

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 8062 OF 2018

Hamta s/o Dolaji Dayma,
age: 46 years, Occ: Business,
R/o Hotel Radhika, Bhone Vasti,
Aundha Nagnath,
Tq. Aundha, District Hingoli.

Petitioner

Versus

01 The State of Maharashtra,
through Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.

02 The Collector, Hingoli,
Collector Office, Hingoli,
Tq. & Dist. Hingoli.

03 The Sub Divisional Officer,
Basmat, Tq. Basmat Nagar,
District Hingoli.

04 The Tahsildar,
Tahasil Office, Aundha,
Tq. Aundha, Dist.Hingoli.

Respondents

Mr. D.M. Shinde, Advocate for Petitioner.
Mr. A.R. Kale, A.G.P. for Respondents.

**CORAM : S. S. SHINDE &
K. K. SONAWANE, JJ.**
DATE : 19th December, 2018

ORAL JUDGMENT (Per S.S.Shinde, J.):

1 Heard. Rule. Rule made returnable forthwith and
heard finally by consent of learned Counsel for respective parties.

2 Since the reply filed by Respondents No.2 to 4 is in relation to some other vehicle, which is not subject matter of this petition, same reply stands ignored.

3 The petitioner is objecting to the order passed by the Respondent – Tahsildar directing imposition of penalty of Rs.1,25,400/- on account of alleged illegal transportation of sand by the petitioner. The petitioner is also praying for the direction to release the vehicle of the petitioner forthwith, which has been seized under a panchanama drawn by the Talathi. So far as the issue of illegal transportation of sand is concerned, the petitioner contends that the petitioner was transporting one brass sand in the said vehicle from Anjanwadi to Aundha for driver's personal house repairing work.

4 It would not be necessary to go into the aforesaid aspect as regards the permissibility to impose the penalty by the Tahsildar and validity of said order, since the petitioner has an alternate remedy available for raising objection to the said order before the Sub Divisional Officer. Petitioner shall have liberty to avail of an alternate remedy for challenging the order passed by the Tahsildar directing imposition of penalty. The grievance raised by the petitioner as regards the seizure of the vehicle under the panchanama drawn by Talathi is concerned, the same needs to be addressed. The petitioner contends that it is not permissible for the revenue authority below the rank of Tahsildar to seize the vehicle.

5 Our attention is drawn to Section 48(8)(1) which

provides that without prejudice to the provisions of Sub-section (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 equipments used for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals and any means of transport deployed to transport the same.

6 In the instant matter, the machinery for transport of the unauthorised minor mineral has been seized by the officer below the rank of Tahsildar that is Talathi, therefore, the action of seizure of the vehicle is bad in law. The respondent authorities, thus, are bound to release the vehicle which has been seized illegally. The order passed by the respondents directing seizure of vehicle under the panchanama drawn by the Talathi is, therefore, quashed and set aside. Respondents are directed to release the vehicle seized under the panchanama forthwith.

7 With the directions as above, the Writ Petition is disposed of. Rule is made absolute to the extent as specified above. No costs.

K. K. SONAWANE
JUDGE

S. S. SHINDE
JUDGE