

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2117 OF 2021**

Avinash s/o. Vitthal Darekar ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

Mr. Nitin Gaware Patil for the Petitioner.

Ms. M.P. Thakur, AGP for the State.

**CORAM : S.J. KATHAWALLA, &
MILIND N. JADHAV, JJ.**

DATE : 24TH JUNE, 2021

(THROUGH VIDEO CONFERENCING)

PC. :

1. By the above Writ Petition the Petitioner has impugned the Order dated 23.03.2021 passed by the Respondent No. 3 Tahsildar, Junnar, District Pune and has sought a writ of mandamus directing the Respondent Nos. 2 and 3 i.e. the Collector and the Tahsildar respectively to forthwith release the vehicle of the Petitioner namely Hyva Truck 1618-LPK bearing registration No. MH-19-Z-9929 (**the said vehicle**).

2. We have heard the learned Advocate appearing for the Petitioner and the learned AGP at some length.

3. Admittedly, the impugned Order has been passed a day after the issuance of the Show Cause Notice without giving a hearing to the Petitioner.

There are several submissions which the Petitioner has made in support of his case that the impugned Order is passed without considering the facts in the matter and the applicable legal provisions. In fact, it is inter alia submitted that though the said vehicle is detained since 18.03.2021 on the ground of unauthorized transportation of sand no FIR has been filed till date against the Petitioner nor the procedure under Section 48 (8) (2) of the Maharashtra Land Revenue Code, 1966 (**MLR Code**) of producing the seized vehicle alongwith sand before the Collector within 48 hours of seizure for release has been followed in the present case. It is also submitted that by such illegal detention of the said vehicle the Petitioner has been deprived of his livelihood.

4. However, as pointed out by the learned AGP, the impugned Order dated 23.03.2021 passed by the Respondent No. 3 is an Appealable Order.

5. In view of the above, we pass the following Order :

- i. The Petitioner shall within a period of two weeks from today file an Appeal before the Appellate Authority impugning the Order dated 23.03.2021 passed by the Respondent No. 3 Tahsildar, Junnar, District Pune. The delay if any, in filing the Appeal is condoned.
- ii. The Petitioner shall without prejudice to his rights and contentions deposit an amount of Rs. 1,50,000/- with the Respondents within a period of one week from the date of uploading of this Order.
- iii. The Petitioner shall within one week from the date of uploading of

this Order execute a bond undertaking that he will not sell, alienate or transfer the said vehicle pending the decision of the Appellate Authority in the Appeal to be filed by the Petitioner and that the said vehicle will not be used for transportation of any minerals unauthorizedly.

iv. Upon the Petitioner complying with clauses (ii) and (iii) above, the Respondents shall forthwith handover the said vehicle to the Petitioner.

v. The Appellate Authority shall upon being satisfied that clauses (ii) and (iii) above have been complied with by the Petitioner, hear the Petitioner and decide the Appeal filed by the Petitioner strictly on its merits and without being influenced by this Order, within a period of 4 weeks from the day of its filing. The Appellate Authority shall in its Order deal with all the submissions advanced by the Petitioner.

vi. The above Writ petition is accordingly disposed off.

(MILIND N. JADHAV, J.)

(S.J. KATHAWALLA, J.)