

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

CRIMINAL WRIT PETITION NO. 1686 OF 2016

Vithal s/o Panditrao Suryawanshi,
age 30 yrs, Occ. Business and Driver,
R/o Arajkheda, Tq. Renapur,
Dist. Latur.
At Present Sai Road, Latur.
Tq & Dist. Latur.

..Petitioner..

VERSUS

1. The State of Maharashtra.
 2. The Tahsildar, Latur.
Tq. & Dist. Latur.
 3. The Police Inspector,
MIDC Police Station, Latur.
Dist. Latur.
- ...Respondents..

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Advocate for Petitioner : Mr T M Venjane
APP for Respondents 1-3 : Mr S G Karlekar

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CORAM : S.S. SHINDE & V.K. JADHAV, JJ.

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Reserved on : March 10, 2017
Pronounced on : March 15, 2017

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ORAL JUDGMENT : (Per Jadhav, J.)

1. Rule. Rule made returnable forthwith and heard finally with the consent of parties.

2. This Criminal Writ Petition is preferred for

following reliefs :-

- “B/ Be pleased to direct the respondent authorities to release the vehicles of the petitioner which are (TATA Tippers) bearing registration No.MH-14/BJ-0002 and MH-04/EB-4399 and hand over to the petitioner.*
- C/ Be pleased to quash and set aside the orders dated 28.11.2016 (Exh.”C” colly) passed by the Ld. Tahsildar, Latur.”*

3. Brief facts, giving rise to the present writ petition are as under :-

The petitioner is exclusive owner in possession of vehicles TATA Tippers. Said vehicles are heavy goods vehicles and used for the purpose of the transportation of the sand from one place to another place. On 27.11.2016 flying squad appointed by respondent no.2 by resorting the amended provisions of Section 48 (8)(1) of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as MLR Code) seized the aforesaid vehicles on the ground that those vehicles were being used for transporting the sand. Those vehicles were seized under the panchanama and for the purpose of protecting custody of the vehicles the same were handed over to the nearest police station i.e. MIDC, Police Station, Latur. By order dated 28.11.2016 the

respondent authorities imposed penalties on the petitioner for illegal transportation of the sand.

4. Learned counsel for the petitioner submits that, in view of the provisions of Section 48(8)(1) of the MLR Code, the Collector or any revenue officer not below the rank of Tahsildar authorized by the Collector in this behalf, may seize and confiscate any mineral extracted, removed, collected, replaced, picked up or disposed of from any mine, quarry or other place extracted illegally and may also seize and confiscate any machinery and equipment used for unauthorized extraction, removal, collection, replacement, picking up or disposal or minor minerals and any means of transport deployed to transport the same. In view of the provisions of section 48(8)(2) of MLR Code, the aforesaid minerals and transportation means (vehicles) are required to be produced before the Collector or such other officer not below the rank of Deputy Collector authorized 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 unauthorized extraction, removal, collection, replacement, picking up or disposal of minor minerals and transportation of the sand.”

5. Learned counsel submits that, in contravention of the said provisions revenue officer below the rank of Tahsildar seized the aforesaid vehicles and same were also not produced before the Collector or such other officer not below the rank of Deputy Collector, within a period of 48 hours of such seizure as provided under 48(8)(2) of the MLR Code.

6. Learned counsel submits that, the seizure of the vehicle as well as imposition of the penalty on the petitioner for the alleged act is improper, incorrect and illegal. Learned counsel for the petitioner submits that,

officers of revenue department have not lodged any complaint against the petitioner, nor such seizure was reported to the concerned Magistrate.

7. Learned APP submits that, in view of the provisions of sub-section 48 (7) of the MLR Code, any revenue officer not below the rank of Tahsildar authorized by the Collector in this behalf, can pass an order against person who was illegally transporting the sand to pay penalty of an amount equal to five times. The flying squad was appointed by respondent no.2 by resorting to the amended provisions of section 48(8)(1) of the MLR Code. The seizure of the vehicle was completed by conducting panchnama and for the purpose of protecting custody of the vehicles, same were handed over to the nearest police station. Those vehicles are not seized by the police authorities. The learned APP submits that, no interference is required. Writ petition is liable to be dismissed.

8. WE deem it appropriate to reproduce herein below Section 48 of the Maharashtra land Revenue Code, 1966

particularly the amendment made in sub-section (7) and sub section 48 (8) 1 and 2 of section 48 which reads thus :-

Section 48 sub section (7) :-

(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 bunds of the fields or on 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.

In section 48 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as “the Revenue Code”),—

(i) in sub-section (7),—

(a) for the words “on the order in writing of the Collector, to pay penalty not exceeding a sum determined, at three times”, the words “on the order in writing of the Collector or any revenue officer not below the rank of Tahsildar authorized by the Collector in this behalf, to pay penalty of an amount equal to five times” shall be substituted ;

(b) the proviso shall be deleted;

Section 48 (8) (1) :-

(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.

(ii) for sub-section (8), the following sub-section shall be substituted, namely :—

“(8)(1) Without prejudice to the provision of subsection (7), the

Collector or any revenue officer not below the rank of Tahsildar authorized by the Collector in this behalf, 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, and may also seize and confiscate any machinery and equipment used for unauthorized 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 unauthorized 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 authorized 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 unauthorized extraction, removal, collection, replacement, picking up or disposal of minor minerals and transportation of the same.”

9. In view of the provisions of Section 48(8)(1) of the MLR Code, the Collector or any revenue officer not below the rank of Tahsildar authorized by the Collector in this behalf may seize and confiscate any mineral extracted, and may also seize and confiscate any machinery and equipment used for such an unauthorized extraction and any means of transport deployed to transport the same.

10. In the instant case, we do not find that Tahsildar had accompanied the flying squad when aforesaid vehicles came to be seized by him under the panchnama. On the contrary, it appears that Naib Tahsildar had seized those vehicles which is contrary to the provisions of Section 48(8)(1) of MLR Code, 1966. It is also not brought to our notice that, said seized vehicles were produced before the Collector or such other officer not below the rank of Deputy Collector authorized by the Collector in this behalf within a period of 48 hours of such seizure for further orders in terms of the provisions of Section 48(8)(2) of MLR Code. It further appears from the record placed before us that, after seizure of those vehicles under the panchnama, vehicles were handed over to the nearest police station i.e MIDC Police Station Latur for the purpose of protection/ custody of the vehicles.

11. By order dated 10.2.2017 noticing the aforesaid illegalities in not following the provisions of section 48 of the MLR Code as discussed above, this court directed respondent no.2 to release the vehicles of the petitioner.

We, thus, partly allow the Criminal Writ Petition in terms of prayer clause 'B' and also in terms of the aforesaid interim order to the extent of release of the vehicles to the petitioners.

12. So far as imposition of penalty on account of extracting the minerals illegally are concerned, we find that impugned order dated 28.11.2016 is passed by the Tahsildar in accordance with the provisions of section 48 (7). We are not inclined to interfere in it.

13. In view of the above, rule is made partly absolute in above terms. Criminal writ petition accordingly disposed of. No costs.

SD/-

(V.K. JADHAV, J.)

SD/-

(S.S. SHINDE, J.)

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