

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

15 WRIT PETITION NO.7672 OF 2021

RAHUL BHAVRAO PATIL
VERSUS
THE STATE OF MAHARASHTRA
THROUGH SECRETARY AND OTHERS

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Mr. Syed Azizoddin, Advocate for the petitioners.
Mr. Kishor Hoke Patil, A.G.P. for the State.

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CORAM : **AVINASH G. GHAROTE, J.**

DATE : 19-07-2021.

ORDER :

1. Heard Mr. Syed, learned Counsel for the petitioner. Mr. Patil, learned A.G.P. waives notice for the respondent Nos.1 to 5.

2. The petition challenges the order dated 08.02.2021 whereby the JCB of the petitioner, was seized under Section 48 (8) (1) of the Maharashtra Land Revenue Code and the order dated 10.02.2021 by which the petitioner, is directed to pay a penalty of Rs. 7,50,000/- for excavation and transport of minor mineral. The appeal against the same under Section 247 of the MLR Code, has been rejected by an order dated 15.06.2021.

3. Mr. Syed, learned Counsel for the petitioner contends, that it is an admitted position on record that what was found in the JCB, was ordinary earth, which was according to him required in

pursuance to the communication by dated 06.02.2021 issued by Grampanchayat for filling up the foundation of construction of the residential units made in pursuance of the Pradhanmantri Awas Yozna which had come up to the plinth level for which the Grampanchayat, had engaged the services of the petitioner. It is an admitted position, that the petitioner made this excavation and what was found was ordinary earth and nothing else, which is indicated from the vehicle seizure order dated 08.02.2021. It is not disputed, that under the Maharashtra Land Revenue (Extraction and Removal of Minor Minerals) Rules, 1968, as amended by the Notification dated 12.01.2018, removal of minor minerals except sand by villagers for their own use, is permitted, with the prior permission of the Tahsildar in writing. It is also not disputed, that the any excavation without lawful authority, is prohibited under Section 48 (7) of the MLR Code. It is an admitted position that there was no permission by the Tahsildar in this regard and therefore, in the appeal memo itself, the petitioner, had admitted his liability to pay, the reasonable value of the ordinary earth in ground (h). The Tahsildar, however has imposed a penalty of Rs. 7,50,000/-. A perusal of the order dated 10.02.2021, indicates, that there is no justification whatsoever for arriving at the amount of Rs. 7,50,000/- by the Tahsildar. When admittedly what was found, was ordinary earth, the imposition of a huge amount of Rs. 7,50,000/-, was required to be justified, which is absent. The impugned order dated 10.02.2021, therefore, on this count cannot be sustained and the

same is quashed and set aside. Since the quantum of ordinary earth found, is now established, there is also no justification in continuing with the order dated 08.02.2021, whereby the vehicle of the petitioner has been seized. The said order also is quashed and set aside. The Tahsildar, is therefore, directed to determine the reasonable price of the quantity of the ordinary earth found and levy a penalty in accordance with law, which shall be paid by the petitioner. The JCB seized, should be immediately released and place in the possession of the petitioner, the next day of the payment of the penalty as determined. The Tahsildar is directed to re-determine the penalty within a period of three days from the date of this order which shall be communicated to the Tahsildar by the learned A.G.P. today itself.

4. The petition is accordingly disposed of.

(AVINASH G. GHAROTE, J.)

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