

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

WRIT PETITION NO.10942 OF 2018

Bhagwan S/o Abhimanyu Bangar,
Age 28 years, Occu : Business & Agriculture,
R/o Gondi, Taluka Ambad,
District Jalna.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai 400 032.
2. The Collector,
Collector Office,
Jalna.
3. The Deputy Collector /
Sub-Divisional Officer,
Ambad, Taluka Ambad,
District Jalna.
4. The Tahsildar,
Tahsil Office, Ghansavangi,
Taluka Ghansavangi,
District Jalna.

... **Respondents**

...
Mr. A.B.Kharosekar, Advocate for Petitioner
Mr. S.G.Karlekar, AGP for Respondent Nos.1 to 4-State
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**CORAM : R.M.BORDE AND
MANGESH S. PATIL, JJ.**

DATE : 06.10.2018

ORAL JUDGMENT : (Per R.M.Borde, J.) :-

1. Heard. Rule. Rule returnable forthwith. With the

consent of parties, the Writ Petition is taken up for final disposal at the admission stage.

2. The petitioner is objecting to the order passed by the Respondent / Tahsildar directing imposition of penalty of Rs.3,57,000/- 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 panchnama drawn by the Talathi. So far as the issue of illegal transportation of sand is concerned though the petitioner contends that he is in possession of its valid receipt, the aforesaid contention is controverted by the respondent contending that the receipt refers to a sand spot at Kuran in Ambad Taluka whereas the vehicle in question was seized at Jogaldevi which is within the jurisdiction of Ghansawangi Taluka. 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 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 panchnama 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.

3. 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.

4. In the instant matter, the machinery for transport of the unauthorized 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 / authority thus are bound to release the vehicle which has been seized illegally. The order passed by the respondents directing seizure of vehicle under the panchnama drawn by the Talathi is, therefore, quashed and set aside. Respondent has directed to release the vehicle seized under the panchanama forthwith.

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

(MANGESH S. PATIL, J.)

(R.M.BORDE, J.)

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vmk/-