

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

MISC. CIVIL APPLICATION NO.794/2017

IN

WRIT PETITION NO.2545/2016 (D)

Abdul Asif Abdul Kadir

...Versus...

State of Maharashtra, Through Police Station Officer, P.S. Talegaon (D), Distt.
Amravati and another

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

Court's or Judge's orders

Shri U.J. Deshpande, Advocate for applicant/petitioner
Mrs. K.S. Joshi, Addl. G.P. for respondents – State

**CORAM : B.P. DHARMADHIKARI AND
ARUN D. UPADHYE, JJ.**

DATE : 18.09.2017

1. Heard.
2. The application for restoration is supported by personal affidavit.
3. We do not see any *mala fides*. Hence, order dated 28/6/2017 is recalled and Writ Petition No.2545/2016 is restored back to file. Misc. Civil Application stands disposed of.

WRIT PETITION NO.2545/2016

1. Heard for some time.
2. The facts in the matter show that for allegedly carrying excess sand on 15/3/2016 truck bearing No.MH-30-AB-22 was

detained by police authorities. From replies placed on record by respondents, it does not appear that violation of Section 48 of the Maharashtra Land Revenue Code was informed by police authorities to revenue authorities. However, it appears that for carrying excess sand, action has been taken under Section 207 of the Motor Vehicles Act. Regional Traffic Officer has filed affidavit explaining that he got knowledge of detention of truck after almost three months.

3. In present matter, we do not wish to go into correctness or otherwise of rival contentions. Petitioner has invited our attention to Division Bench judgment, reported at **2010 (6) Bom. C.R. 236 (Rumao Constructions and others... Versus...State of Maharashtra)** to urge that even under the Maharashtra Land Revenue Code such action could not have been taken.

4. This Court has on 28/9/2016 passed an order and directed the petitioner to deposit amount of Rs.50,000/- with the Registry of this Court. Petitioner accordingly has deposited that amount with the Registry and thereafter vehicle has been released in favour of petitioner.

5. In this situation, taking overall view of the matter, we find it appropriate to permit the petitioner to file representation in detail in this respect with Collector, Bhandara within three weeks from today. If such representation is made by petitioner, the office of Collector shall after hearing the petitioner, police authorities, R.T.O. authorities and also concerned Tahsildar having jurisdiction of sand Ghat from which sand was lifted, take a suitable decision, as per law, within next two months.

6. If the amount is found due and recoverable by any of the respondents including State towards penalty under Section 48 (7)/(8) of the Maharashtra Land Revenue Code, the concerned respondent can then apply to this Court and seek leave to withdraw the amount. If any amount is found refundable to petitioner, the petitioner also can apply to this court and seek refund of that amount.

7. However, it is made clear that if representation is not made by petitioner to office of Collector, Bhandara within three weeks from today, the respondents can apply to this Court for withdrawal of amount.

8. With these directions and keeping all rival contentions open, we dispose of writ petition. No costs.

JUDGE

JUDGE

Wadkar