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

WRIT PETITION NO. 2955 OF 2021

ASHOK MAHADEO ALDAR ..PETITIONER
VS.
THE STATE OF MAHARASHTRA & ORS. ..RESPONDENTS

Mr. B.A. Lawate for the petitioner.
Mr. C.D. Mali, AGP for the respondents – State.

CORAM : M.S.KARNIK, J.

DATE : AUGUST 18, 2021

P.C.:-

Heard learned counsel for the petitioner.

2. The Tahsildar, Sangola by the order dated 15/1/2020 confiscated the JCB machine of the petitioner for illegal transport of three brass sand. The penalty upto 5 times was levied, the total of which comes to Rs.1,05,000/-. Further penalty of Rs.7,50,000/- and royalty amount of Rs.6,402/- coupled with land rent Rs.550/- totalling Rs.8,61,952/- was imposed on the petitioner.

3. The petitioner has filed an appeal before the Sub-Divisional Officer (SDO) against the said order in 2020. The said appeal is

pending. Even the application for stay is not yet decided. Learned counsel for the petitioner submits that the JCB machine is confiscated since 10/1/2020 and his business is suffering as that is the only source of his livelihood. He submits that he is willing to deposit reasonable amount with the Tahsildar and subject to conditions the machine be released as the same will further deteriorate if it lies idle.

4. Learned AGP contended that as the appeal is pending, the Petition should not be entertained. He submits that the application for stay can be directed to be decided.

5. I am of the opinion that having regard to the facts and circumstances of the present case, the petitioner can be put to some terms and JCB machine can be directed to be released. Hence the following order.

ORDER

i. Subject to the petitioner depositing a sum of Rs.1 lakh with the Tahsildar within a period of two weeks from today, the JCB machine be released.

ii. The petitioner to file an undertaking before the Tahsildar that he shall not sell, dispose of or otherwise use

the JCB machine except for legitimate business purpose. The said undertaking and the deposit is subject to orders in the appeal before the SDO.

iii. The petitioner shall produce the JCB machine as and when asked for by the Tahsildar.

iv. The SDO is free to decide the appeal on its own merits and in accordance with law.

6. All contentions are kept open.

7. The Writ Petition is disposed of.

(M.S. KARNIK, J.)