Officer therein was managed and his no objection was taken so as to avoid liability to pay the penalty before seeking the custody of the vehicles. Vehicle bearing No.MH-38-B-2832 was seized on 9.11.2016. Penalty of Rs.18,261/- was imposed. The petitioner applied to Sub Divisional Officer, Basmat for release of the vehicle and gave bond, but it was again seized for carrying minerals second time and apprehending imposition of penalty equal to market value of the vehicle, the petitioner has adopted this way of getting back the vehicle. Penalty of Rs.1,17,696/- was imposed on the vehicles due from the petitioner. The State wants to challenge the orders of learned Magistrate. Hence, the petition be rejected.

10. The petitioner filed rejoinder affidavit dated 10.8.2017. He claimed that the order of penalty of Rs.14,70,900/- dated 5.11.2016 was not passed. It is back dated order. There was oral direction to pay Rs.90,000/- penalty, which was paid by the petitioner. There was no case of transport of 100 brass of sand and he had never given letter admitting 60 brass of sand. He has not suppressed any material

facts. The State has not challenged the orders of learned Magistrate. His vehicle MH-22-A-290 was released by respondents no.2 to 4.

11. After hearing learned Advocates, the points for our consideration with our findings are as follows :

- |                                                                                                                                                          |                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|
| (I) Whether respondents no.2 to 4 illegally detained three vehicles of the petitioner and whether petitioner deserves to get custody of those vehicles ? | .. In the affirmative                                 |
| (II) Whether any directions for enquiry of revenue Officer is necessary ?                                                                                | .. In the affirmative                                 |
| (III) Whether there was loss of the petitioner by theft of parts of the vehicles and loss of business ?                                                  | .. Cannot be decided.<br>Necessary directions issued  |
| (IV) What order ?                                                                                                                                        | .. The petition is partly allowed as per final order. |

### REASONS

12. The relevant provisions of Section 48 (7) and (8) of MLR Code are modified from 5.1.2017, but considering the dates of alleged offences, the old provisions would be applicable in most of the cases, which read thus :

## Section 48 - GOVERNMENT TITLE TO MINES AND MINERALS

### **(Old Sections)**

“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 constructions of bund of the fields or an 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.”

Section 48 - GOVERNMENT TITLE TO MINES AND MINERALS**(AMENDED SECTIONS As per amendment dated 5.1.2017)**

“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 constructions of bund of the fields or an 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, ***or any revenue officer not below the rank of Tahsildar authorised by the Collector in this behalf to pay penalty of an amount not exceeding a sum determined, equal to five times*** the market value of the minerals so extracted, removed, collected, replaced, picked up or disposed of, as the case may be;

(8) (1) Without prejudice to the provision in sub-section (7), the Collector or any revenue officer not below the rank of Tahsildar authorised by the Collector in this behalf, may seize and confiscate any mineral extracted, removed, collected, replaced, picked up 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, and may also seize and confiscate any machinery and equipment used for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals and any means of transport deployed to transport the same.

(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".

13. It is well settled that the penal provisions of amended Act apply prospectively and not retrospectively unless there is specific provisions to that effect. In the present case, Section 48 (7) and 48 (8) of the MLR Code were amended on 5.1.2017. the provisions of amended Act would not be applicable to the seizures which took place before the date of amendment.

14. We find substance in the arguments that as per the provisions existing prior to the amendment dated 5.1.2017, the penalty was to be imposed by the Collector and it was to the extent of three times the market value of the minerals. In case of seizures subsequent to the date of amendment, the Collector has been given powers to

delegate his powers of imposition of penalty to any authorised Officer not below the rank of Tahsildar and the penalty amount is to be equal to five times the market value.

15. As per old provisions of Section 48 (8) of the MLR Code before amendment, the power of seizure and confiscate was given exclusively to the Collector. There was no power given to the Collector to delegate his powers to his sub-ordinate. As per amendment dated 5.1.2017, the Collector has been authorised to delegate the powers of seizure and confiscation of minerals extracted, removed etc. to any revenue Officer not below the rank of Tahsildar authorised by the Collector. Sub-clause (ii) of Section 48 (8) of the MLR Code lays down that when any seizure is made under sub-section (1), the minerals or means of transportation shall be produced before the Collector or 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 and the decision as to whether the vehicle or machinery/equipment should be released on payment of penalty and on furnishing P.R. bond has to be taken by such authorised Officer not below the rank of Deputy Collector. It is needless to state that the powers of seizure, imposition of penalty and of confiscation must be followed strictly in accordance with the provisions of law. We find that in the present case, the Tahsildar, Naib Tahsildar and Circle Officer have many a times exceeded their jurisdiction while effecting the seizures and passing orders of imposition of penalty and detaining the vehicle without following the provisions of Section 48 (7) and 48 (8) of the MLR Code. When these provisions are not followed and when

F.I.R. is registered without intimation that the seizure was made under Section 48 (7) and 48 (8) of the MLR Code and not under Section 379 of Indian Penal Code, the powers of Judicial Magistrate, First Class under Sections 451, 452, 457 of Cr.P.C. are not taken away to pass appropriate orders for interim custody, as no person can be left remediless.

16. In case of vehicle, it is necessary to remember that the vehicle standing on the spot gets junk and becomes valueless. If the confiscation is to be made, it should be made strictly within short time and the authority may consider the release of the vehicle for the time being so that the valuable vehicle is not damaged due to natural wear and tear. In this regard, the following directions of the Apex Court in **Sunderbhai Ambalal Desai Vs. State of Gujarat, AIR 2003 SC 638**, should be followed even by revenue Officers. In paragraphs 17 and 18, it is observed :

“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.”

17. Taking the case of each individual vehicle, we find as follows:

(I) Vehicle No.MH-22-AA-2271 :

The copy of R.C. Book stands in the name of the petitioner (Page 21).

As per report of Naib Tahsildar and seizure panchnama, both dated 5.12.2016, this vehicle was seized along with excess sand of 2.5 brass by Naib Tahsildar on 5.12.2016 (Page 27-28). Naib Tahsildar imposed penalty of Rs.53,983/- by order dated 29.12.2016 (Page 85).

Penalty was paid as per challan dated 31.12.2016 (Page 38).

Sub Divisional Officer, Basmat by order dated 4.1.2017 (Page 39) issued directions to release the vehicle, but according to the petitioner, the vehicle was not released. Hence, the petitioner filed application (Page 40) before the learned Judicial Magistrate, First Class, Basmat. The A.P.I., Hatta gave no objection (Page 46) and the learned Judicial Magistrate, First Class, Basmat passed order dated 18.3.2017 (Page 49). Still, the vehicle has not been released.

The respondents have contended that the vehicle was involved in similar offences on 5.12.2016 and 11.12.2016 and there was direction to deposit penalty of Rs.45,052/- and Rs.53,383/- (Page 81). As the vehicle was in custody of revenue Officers, the petitioner could not have committed similar offence with the same vehicle. Therefore, it was claimed that the said vehicle was taken away by the petitioner

on 10.12.2016. There is no seizure panchnama of 11.12.2016 on record. It is not explained how the vehicle was still ordered to be released subject to payment of penalty by the Tahsildar, when it was stolen earlier and used for commission of similar offence. This contention of the respondents that the vehicle was stolen by the petitioner on 10.12.2016 is not even reflected in the order passed by Sub-Divisional Officer, Basmat dated 4/17.1.2017 (Page 39) who has acted on the report of Tahsildar dated 31.12.2016. This case appears to be concocted and the Collector should make enquiry in this regard. We, therefore, find that prima facie at this stage, the petitioner cannot be directed to deposit Rs.45,052/- as per order dated 7.12.2016 (Page 81).

18. It is necessary to note that F.I.R. is lodged against several persons not connected with each other for acts over a huge period from 16.2.2016 to 15.11.2016 and on 9.12.2016 (Page 29). It is under Section 379 of Indian Penal Code, the Police have not filed separate seizure memos to show that this offence under Section 379 of Indian Penal Code is different from the other offences, for which the petitioner was penalised. In this case, it has been stated that the petitioner was taking away sand of 420 brass worth Rs.12,01,620/-. The vehicle number is not given. The learned Magistrate has passed order on assumption that all the vehicles were seized in this crime. The said order dated 18.3.2017 has not been challenged (Page 49).

19. In the light of order of Judicial Magistrate, First Class, Basmat and the order of Sub-Divisional Officer, Basmat dated 17.1.2017, the

detention of this vehicle by the revenue Officers, particularly respondent no.4 is illegal.

(II) Tractor No.MH-38-B-2832 : As per copy of R.C. Book (Page 22), the same stands in the name of petitioner. As per seizure memo dated 9.11.2016 (Page 75), and order of imposition of penalty dated 9.11.2016 (Page 76), copy of challan dated 7.12.2016 (Page 26), the vehicle was seized by Naib Tahsildar for illegally transporting one brass sand for which penalty of Rs.18, 261/- was fixed and the same was paid on 7.12.2016. The Sub-Divisional Officer had issued letter of even date (Page 77) directing the release of the vehicle. Still the vehicle was not released. Petitioner approached the learned Judicial Magistrate, First Class, Basmat and filed application dated 13.2.2017 (Page 42). The Police Officer gave no objection (Page 47) and learned Magistrate passed order dated 18.3.2017 for releasing the vehicle (Page 50-51). This order has not been challenged and the period of appeal or revision is also over. In spite of order of Sub-Divisional Officer, Basmat as well as Judicial Magistrate, First Class, Basmat, respondent no.4 has not released the vehicle. In paragraph 12, Naib Tahsildar has pleaded that the vehicle was second time involved and was seized on 21.1.2017. Report of Tahsildar to that effect is produced at Page 36. It does not disclose whether the vehicle was illegally transporting the sand or not. If it was not illegally transporting sand, then the revenue Officers have no authority to seize the vehicle. The penalty of Rs.18,261/- is imposed by Tahsildar on 21.1.2017 (page 83), but no seizure memo, no enquiry is done. When the vehicle was already in the custody of revenue

Officers, it could not have been again used. The bond was given by the petitioner (page 90) and it is consistent stand of the petitioner that vehicle was not released in his favour. In view of unchallenged orders of learned Judicial Magistrate, First Class and order of Sub-Divisional Officer, prima facie we find that the vehicle has been illegally detained by respondent no.4.

(iii) Tempo No.MH-19-J-9319 : Copy of R.C. Book of the vehicle is at (Page 23) in the name of the petitioner. As per panchnama dated 29.12.2016, drawn by Talathi and Circle Officer (Page 37), this vehicle was seized for illegal transportation of sand of one brass. Penalty of Rs.18,261/- was imposed by the Tahsildar as per order dated 29.12.2016 (Page 82). It seems that this penalty has not been paid by the petitioner. The petitioner moved application dated 13.2.2017 (Page 44). The Police Officer gave no objection (Page 48). The learned Judicial Magistrate, First Class, Basmat passed order dated 18.3.2017 (Page 53). The said order has not been challenged. We find that this vehicle can be released subject to condition of payment of penalty of Rs.18,261/-.

(iv) Tipper No.MH-22-AA-290: This vehicle was seized on 5.12.2016, but that has been released in favour of the petitioner and documents with regard to it need no consideration.

20. The Tahsildar has passed an order dated 5.11.2016 against the petitioner, whereby it is alleged that he was transporting sand of 100

brass for which five times penalty (+) land rent and other charges total Rs.14,70,900/- was imposed. Respondents have produced one letter dated 25.11.2016 (Page 74), whereby the petitioner has admitted that he had transported sand of 60 brass and was ready to pay the penalty for the same. Both these documents are strongly disputed by the petitioner. We find substance in the petitioner's claim, as the petitioner had requested for information about his liabilities and by letter date 25.3.2017, he was informed that he was liable to pay Rs.1,17,696/- (Page 61). If this liability of Rs.14,70,900/- was existing on that date, it is not clear why this was not included in this letter dated 25.3.2017 issued by the Tahsildar addressed to the petitioner.

21. Considering the above facts, we find that it is not necessary to consider whether the seizure was made under the provisions of Indian Penal Code or under Section 48 (8) of the MLR Code, as there are orders of Sub-Divisional Officer, Basmat as well as Judicial Magistrate, First Class, Basmat for release of two vehicles bearing No.MH-22-AA-2271 and MH-38-B-2832. Further detention of these vehicles cannot be permitted.

22. Considering all these facts, we are inclined to allow this petition subject to condition of payment of penalty of Rs.18,261/- for release of vehicle bearing No.MH-19-J-9319 and subject to fulfillment of the conditions imposed by the Judicial Magistrate, First Class, Basmat or Sub-Divisional Officer, Basmat for release of these two vehicles, as well as vehicle bearing No.MH-19-J-9319 (if remained to be fulfilled).

23. As far as prayer clause (C) is concerned, it is for quashing of letter dated 25.3.2017, whereby the petitioner was informed that he has to pay Rs.1,17,696/-. We find that imposition of penalty of Rs.45,052/- disclosed therein is not tenable. The petitioner has deposited Rs.53,983/- for vehicle bearing No.MH-22-AA-2271, Rs.18,261/- for vehicle No.MH-38-B-2832 and has not deposited Rs.18,261/- for vehicle No.MH-19-J-9319.

24. In view of the observations made hereinabove, we hold that the Collector or competent sub-ordinate appointed by him shall make enquiry into the allegations about the behaviour of respondent no.4 -Tahsildar in not returning the vehicle in spite of orders of Sub-Divisional Officer, Basmat and Judicial Magistrate, First Class, Basmat and also with regard to his case that vehicle bearing No.MH-22-AA-2271 was stolen by the petitioner on 10.12.2016 and again used for commission of offence. The Collector or the person authorised by him shall make enquiry whether the respondent no.4 - Tahsildar has prepared back dated documents with regard to penalty of Rs.14,70,900/- and with regard to second seizure of vehicle bearing No.MH-22-AA-2271 as per panchnama dated 11.12.2016 and imposition of two penalties for the same vehicle and reconsider whether the said vehicle was in the custody of the revenue Officers on the day when it was allegedly used by the petitioner again for illegal transport. We make it clear that we are not expressing any opinion with regard to merits of these allegations, but prima facie, we find suspicious circumstances so that there should be proper enquiry in this matter.

25. As far as the claim for compensation from respondent no.4 Tahsildar is concerned, it is based on disputed facts. We, therefore, direct that at the time of delivery of the vehicles, there should be proper checking by the petitioner in presence of Police Officer and panchnama should be drawn along with photographs of the vehicles and if any parts are found missing, the petitioner shall take appropriate steps to claim compensation by filing any proceeding before appropriate forum as may be advised to him. This Court cannot issue directions for payment of compensation or otherwise in respect of disputed facts.

26. We make it clear that apart from the various seizures shown in respect of the vehicles referred above, any other seizure or illegal transport of sand is noticed, the Collector shall be at liberty to take appropriate decision and authorise any person competent to take such decision as permissible under the provisions of law.

27. We, therefore, allow the petition in terms of prayer clause (B) subject to condition of payment of penalty of Rs.18,261/- for release of vehicle bearing No.MH-19-J-9319 and subject to fulfillment of conditions imposed by Judicial Magistrate, First Class, Basmat or Sub-Divisional Officer, Basmat, for the release, if remained to be fulfilled.

28. We allow the petition in terms of prayer clause (C) to the extent of cancellation of the letter with regard to penalty of Rs.45,052/-.

29. With regard to prayer clause (D), we direct the Collector to hold enquiry, as disclosed in paragraph 24 above and submit compliance

report thereof within eight weeks from the date of receipt of this order.

30. With regard to prayer clause (E), the claim is refused in the light of observations made in paragraph 25 above.

31. Rule is made absolute in above terms. There shall be no order as to costs.

**( A.M. DHAVAL, J.)**

**( S.S. SHINDE, J.)**

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