

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4472/2021

**Shoeb Ahemad Ajaz Ahemad..Versus... State of
Maharashtra and others**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. A.R.Ingole, Advocate for petitioner
Mr. A.A.Madiwale, AGP for Respondent Nos.1 to 5

CORAM : AVINASH G. GHAROTE, J.

DATE : 03/12/2021

Heard Mr. Ingole, learned counsel for the petitioner. The contention is that the impugned order dated 28.10.2021 has been passed under Section 48(8)(2) of the Maharashtra Land Revenue Code by the Tahsildar, who has no authority to do so, in view of the language of Section 48(8)(2) of the MLR Code, which requires an order regarding the release of the seized vehicle to be passed by an officer not below the rank of Deputy Collector, authorized by the Collector in that behalf. He therefore submits that the impugned order cannot be sustained. Reliance is placed upon **Deepak Ghadge and ors vrs. State of Maharashtra and ors; 2018 (66) GST 314.**

Learned AGP for the respondents submits that the impugned order is two fold inasmuch as, the first part of it imposes penalty five times the value of the sand in absence of a royalty pass and the second part directs the vehicle to be sent to the appropriate authority to take action under Section 48(8)(2) of the MLR Code. He therefore submits that there is no infirmity in the impugned order.

It is an admitted position, as admitted by Mr. Ingloe, learned counsel for the petitioner, that the sand was being transported without any royalty pass. That being the position, the imposition of the penalty under Section 48(7) of the MLR Code by the learned Tahsildar cannot be faulted with.

In so far as the plea that the impugned order has been passed by the Tahsildar, who does not have any authority to do so under Section 48(8)(2) of the MLR Code is concerned, it is necessary to note that the Tahsildar has not exercised any power under Section 48(8)(2) of the MLR Code. Rather the Tahsildar has merely directed transmission of the vehicle seized, to the authority competent to exercise powers and jurisdiction under Section 48(8)(2) of the MLR Code, as is apparent from the reading of part 2 of the operative part of the impugned order.

Reliance placed upon **Deepak Ghadge** (supra) by the learned counsel for the petitioner is clearly misconceived, as first of all there is no order under Section 48(8)(2) of the MLR Code. That apart any plea of prejudice caused to the petitioner due to non-production of the said vehicle before the concerned authority within the time frame as contemplated in Section 48(8)(2) of the MLR Code could always be raised by the petitioner before such authority. This position, has clearly been considered by this Court in **Harihar Mahadev Puri vrs. State of Maharashtra and anr**; W.P. No. 7165/2018 decided on 15.03.2019, wherein the learned Division Bench of this Court after taking notice of the dictum in **Deepak Ghadge** has held as under;

9. The next contention of the learned counsel for the petitioner is that the vehicle in question was not produced before the Collector within 48 hours of its seizure and that violated the mandate of sub-section (8) of Section 48 of MLR Code. From the documents placed on record, we find that there is a delay in production of the vehicle in question before the Collector or duly authorized Deputy Collector by the Tahsildar, Armori and this delay went beyond the stipulated time of 48 hours. But, the question would be whether such belated production of the vehicle before the concerned authority would make the transport of excess sand found to be illegal as legal and the answer has to be stated in negative terms. Of course, the Division Bench of this Court in the case of **Dipak Ghadge and others vrs. State of Maharashtra and others**, reported in **2018 (66) GST 314** has taken a

view that the provision of Section 48(8)(2) is mandatory in nature and if it is not followed, a serious prejudice would occur to the affected person for, it is likely that such person may suffer substantial financial loss. This view expressing the consequence of not following the mandate of Section 48(8)(2) is only about a prejudice occurring to an affected person in terms of financial loss and not in terms of the legality or otherwise of the action of illegal transportation of the sand belonging to the State Government. Therefore, so far as the question involved in the present case is concerned, in our humble opinion, the view so expressed by the coordinate Bench of this Court, on facts, would be of no assistance to the case of the petitioner here. In the present case, question of financial loss would arise only when the petitioner has proved his right over the excess sand, which he has not. Facts show that the petitioner failed to dislodge the presumption of the sand belonging to the Government. Financial loss would occur to only that person who illegally or wrongly loses or sacrifices a thing owned by him. There is another dimension involved. Violation of mandate of Section 48(8) by itself would not legalize an action, the action of illegal transport of sand, which is otherwise patently unlawful and in clear violation of the right of the State Government to all the minerals found in the State and the transporter has to make out a case of specific prejudice to him, which the petitioner has not done in the present case.

In view of the above discussion, I do not see any merit in the petition and the same is dismissed.

In case the petitioner has any grievance regarding the non-compliance of requirement of Section 48(8)(2) of the MLR Code, it would be permissible for him to raise the same before the competent authority.

JUDGE

rvjalit