

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

CRIMINAL WRIT PETITION NO.1380 OF 2020

Shri Vijay s/o Sitaram Bhonde ... **PETITIONER**

VERSUS

The State of Maharashtra ... **RESPONDENT**

.....
Shri B.S. Deshmukh, Advocate for petitioner
Shri S.N. Kendre, A.P.P. for respondent – State
.....

CORAM : R. G. AVACHAT, J.

DATE : 22nd JUNE, 2021

ORDER:

By this writ petition, clause (2) of operative paragraph of the order dated 11/6/2020, passed by the Court of Assistant Sessions Judge, Jalgaon in Sessions Case No.76/2020 is sought to be set aside. Vide the impugned clause in the order, the petitioner has been directed to obtain No Objection Certificate from the Revenue Department and produce the same before the investigating officer and then only his vehicle namely JCB Machine No.MH-28/AG-1771 is directed to be released in his favour.

2. Heard Mr. Deshmukh, learned counsel for the petitioner. Perused the impugned order and the relevant papers. A Crime vide C.R. No.360/2019 has been registered at Pachora Police Station for the offence punishable under Sections 379, 353, 392 read with Section 34 of the Indian Penal Code. The F.I.R. has been lodged by the Village Talathi. It is alleged in the F.I.R. that, on 17/11/2019, the informant and other officials of the squad formed for detection of unauthorised excavation of minor minerals were on patrolling duty. The informant received a tip of that, at sandspot Gut No.6, at village Kurangi, one Ayunuddin Patve and three other persons were engaged in loading sand by means of JCBs in tractors. The informant and others, therefore, went to the said place and seized the tractors and JCB under the panchanama. While these vehicles were being taken to the Tahsil Office, Pachora, the JCB Driver Kiran Patil and Ayunuddin Patve fled with those vehicles.

3. The present petitioner moved the application under Section 451 of the Code of Criminal Procedure for custody of the JCB Machine. On hearing the other side, the learned Assistant Sessions Judge granted the application interalia on the condition of the petitioner to produce the No Objection Certificate of the Revenue Department.

4. Section 48(8) of the Maharashtra Land Revenue Code (MLRC) speaks that the Collector or any Revenue Officer authorised by the Collector in this behalf, may seize and confiscate any mineral extracted, removed, collected, replaced, picked up or disposed of from any mine, quarry or other place referred to in sub-section (7), the right to which vests in, and has not been assigned by the State Government, and may also seize and confiscate any machinery and equipment used for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals and any means of transport deployed to transport the same.

5. The order passed by the Assistant Sessions Judge, granting custody of the JCB machine to the petitioner on condition has not been challenged by the State. It is informed that, the revenue authorities have independently initiated proceedings under Section 48 of the MLRC. Those proceedings may be taken to logical conclusion. In the said proceedings, vehicles used for unauthorised transportation of sand, may be confiscated. Since the proceedings under Section 48 of the MLRC are independent one, and the revenue authorities initiated the same, the learned Assistant Sessions

Judge ought not to have imposed the impugned condition. The said condition is, therefore, liable to be set aside. In the result, the petition succeeds in terms of prayer clause (C).

6. It is, however, made clear that, the revenue authorities may exercise their powers under Section 48(8) of the Maharashtra Land Revenue Code.

**(R. G. AVACHAT)
JUDGE**

fmp/-