

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

WRIT PETITION NO.249 OF 2019

Rafiq S/o Haider Pinjari
Age 42 years, Occu. :Business
R/o. 08, Sonabai Nagar, Nandurbar
Dist. Nandurbar

... Petitioner

VERSUS

1. The State of Maharashtra
Through its Principal Secretary
Revenue and Forest Department
Mantralaya Mumbai - 32.
 2. The District Collector,
Collector Office, Nandurbar
 3. The Deputy Collector,
Sub Divisional Office, Nandurbar
 4. The Tahsildar,
Tahsil Office, Nandurbar
 5. The Talathi,
Tahsil Office, Nandurbar.
 6. The Circle Inspecotr,
Tahsil Office, Nandurbar.
- ... Respondents.

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Mr. M.V. Ghatge, Advocate for Petitioner;
Mr. A.R. Kale, A.G.P. for Respondent Nos. 1 to 6.

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**CORAM : PRASANNA B. VARALE
AND
S.M. GAVHANE, JJ**

DATED : 04th MARCH, 2019

PER COURT:-

1. Heard Mr. Ghatge, learned counsel for the petitioner.
2. The petitioner is challenging the action of the respondent authorities, whereby a vehicle of the petitioner is seized on an allegation that the vehicle was transporting sand illegally. The petitioner also challenged the notice issued to him dated 05.12.2018, wherein the respondent authority imposed penalty.
3. In so far as the first grievance is concerned, Mr. Ghatge, learned counsel was fair enough in submitting before us that on two grounds, the action of seizure of vehicle is unsustainable. Firstly, perusal of the *Panchanama* shows that at the time of drawing *Panchanama*, it is stated that the vehicle was empty and sand stock was already unloaded from the vehicle, and secondly, the *Panchanama* is drawn in presence of the Circle Officer and the Talathi. In support of his submissions, the counsel for the Petitioner placed reliance on the order earlier passed by this Court in Writ Petition No.13766/2018. Though, the learned counsel in support of his submissions invited our attention to the photographs placed on record in so far as the aspect whether the vehicle was empty or filled in with sand stock, we are not going into that aspect for the reason the authority who has drawn the *Panchanama* is not competent to seize the vehicle.

4. As a view is consistently taken by this Court and the learned counsel also relied on the order dated 20.12.2018 passed by this Court in Writ Petition 13766/2018, the petition is partly allowed. The order passed by the Respondent authorities, directing seizure of the vehicle under *Panchanama* drawn by the Talathi is quashed and set aside. The Respondent authorities is directed to release the vehicle forthwith.

5. In so far as the aspect of imposition of penalty is concerned, the Petitioner can certainly avail the remedy, which is alternate and efficacious to approach the competent authority raising the said grievance.

6. With above observations and directions, the petition is disposed of.

(S.M. GAVHANE)
JUDGE

(PRASANNA B. VARALE)
JUDGE