

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

WRIT PETITION NO. 14265 OF 2018

Kiran Nana Sangale and Anr. **... Petitioners**

V/s.

The State of Maharashtra and Ors. **... Respondents**

Mr. D.G. Khamkar for the Petitioner.

Mr. R.S. Pawar, AGP for the Respondent Nos. 1 to 3/State.

**CORAM : R.M.BORDE, &
 PUSHPA V. GANEDIWALA, JJ.**

DATE : 1st MARCH, 2019

P.C.:

1. The Petitioners are praying for issuance of directions to the Respondents to release the vehicles seized by them and which has been deposited in the Police Station. It is alleged that a JCB bearing No. MH-42-5631 was used for excavation of sand and same was seized under panchnama drawn on 19.08.2018.

2. We have perused the original record, wherein we find that in the statement given by the Petitioner No.1 he has admitted to have committed the illegality. Though Petitioner No.1 is disowning the statement and is also disputed the signature appearing on the statement, we do not propose to consider the disputed question in this petition. It is observed that the concerned Tahsildar has not followed the mandate of law. A notice has been issued to the Petitioner No.1 on 28.08.2018 calling upon him to show cause as to

why a fine amount of Rs.7,50,000/- shall not be imposed. The Petitioner No.1 tendered a reply on 10.09.2018. Tahsildar however, without considering the contention of the Petitioner and reply tendered by him, has ordered that Petitioner shall deposit the amount of fine immediately. The Tahsildar while issuing order dated 28.08.2018 has not recorded any reasons for its satisfaction.

3. The order is in the nature of the communication issued to the Petitioner. We do not find any separate order in the original record. Apart from this, it was the responsibility of the Tahsildar to observe mandate of Sub-Section 8 (2) of Section 48 of the Maharashtra Land Revenue Code. Sub-Section 8(2) of Section 48 provides thus:

“48(8)(2) Such machinery or equipment or means of transport, used for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals or transportation thereof, which is seized under Sub-Section (1), shall be produced before the Collector or such other officer not below the rank of Deputy Collector authorised by the Collector in this behalf, within a period of forty-eight hours of such seizure, who may release such seized machinery, equipment or means of transport on payment by the owner thereof of such penalty as may be prescribed and also on furnishing personal bond of an amount not exceeding the market value or the seized machinery, equipment or means of transport, stating therein that such seized machinery, equipment or means

of transport shall not be used in future for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals and transportation of the same."

4. The Tahsildar has not produced the vehicle/machinery before the Deputy Collector or the Sub Divisional Officer within period of 48 hours from such seizure. There is absolutely no reason demonstrated as to why the Tahsildar has not observed the mandate of Section 48(8)(2) of the Code.

5. For the reason recorded above, the order passed by the Tahsildar in the form of communication issued to the Petitioners on 28.12.2018 is quashed and set aside. The Tahsildar is directed to pass an appropriate order after giving hearing to the Petitioners within a period of one week from today. The Petitioners shall appear before the Tahsildar on 04.03.2019 and as such, no separate intimation shall be required to be issued to the petitioners for requiring his presence before the Tahsildar. The concerned Tahsildar shall produce the vehicle/machinery before the Sub-Divisional Officer/Deputy Collector on 04.03.2019.

6. It would be open for the Petitioners to tender application to the concerned Deputy Collector/Sub-Division Officer seeking release of the vehicle which shall be dealt with by the Sub Divisional Officer/

Deputy Collector in accordance with law. Sub-Section 8(2) of Section 48 mandates that the vehicle produced before the Sub Divisional Officer shall be released on payment by owner thereof such penalty as may be prescribed and also on furnishing personal bond of an amount not extending market value of seized machinery, equipment or means of transport, stating therein that such seized machinery, equipment or means of transport shall not be used in future for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals and transportation of the same.

7. Apart from this, the separate Rules prescribed by State of Maharashtra in respect of extraction of minor minerals also require payment of value and vehicle while directing its release. It would be open for the Sub Divisional Officer/Deputy Collector to look into the relevant provision and pass appropriate order directing release of the vehicle subject to conditions provided under the Act or the relevant Rules. The Sub Divisional Officer shall pass necessary order within a period of two days from the date of production of vehicle.

8. With the aforesaid directions, Writ Petition is disposed of.

(PUSHPA V. GANEDIWALA, J.)

(R.M.BORDE, J.)