IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11840 OF 2016

1. Dineshbhai Bhikabhai Malviya
Proprietor of Sagar Enterprises,
having address at Saveni, Tal. Kamrej,
District Surat, Gujrat State **...Petitioner**

Versus

1. The State of Maharashtra
Through the Tahsildar (Revenue
Department) Dahanue Fort,
Taluka Dahanu, Dist. Palghar–401 601
2. The In-charge of Police Station, Kasa
Police Station, Tal. Dahanu,
Dist. Palghar - 401 601. ...**Respondents**

WITH
WRIT PETITION NO. 1233 OF 2016
WITH
CIVIL APPLICATION NO. 340 OF 2016

1. Pankaj C. Mehta s/o Chimanlal Mehta,
aged : 53 years, Occu. : Transporter,
having address at : Room No.10,
Bhagirath Niwas, Carter Road No.3,
Borivali (E), Mumbai – 400 066.
2. Nirmalbhai Y. Gheenaiya s/o
Yogeshbhai Gheenaiya, aged : 28 years,
Occupation : Business, having address
at: Shree Gajanan Bilcon, Raj Carbon P
Ltd., Survey No.98, Jitnagar, Rajpipla,
Narmada – 393 145.

...Petitioners

Versus

1. State of Maharashtra, Represented by
Government Pleader
2. Tehsildar (Revenue Department)
Killa Bunder Road, Malonde, Vasai
village, Taluka Vasai, District Palghar,
Pin Code – 401 201.

3. Inspector Of Police, Vasai Police Station Killa Rd., Police Colony, Vasai West – 401 201. **...Respondents**

Mr. Nitin Gangal, for the Petitioner in WP No.11840/2016.
Mr. Sachin Kanse, a/w Mr. Ashish Kanojia, I/b PRS Legal, for the Petitioner in WP No.1233/2016.
Dr. Mrs. K. R. Kulkarni, AGP for Respondent nos.1 and 2/State in both Petitions and for the Applicant in CA No.340/2016.

CORAM: R. M. BORDE &
N. J. JAMADAR, JJ.
DATED: 25th JULY, 2019.

JUDGMENT:- (Per N. J. Jamadar, J.)

1. Rule. Rule made returnable forthwith and with the consent of the learned Counsels for the parties, heard finally at the stage of admission.

2. The challenge in these petitions, under Article 226 of the Constitution of India, is to the action of the Revenue Authorities of seizing the vehicles carrying the ready-mix plast, and imposition of the penalty for alleged unauthorised transportation, by invoking the provisions contained in Section 48(8) of the Maharashtra Land Revenue Code, 1966 ("the Code"), on the premise that it constitutes illegal transportation of minor minerals.

3. In brief, the facts leading to the present petitions can be stated as under:

Writ Petition No.11840 of 2016:

The petitioner in Writ Petition No.11840 of 2016 is a manufacturer of ready-mix plast based at Surat. The Petitioner claims to possess all the requisite licences to manufacture, process and supply the ready-mix plast, which primarily contains sand and partly contains fly-ash. An order was placed by Kamdhenu Mega-Structure Pvt. Ltd. Kharghar, Navi Mumbai, for supply of 28 tonnes ready-mix plast. After making a declaration, as envisaged under Section 68 of Gujrat Value Added Tax Act, 2003, the petitioner despatched the ready-mix by a truck bearing No.MH-43-Y-3289. The Police attached to Kasa Police Station intercepted the said truck at Charoti Naka, Taluka Dahanu, on 30th September, 2016. The police thereafter handed over the said ready-mix plast laden truck to Tahsildar, Dahanu Fort, Taluka Dahanu. The later confiscated the said vehicle without adhering to the mandatory requirement of drawing a panchnama. Respondent no.1 passed an order on 3rd October, 2016, levying penalty of Rs.2,49,500/- for alleged unauthorised transportation of 5 brass sand. The petitioner has, thus, invoked the writ jurisdiction of this Court asserting that the impugned action is wholly arbitrary, without any authority of law and beyond the competence of the revenue authorities.

Writ Petition No.1233 of 2016:

Petitioner no.2 in Writ Petition No.1233 of 2016 deals in the business of storage, processing and sale of gravel / sand, under the name and style of Shree Gajanan Bilcon. Petitioner no.2 has all the requisite licenses. In pursuance of an order placed by M/s. Bhanu International, Nerul, Navi Mumai, for supply of ready-mix plast, petitioner no.2 had prepared the ready-mix plast and dispatched the same by a truck bearing registration No.MH-43-U-2973, owned by petitioner no.1. On 19th January, 2016, while the said truck was passing through Palghar district, the officers of respondent no.2 unauthorisedly seized the said ready-mix plast laden truck. A notice was addressed by respondent no.2 on 21st January, 2016, contending that it was found that illegally excavated 5.75 brass sand was transported in the said truck and, thus, a penalty of Rs.2,86,925/- was levied upon petitioner no.1. It was further informed that the said truck would be released only after deposit of the penalty amount. The petitioners have assailed the said action and the consequential communication dated 21st January, 2016.

4. It would be apposite to note that in Writ Petition No.11840 of 2016, by way of an interim order, this Court directed respondent to release the truck bearing registration No.MH-43-Y-3289, subject to the petitioners depositing 25% of the amount mentioned in the notice dated 3rd October, 2016, impugned therein. Likewise, in Writ Petition No.1233 of 2016, by order dated 29th January, 2016, the Respondents were directed to release the truck.

5. We have heard Mr. Gangal, the learned Counsel for the petitioner in Writ Petition No.11840 of 2016, Mr. Kanse, the learned Counsel for the petitioner in Writ Petition No.1233 of 2016 and Mrs. Kulkarni, the learned AGP for the State/Respondents in both petitions.

6. Mr. Gangal, the learned Counsel for the petitioner urged that the officials of the respondents have brazenly proceeded to take high-handed action of seizing the trucks laden with ready-mix plast, without following a modicum of procedure in the nature of at least drawing a panchnama to evidence the seizure. It was further urged that the officials of the respondents have levied the penalty under the impugned orders, for the transportation of allegedly illegally excavated sand, in utter disregard to the statutory and regulatory framework. On the one hand, there is no prohibition for import and transportation of ready-mix plast, which is a distinct finished product, though the major component thereof is sand. On the other hand, the transportation of the sand lawfully excavated in the State of Gujrat can not be a subject matter of regulation and levy of penalty in the State of Maharashtra. To bolster up this submission, the learned Counsel for the petitioners placed reliance on a judgment of a Division Bench of this Court in the case of ***Dipak Logistics and Forwarders and another vs. The State of Maharashtra and others, in Writ Petition No.1273 of 2018, with connected Writ Petition No.1274 of 2018***, dated 6th February, 2018, of which one of us, (R. M. Borde, J.), was a member.

7. In the case of ***Dipak Logistics*** (supra), the circular dated 19th January, 2018 issued by the Collector, Palghar, prohibiting the transportation of ready-mix plast from the State of Gujrat into the State of Maharashtra, was challenged. The said circular was issued by the Collector, Palghar placing reliance upon a Notification issued by the State of Gujrat on 11th June, 2010, in the purported exercise of the power under Section 15 read with Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957, so as to incorporate Rule 44-BB, which prohibited the movement of sand beyond the border of the State of Gujrat. Rule 44-BB of the Gujrat Minor Mineral (Amendment) Rules, 2010; (as it stood then) read as under:

> "**Rule 44-BB** – No movement of sand shall be allowed beyond the border of the State. In case any vehicle is found transporting sand to the neighbouring State, even with authorized royalty pass or delivery challan, it shall be treated as violation of the Act and the Rules made thereunder and the penal provisions as specified therein shall be applicable."

8. This Court after consideration of the judgment of the Division Bench of the Gujrat High Court in the case of ***Jayeshbhai Kanjibhai Kalathia and others vs. State of Gujarat and others, in Special Civil Application Nos.7321 of 2010 and 6204 of 2010, dated 19th October, 2010,*** wherein the said rule was struck down by the Division Bench of the Gujrat High Court, observed that there does not appear to be any logical reason to overlook the judgment delivered by the Gujrat High Court. The Division Bench of this Court observed as under:

> "In the instant matter the Petitioners are alleged to have transported the Ready mix plaster from the State of Gujarat. <u>It has not been brought to our notice that the transportation of Ready Mix plaster is prohibited in the State. The policy regulating transportation of sand cannot be made applicable to the transportation of Ready Mix plaster</u>. The final product attracts 18% GST which is said to have been paid by the Petitioners. <u>The circular issued by the Collector, Palghar on 19th January, 2018, as such, deserved to be quashed and set aside and the same is, accordingly, quashed and set aside. The consequent action based on the aforesaid circular also, therefore, deserves to be quashed</u>."
>
> (emphasis supplied)

9. The Division Bench further observed that while issuing the said circular dated 19th January, 2018, the Collector, Palghar, had even not verified as to whether the rule on which reliance was placed for issuing the said circular was operative even in the State of Gujarat leave apart its inapplicability in the State of Maharashtra.

10. It would be contextually relevant to note that, the judgment in ***Jayeshbhai*** (supra) was challenged by the State of Gujarat in ***Civil Appeal Nos.10373 and 10374 of 2010*** (***State of Gujarat and others vs. Jayeshbhai Kanjibhai Kalthiya and others)***, before the Supreme Court. In the said case, the Supreme Court, after noticing controversy and rival submissions, culled out the issues that arose for consideration in paragraph 34, which read thus:

> "**34**. From the subject matter of these appeals as well as arguments noted above, it clearly follows that the main issues that arise for consideration are as under:
>
> (**a**) Whether the impugned rules framed by the State of Gujarat as a delegate of Parliament are beyond the powers granted to it under the MMDR Act? In other words, whether the impugned rules are ultra vires Sections 15, 15A and 23-C of the MMDR Act?
>
> (**b**) Whether the impugned rules are violative of Part XIII of the Constitution of India?"

11. The Supreme Court, answered the aforesaid issues as under:

"**40**. On the other hand, the prohibition on the transport or sale of the already mined minerals outside the State has no direct nexus with the object and purpose of the MMDR Act which is concerned with conservation and prudent exploitation of minerals.

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42. It is in this context the words 'transportation' and 'storage' in Section 23-C are to be interpreted. Here the two words are used in the context of 'illegal mining'. It is clear that it is the transportation and storage of illegal mining and not the mining of minor minerals like sand which is legal and backed by duly granted license, which can be regulated under this provision. Therefore, no power flows from this provision to make rule for regulating transportation of the legally excavated minerals.

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46. In order to justify any 'preference' or 'discrimination' under Article 303, a scarcity of goods would have to be made out. It is a matter of record that the Study Group's report on which reliance is placed by the appellant focuses on the need to restrict the export of sand outside India and not within India. In any case, nothing prevents the appellant from restricting the quantum of sand being excavated. However, once the appellant State permits sand to be excavated, neither can it legally restrict its movement within the territory of India nor is the same constitutionally permissible. Likewise, there is no restriction on the State importing sand from other states. If it is the case that the demand of any State is not being met, it may purchase sand from other states. In any event, the market will dictate trade in sand inasmuch as it may make no business sense for mining company to transport and sell its sand in a far away destination after incurring large costs on transportation.

47. We, thus, answer both the questions against the appellants."

(emphasis supplied)

12. In the light of the aforesaid enunciation of the legal position, it can not be gainsaid that no power flows from the provisions of the Mines and Minerals (Development and Regulation) Act, 1957, to make rules for regulating transportation of legally excavated minerals. The State cannot restrict the movement of the sand legally excavated within the territory of India.

13. In the backdrop of the aforesaid position, we were anxious to understand the stand of the authorities of the State in justification of the impugned actions. However, despite ample opportunities, the respondents have not tendered any justifiable explanation in support of the impugned action.

14. From the perusal of the material on record, we have found that the petitioners, in both the petitions, were apparently transporting ready-mix plast. In view of the judgment of this Court in the case of ***Dipak Logistics*** (supra), there is no prohibition for transportation of ready-mix plast. Neither, the State Government could point out any statutory or regulatory mandate, which authorises its officials to seize ready-mix plast. Nor any endeavour was made on behalf of the respondents to place material on record to show to the contrary and establish that what was being transported was not ready-mix plast but sand only. Even if we assume that the commodity which was allegedly transported was not ready-mix plast but sand, pure and simple, then also, in view of the pronouncement of the Supreme Court in the case of ***Jayeshbhai*** (supra), even the transportation of the sand lawfully excavated in the State of

Gujarat into the State of Maharashtra can not be a subject matter of any action by invoking the provisions contained in Mines and Minerals (Development and Regulation) Act, 1957.

15. The conspectus of the aforesaid consideration is that the impugned actions in both the petitions are arbitrary, sans any statutory mandate and beyond the authority vested in the officers/officials of the respondents. We are, thus, persuaded to allow the petitions. Hence the following order;

:O R D E R:

1. Writ Petition No.11840 of 2016 stands allowed.

(i) The impugned order issued by Respondent no.1 on 3rd October, 2016, levying penalty of Rs.2,49,500/- stands quashed and set aside.

(ii) The Respondents are directed to refund 25% of the amount of the penalty, mentioned in the said notice dated 3rd October, 2016, which has been deposited by the petitioner in adherence to the interim order passed by this Court on 15th October, 2016, within a period of four weeks from today.

2. Writ Petition No.1233 of 2016 stands allowed.

The impugned communication dated 21st January, 2016, levying the penalty of Rs.2,85,925/- stands quashed and set aside.

3. In view of disposal of the petition, Civil Application No.340 of 2016, does not survive and stands disposed of accordingly.

4. Rule made absolute in aforesaid terms. No order as costs.

[N. J. JAMADAR, J.] **[R. M. BORDE, J.]**