

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

WRIT PETITION NO. 3118 OF 2020

Ajay Piraji Gavali and another .. Petitioners

Versus

The State of Maharashtra and another .. Respondents

Shri Chaitanya C. Deshpande, Advocate for Petitioners.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 1 to 5.

**CORAM : S. V. GANGAPURWALA AND
R. G. AVACHAT, JJ.**

DATE : 06TH JULY, 2020.

FINAL ORDER :

. Vehicle of the petitioner No. 1 has been seized by the police authorities. Mr. Deshpande, the learned counsel for the petitioner submits that, F.I.R. has not been lodged against the petitioner or the vehicle, still the police authorities have seized the vehicle and today vehicle is in the custody of the police authorities in the police station. The learned counsel further submits that, fine and penalty is imposed without authority of law and without following due procedure U/Sec. 48 of the Maharashtra Land Revenue Code. The learned counsel submits that, alternate remedy is no bar, more particularly when the action is without jurisdiction.

2. Mr. Karlekar, the learned Assistant Government Pleader for respondents submits that, the authorities have the power to

impose fine and penalty on the vehicle also. As the petitioner has remedy of appeal, he will have to avail the remedy of an appeal.

3. Rule of alternate remedy is a rule of self restraint. The petitioner can file an appeal against imposition of fine and penalty.

4. Accepting the contention of the learned advocate for the petitioner that, no FIR has been filed till today, it was inappropriate on the part of the police authorities to retain the custody of the vehicle.

5. In the light of the above, we pass the following order.

6. The police authorities shall release the vehicle of the petitioner i. e. tractor bearing No. MH-18/AA-0515 seized by the Police Inspector, Songir Police Station. The petitioner No. 1 shall deposit an amount of Rs. 1,00,000/- (Rs. One Lac only) with the respondents without prejudice to his rights and contentions. The said deposit would be subject to the decision in appeal that may be taken up by the appellate authority, in case the petitioners file an appeal against imposition of fine and penalty by the Tahsildar Ghansavangi. In case, appeal is not filed by the petitioners within a period of one (01) month against the fine and penalty imposed, then the respondent authorities may initiate further course of action against the vehicle of this petitioner No. 1. The petitioners shall also submit a bond with the police

station that the vehicle shall not be alienated or transferred pending the appeal and that the vehicle shall not be used for any illegal purpose. The deposit of amount is condition precedent. Upon the petitioners producing the receipt of deposit of amount as directed above, the respondents shall release the vehicle of the petitioner immediately.

7. In the light of the above, the writ petition is disposed of.

[R. G. AVACHAT, J.]

[S. V. GANGAPURWALA, J.]

bsb/July 20