

Amk

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10270 OF 2018

Vijay Sudhakar Kadam .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 6739 OF 2018**

Yogesh Hiranman Pimpale .. Petitioner
Vs.
The Tahasildar & Ors. .. Respondents

**WITH
WRIT PETITION NO. 10269 OF 2018**

Baba Rajaram Rupnavar .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 10278 OF 2018**

Yogesh Bhagwat Shinde .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 10284 OF 2018**

Bharat Bhagwat Shinde .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 10285 OF 2018**

Ajit Bharat Shinde .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 12240 OF 2018**

Satish Bhagwat Shinde	.. Petitioner
Vs.	
The State of Maharashtra & Ors.	.. Respondents

Mr. S. H. Deokar for the Petitioners in WP 10270/18, 10269/18.
Mr. Abhijeet Kandarkar for the Petitioner in WP 10278/18, 10284/18, 10285/18, 12240/18.
None for the Petitioner in WP 6739/18.
Mr. R. S. Pawar, AGP for the Respondent-State.

CORAM : R. M. BORDE & V. L. ACHLIYA, JJ.
DATE : 6th FEBRUARY, 2019.

P. C. :

1. The vehicles belonging to the Petitioners have been attached on account of violation committed by the owners of the vehicles as regards the excavation and transportation of minor mineral i.e. sand. It has been pointed out that separate crimes have been registered in respect of each of the vehicles and the vehicles have been put in the custody of the police authority. It is also evident that while dealing with the applications for release of the vehicles either by the Sessions Court or the concerned Magistrate, direction has been issued to release of the vehicles on production of the same before the Tahasildar subject to payment of royalty and penalty amount of sand, as determined by the office of the Tahasildar and subject, however, to Appellate order, if any, and the concerned Tahasildar is directed to release the vehicle forthwith on payment of royalty and penalty amount as determined. The concerned Applicants have been

directed to furnish a Supurtnama for certain amount and it was a further condition imposed by the concerned Criminal Court directing the vehicle owners to produce the vehicles before the Investigating Officer and the Court as and when required. It has also been directed to the owners of vehicles not to create third party interest by way of sale, lease, mortgage etc. and not to change nature of vehicle in question till the final disposal of the criminal cases. The vehicle owners are bound by the conditions those have been imposed by the concerned Courts. The vehicle owners also shall have to give the undertaking to the Court to the effect that they would not use the vehicles for illegal excavation or transportation of the minor minerals. Such an undertaking shall be tendered within a period of three weeks from today.

2. The concerned Tahasildar has issued orders directing the imposition of penalty for the illegal excavation of sand and has also determined the amount of royalty. The Tahasildar has imposed an additional condition in respect of payment of value/penalty for the vehicle. The Petitioner submits that the additional condition imposed by the Tahasildar as regards the payment of value/penalty in respect of vehicle is not a condition included in the order passed by the Criminal Court while directing the release of the vehicles. The Respondent-State has neither challenged the orders passed by the concerned Criminal Court nor have complied with the said interim orders. It is desirable for the State to comply with the orders passed by the Criminal Court directing the release of the vehicles and hand over the

custody of the vehicles to the Petitioners. The orders passed by the Criminal Court shall have to be implemented by the Respondents and it is, accordingly, directed.

3. It would be open for the Petitioners to challenge the orders passed by the concerned Tahasildar before the Appellate Forum and the Appellate Forum may deal with the Appeal in accordance with the provisions of law. The direction issued by Tahasildar as regards the payment of the value/penalty in respect of the vehicles shall be subject to decision of the Appellate Forum. It would be open for the Appellate Forum to determine the legality and validity of the order passed by the Tahasildar on its own merits and in accordance with law. The Appellate Forum is directed to decide the Appeal if the Petitioner presents an Appeal within a period of four weeks from today, in accordance with law and on its own merits and such Appeals shall not be turned down on account of the bar of limitation. The decision of the Appellate Forum may be brought to the notice of appropriate Criminal Court and appropriate directions as permissible in law can be requested.

4. In view of reasons recorded as above, Writ Petitions are disposed of.

[V. L. ACHLIYA, J.]

[R. M. BORDE, J.]