

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3976 OF 2021**

Vaijnath Bhima Devkar .. Petitioner

vs.

The State of Maharashtra .. Respondent

Mr. Jitendra R. Gautam a/w Mr. Amit G. Dubey for the Petitioner.

Mr. P.V. Nelson Rajan, AGP for the State.

CORAM : M.S.KARNIK, J.

DATE : AUGUST 17, 2021

P.C.

Heard learned counsel for the parties.

2. The Petitioner's truck was seized by the Tahsildar under the provisions of Sub-Section 8 of Section 48 of the Maharashtra Land Revenue Code, 1966 ('the Code' for short) as according to the Tahsildar the truck was involved in the illegal transportation of minerals extracted. It is the contention of learned counsel for the Petitioner that what was being transported was aggregate process material and not any mineral within the meaning of Section 48(8) of the Code. The truck was seized on 02.07.2021.

3. The Tahsildar by an order dated 02.07.2021 held that the Petitioner is liable to pay a sum of Rs.1,33,800/- being the amount of market value of the minerals along with penalty. The market

value is determined as Rs.33,800/- and Rs.1,00,000/- is towards the penalty for the use of truck in question.

4. It is the contention of learned AGP that there is a remedy of an Appeal provided under Section 247 of the Code and the Petitioner has not exhausted the alternate remedy.

5. Heard. In the present facts, therefore, the Petitioner has to be relegated to the remedy of filing an Appeal before the Sub-Divisional Officer (S.D.O.). However, as the truck has been seized as far back on 02.07.2021 and the Appeal filed before the SDO may take some time to decide, in the interest of justice, I am of the opinion that the concerned truck can be released subject to certain terms and conditions.

6. As per the order of the Tahsildar, the Petitioner is to pay an amount of Rs.1,33,800/- towards the market value of the material and the penalty for the use of the truck to transport the materials. Learned counsel for the Petitioner on instructions submits that he is willing to deposit a sum of Rs.75,000/- with the Tahsildar on or before 24.08.2021. In case this amount is deposited on or before 24.08.2021, the Tahsildar to release the truck and hand over the same to the Petitioner subject to the Petitioner giving the usual undertaking and/or subject to the Petitioner incorporating the following Clauses in the undertaking :-

- (1) That the Petitioner shall not deal with, sell, dispose of or hand over the possession of the truck to any other person.
- (2) The truck shall be used for legitimate transportation purposes only.
- (3) The truck shall be produced as and when required by the Tahsildar.

7. The said undertaking and the consequential release of the truck shall be subject to the further orders passed by the SDO in the Appeal. Learned counsel for the Petitioner submits that the Appeal will be filed before the S.D.O. within a period of two weeks from today. Statement is accepted. Subject to the what is stated hereinbefore, the present Writ Petition is disposed of. The deposit made shall abide by the orders of the S.D.O.

8. All contentions on merits are kept open to be agitated before the SDO. In the event the Appeal is not filed, the order passed by the Tahsildar shall operate and the Petitioner shall then voluntarily hand over the possession of the truck to the Tahsildar whereupon the impugned order of the Tahsildar can be taken to the logical conclusion.

(M.S.KARNIK, J.)