

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

WRIT PETITION NO.230 OF 2019

Sayyed Iqbal S/o Sayyed Safdar
Age: 57 years, Occu.: Business
R/o. Chirag Ali Mohalla, 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. Mr. Ghatge, learned counsel for the Petitioner submitted that the notice was issued on 05.12.2018. The reply is also filed Shri Mahendra Uttam Kadambande on behalf of Respondent No.4 Considering the contentions raised in the petition as well as considering the documents placed on record, and the reply filed by Respondent No.4, the Petition is taking for final disposal at the admission State by the consent of the parties.
3. Mr. Ghatge, learned counsel for the Petitioner submitted that the petition is engaged in business of construction and transportation. The Petitioner is owner of vehicle – Tractor bearing registration no. MH 18 A1522. This vehicle was purchased by the petitioner for his business purpose. When the said vehicle was traveling from Gujarat to Nandurbar, the same was apprehended by Respondent No.6. A *Panchanama* was drawn. Statement of the driver is also recorded. In the *Panchanama*, it is stated that the vehicle was used for transportation of the minerals, and on inspection of the vehicle, it reveals that 1 Brass sand quantity was stored in the vehicle. A notice was issued to the Petitioner on 05.12.2018. It is stated in the notice that vehicle was apprehended on 04.11.2018, and on

enquiry, the driver of the vehicle failed to produced licence or permit for transportation of the mineral, as such, by invoking the powers under the provisions of the Maharashtra Land Revenue Code, 1966 and more particularly under Section 48(8)(1), penalty to the tune of Rs.1,15,600/- is imposed by on the Petitioner. Mr. Ghatge, learned counsel for the petitioner vehemently submitted that the action of the authority by seizure and confiscation of the vehicle and imposing of the penalty on the Petitioner is unsustainable. Learned counsel submitted that the Petitioner had lifted sand from the construction sites and was removing it from one place to other place only for his own personal work, which was in progress. The statement finds place in the petition at page no.6. It was further submitted by Mr. Ghatge, the learned counsel that the petitioner is a handicapped person and use of the vehicle – Tractor for his business purpose only to earn th livelihood. The learned counsel further vehemently submitted that the *Panchanama* was drawn in presence of Talathi and Circle Officer. This exercise itself was in contravention of the provisions. Mr. Ghatge, learned counsel also placed reliance on order of this Court and submitted that such an exercise of seizure of the vehicle or confiscation of the vehicle under a *Panchanama*, and only Talathi and other *Panchas* have signatory to this *Panchanama* in absence of the Tahsildar is negated and turn down by this Court in various petition under the

orders of this Court. Learned counsel then submitted the alleged quantity of the sand stock in the vehicle is 1 Brass. The learned counsel Mr. Ghatge invited our attention to the Maharashtra Land Revenue. (Extraction and Removal of Minerals) Rules, 1968 and particularly Rule 2, which reads as under:

"2. Removal of Minor Mineral except sand by villagers for their own use:

Subject to the provisions of these rules, with the prior permission of the Tahsildarin writing but without payment of any fee or royalty, any resident of any village may, for his own domestic or agricultural purpose, including building of well, remove not more than two brass of each minor mineral (earth, bank, stone, kankar, gravel or murum), from any unassessed Government waste land assigned by the Collector for this purpose under section 22 of the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966), or any tank, right to which is vested in the State Government. Such written permission shall be granted by the Tahsildar within a period of fifteen days from the date of receipt of such application:

Provided that, no stone from any taken which may have fallen in it from its bank shall be removed and no excavation shall be made within 4.5 meters of the foot of the embankment of any such tank."

4. Learned AGP oppose the petition. The learned AGP submits that as a final order is passed by the Tahsildar, Nandurbar dated 21.12.2018, under the provisions of the Code and more

particularly under Section 48(7)(8)(9). The learned AGP then submitted that though the petitioner has raised the ground that the sand was to be transported for the personal use, when the statement was recorded by the authorities, the driver of the vehicle failed to submit any such ground. The learned AGP then submitted that the authority before whom the Petitioner would file the proceeding challenging the final order of penalty shall also consider the application for release of the vehicle, if such application is submitted by the petitioner to the authority. The learned AGP placed reliance on the judgment of the Division Bench of this Court dated 02.08.2018 in Writ Petition No.4258/2018.

5. Considering the the rival submissions of the counsel, we are of the opinion that the Petition can be disposed of by allowing the petition partly. As we find considerable merit in the submissions of Mr. Ghatge, that the exercise of seizure of the vehicle or confiscation of the vehicle under a *Panchanama*, in absence of the Tahsildar is not approved by this Court in the identical circumstances, and considering the fact that the petitioner is a handicapped person and to support this contention that the Petitioner is also placed on record the disability certificate at Exhibit 'D', we direct the authorities to release the vehicle of the petitioner and permit to operate the vehicle on the statement of

the counsel that the petitioner would approach the authority raising a challenge to the final order of the authority dated 31.12.2018 along with an application for releasing the vehicle. The permission is granted to the Petitioner to operate the vehicle subject to the decision of the authority on the application, which would be filed by the Petitioner. If the petitioner submits the appeal along with the application within (2) two weeks, the authority to pass appropriate order on the application within (2) weeks from the date of submitting the application to the authority and make appropriate decision on the aspect of the imposition of penalty on the merits of the proceedings/appeal.

6. With these observations, we direct the respondent authorities to release the vehicle forthwith. The Petitioner submits that he will file appropriate proceeding challenging the order of imposition of penalty. The petition is disposed of.

(S.M. GAVHANE)
JUDGE

(PRASANNA B. VARALE)
JUDGE