

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

WRIT PETITION NO. 13766 OF 2018

VILAS S/O. BAPURAO SHINDE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Dhananjay M. Shinde
AGP for Respondents No. 1 to 5 : Mr. S. B. Narawade

...
**CORAM : S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATED : 20th DECEMBER, 2018

Order :-

Heard learned counsel appearing for the parties. We have carefully perused the pleadings and annexure thereto, *prima facie*, it appears that seizure of the vehicle by *Talathi* is not well within his powers. In the similar set of facts, the Division Bench of this Court (Coram: R.M. Borde & Mangesh S. Patil, JJ.) in oral Judgment dated 6th October, 2018, in paragraph Nos. 3 and 4 held that :

"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 panchnama forthwith."

2. In that view of the matter, the order passed by respondents, directing seizure of the vehicle under *panchnama* drawn by *Talathi* is quashed and set aside. The respondents are directed to release the seized vehicle under *panchnama*, forthwith.

3. We have not granted relief to the petitioners in respect of penalty imposed on them. So far as amount towards penalty mentioned in Exhibit-F (page nos. 30 and 31) is concerned, the petitioners will be at liberty to avail of alternate remedy, as may be permissible in law.

4. With the above observations, the Writ Petition stands disposed of. No costs.

[K. K. SONAWANE, J.]

[S. S. SHINDE, J.]