

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

WRIT PETITION NO.4471 OF 2021

Parvej Jibrail Khan Pathan

Vs.

State of Maharashtra through its Secretary, Revenue and Forest Department,
Mantralaya, Mumbai and others

with

WRIT PETITION NO.4473 OF 2021

Parvej Jibrail Khan Pathan

Vs.

State of Maharashtra through its Secretary, Revenue and Forest Department,
Mantralaya, Mumbai and others

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

Court's or Judge's orders

Mr. A. R. Ingole, Advocate for petitioner.

Mr. A. A. Madiwale, AGP for respondents.

CORAM : AVINASH G. GHAROTE, J.

DATE : 04/12/2021

Heard Mr. Ingole, learned counsel for the petitioner and Mr. Madiwale, learned AGP for respondents.

2. Mr. Ingole, learned counsel for the petitioner submits that the respondent No.4, while passing the impugned order 27.10.2021 has exercised powers under Section 48(8)(2) of Maharashtra Land Revenue Code, 1966 (for short, the MLR Code, 1966, hereinafter), which is not permissible for him, which is reflected from the last para of the impugned order. In so far as the exercise of

power under Section 48(7) of the MLR Code is concerned, learned counsel submits that zero royalty pass was issued by the appropriate authorities, copy of which is placed on record at page 19, which would indicate that the penalty has been imposed without taking the same into consideration. It is submitted that though the zero royalty pass was shown to the authorities when the vehicle was apprehended, they intentionally did not take notice of the same.

3. Mr. Madiwale, learned AGP for the respondents submits that the zero royalty pass was not shown when the vehicle was apprehended. However, considering that the said zero royalty pass has been placed on record and the issuance of the same being not disputed by the learned AGP, the contention is rejected, for the reason that the zero royalty pass was accessible to the revenue authorities, who themselves had issued the same.

4. In so far as the imposition of the penalties is concerned, the seizure memo dated 27.10.2021 does not indicate that there is any measurement of the sand found in the seized vehicle. It only states one tipper of sand, considering which, the impugned order, which imposes penalties by presuming that there was 5.5 brass of sand in the vehicle, is clearly without any basis whatsoever and cannot be sustained. The same is therefore, quashed and set aside.

(3)

22.wp.4471.2021

5. The vehicles seized shall be returned forthwith to the petitioner. The writ petitions are allowed, in the above terms. No order as to costs.

JUDGE

Sarkate