

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3882 OF 2019

1. Prakash Tumdu Chaudhari
Age: 70 years, Occu: Agriculture,
R/o. Navi Bhoi Galli, Gavaliwada, Nandurbar,
Dist. Nandurbar
 2. Sujit Prakash Gujrati
Age: 41 years, Occu: Agriculture,
R/o. Vedu Govinda Nagar, Nandurbar,
Dist. Nandurbar
- ... Petitioners**

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 32
 2. The District Collector,
Collector Office, Nandurbar
 3. The Deputy Collector,
Sub Divisional Officer, Nandurbar
 4. The Tahsildar,
Tahsil Office, Nandurbar
 5. The Talathi,
Tahsil Office, Nandurbar
 6. The Circle Inspector
Tahsil Office, Nandurbar
- ... Respondents**

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Mr. M. V. Ghatge, Advocate for petitioners
Mr. A. S. Shinde, AGP for respondents

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**CORAM : MANGESH S. PATIL AND
Y. G. KHOBRAGADE, JJ.**

**RESERVED ON : 02.12.2022
PRONOUNCED ON : 14.12.2022**

JUDGMENT (Per Y. G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of parties, the petition is taken up for final disposal at the admission stage.

2. By this petition under Article 226 of the Constitution of India, the petitioners are praying to quash and set aside the order/notice dated 15.12.2018 and 31.12.2018 issued/passed by respondent No.4 – Tahsildar. The petitioners further pray for issuance of directions against the respondents for releasing the tractor bearing No.MH-18-A-9229, which has been seized under panchanama dated 18.11.2018.

3. Mr. Ghatge, learned counsel for the petitioners submitted that the petitioner No.2 is the registered owner of tractor bearing MH-18-A-9229, which he purchased for agriculture purpose, however, on 18.11.2018, he had lent the said tractor to petitioner No.1 for

personal use, who collected acne (murum) and was transporting the same to fill up patholes, but the said tractor was seized by the Mining Officer under panchanama on the ground that the driver of tractor was found transporting minor minerals of half brass without holding royalty receipt and recorded statements of the spot witnesses. On 15.12.2018, the petitioner No.1 was served with show cause notice under Section 48(8)(1) of the Maharashtra Land Revenue (MLR) Code and asked as to why a fine of Rs. 1,04,300/- should not be imposed and as to why crime should not be registered against him for theft of minerals. Thereafter, on 31.12.2018, the respondent No.2 passed the order and directed the petitioner No.2 to deposit fine amount of Rs.1,04,300/-.

4. The learned counsel for the petitioners canvassed that the tractor was carrying acne/murum for filling patholes on the road in front of the house of petitioner No.1 and said minor mineral was collected from the agriculture field of one Shri Hiralal Mahadu Chaudhari, who had dug well in Nandurbar shivar. Therefore, murum/acne was not being transported illegally and there was no necessity to pay any royalty. However, respondent No.6 – Circle Inspector and the Talathi, illegally seized tractor of petitioner No.2

though Section 48 of the MLR Code empowers the Deputy Collector not below the rank of Tahsildar to search and seizure of vehicle found while transporting illegal minerals. It is further canvassed that though the seizure panchanama was signed by respondent No.3 – Tahsildar, however at the time of search and seizure of the tractor, respondent No.3 – Tahsildar was not present at the spot. Therefore, the impugned notice dated 15.11.2018 and order dated 31.12.2018 are illegal, bad in law and liable to be quashed and set aside. In support of these submissions, the learned counsel for the petitioner has relied on the following judgments/orders of this Court :

- (i) Sayyed Iqbal S/o Sayyed Safdar vs The State of Maharashtra – Writ Petition No. 230 of 2019;*
- (ii) Hanumant s/o Manik Pawar vs The State of Maharashtra and others – Writ Petition No. 10298 of 2018;*
- (iii) Madhav s/o Shankar Umate vs The State of Maharashtra and others – Writ Petition No. 11174 of 2018;*
- (iv) Bhagwan s/o Abhimanyu Bangar vs The State of Maharashtra and others – Writ Petition No.10942 of 2018;*
- (v) Abdul Asif Abdul Kadir vs State of Maharashtra and another – Writ Petition No.6812 of 2015 with connected Writ Petition No.6848 of 2015.*

5. On the other hand, the learned AGP Mr. A. S. Shinde submitted that respondent No.4 Tahsildar has filed affidavit-in-reply and stated that in reply affidavit filed on behalf of respondent Nos. 2 and 3, mistakenly stated that on 18.11.2018 at about 2.00 p.m., the panchanama was made by Tahsildar and Circle Officer in his presence and statement of the driver of tractor was recorded by the Circle Officer. However, the respondent No.4 by rectifying said mistake stated that, on 18.11.2018, the then Tahsildar had seized the tractor of the petitioner and the deponent Tahsildar joined with the Tahsil Office, Nandurbar on 22.09.2019 but on the day of seizure of tractor he was not holding the post of Tahsildar, Nandurbar. Therefore, the statement wrongly made in reply affidavit on behalf of respondent Nos. 2 and 3 cannot be considered.

6. The learned AGP further submitted that, on 18.11.2018, the District Mining Officer seized the tractor in question when it was found transporting minor minerals without any royalty receipt and drew panchanama in presence of witnesses and recorded statement of the witnesses as well as the driver. Though the inquiry was made with the driver of the tractor, but he could not produce royalty receipt for transportation of half brass acne (morum). Therefore, the said tractor

was seized and show cause notice dated 15.12.2018 was served upon the petitioner No.1 calling upon him to show within seven days as to why fine should not be imposed and crime should not be registered against him for theft of minor mineral, but the petitioner No.1 failed to submit reply. Therefore, on 31.12.2018, the respondent No.4 Tahsildar passed the impugned order and directed the petitioner No.2 to deposit fine amount. So also, the respondent No.4 passed impugned order under Section 48(8)(1) of the MLR Code. However, appeal against said order lies to the appellate authority under Section 247 of the MLR Code, Hence, prayed for dismissal of the petition.

7. The learned AGP further submitted that the petitioner has suppressed material facts that previously also the petitioner No.2 was involved in business of illegal transportation of mines and minerals and the vehicle which is involved in the present petition was also seized by the revenue officers in the year 2017 and on execution of bond, said tractor was released. Therefore, the petitioners are not entitled to any equitable relief from this Court, hence prayed for dismissal of the petition.

8. In the instant matter, it is apparent that on 18.11.2018, when the District Mining Officer and the revenue officers found minor minerals (acne/murum) being transported in tractor bearing No.MH-19-A-9229 owned by petitioner No.2. The said tractor was stopped and inquiry was made with the tractor driver about royalty pass for transportation of the minor minerals. However, the tractor driver failed to produce any royalty receipt and disclosed that the petitioner No.2 is the owner of tractor. Hence the revenue official seized the tractor. The panchanama mentions that the District Mining Officer having drawn it. Thereafter, the respondent No.4 issued show cause notice under Section 48(8)(1) of the MLR Code calling upon the petitioner to submit cause, but the petitioner failed to submit reply.

9. Rule 2 of the Maharashtra Land Revenue (Extraction and Removal of Minerals) Rules, 1968 provides as under:

“2. Removal of Minor Mineral except sand by villagers for their own use:

Subject to the provisions of these rules, with the prior permission of the Tahsildar in writing but without payment of any fee or royalty, any resident of any village may, for his own domestic or agricultural purpose, including building of well, remove not more than two brass of each minor mineral (earth, bank, stone, kankar, gravel or murum), from any unassessed

Government waste land assigned by the Collector for this purpose under section 22 of the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966), or any rank, right to which is vested in the State Government. Such written permission shall be granted by the Tahsildar within a period of fifteen days from the date of receipt of such application:

Provided that, no stone from any taken which may have fallen in it from its bank shall be removed and no excavation shall be made within 4.5 meters of the foot of the embankment of any such tank.”

10. Section 48 of the MLR Code provides as under:-

48. Government title to mines and minerals

(1) 1[The right to all minerals] at whatever place found, whether on surface or undergorund, including all derelict or working mines and quarries, old dumps, pits, fields, bandhas, nallas, creeks, river-beds and such other places, is and is hereby declared to be expressly reserved and shall vest in the State Government which shall have all powers necessary for the proper enjoyment of such rights.

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(2) The right to all mines and quarries includes the right of access to land for the purpose of mining and quarrying and right to occupy such other land as may be necessary for purposes subsidiary thereto, including erection of offices, workmen's dwelling and machinery, the stacking of minerals and deposit of refuse, the construction of roads, railways or tram-lines, and any other purposes which the State Government may declare to be subsidiary to mining and quarrying.

(3) If the State Government has assigned to any person its right over any minerals, mines or quarries, and if for the proper enjoyment of such right, it is necessary that

all or any of the powers specified in sub-sections (1) and (2) should be exercised, the Collector may, by an order in writing, subject to such conditions and reservations as he may specify, delegate such powers to the person to whom the right has been assigned :

Provided that, *no such delegation shall be made until notice has been duly served on all persons having rights in the land affected, and their objections have been heard and considered.*

(4) If, in the exercise of the right herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the State Government or its assignee shall pay to such persons compensation for such infringement and the amount of such compensation shall, in the absence of agreements, be determined by the Collector or, if his award is not accepted, by the civil court, in accordance with the provisions of the Land Acquisition Act, 1894.

(5) No assignee of the State Government shall enter on or occupy the surface of any land without the previous sanction of the Collector unless compensation has been determined and tendered to the persons whose rights are infringed :

Provided that, *it shall be lawful for the Collector to grant interim*

permission pending the award of the civil court in cases where the question of determining the proper amount of compensation is referred to such court under sub-section (4).

(6) If an assignee of the State Government fails to pay compensation as provided in sub-section (4), the Collector may recover such compensation from him on behalf of the persons entitled to it, as if it were an arrear of land revenue.

(7) Any person who without lawful authority extracts, removes, collects, replaces, picks up or disposes of any mineral from working or derelict mines, quarries, old dumps, fields, bandhas (whether on the plea of repairing or constructions of bund of the fields or any other plea), nallas, creeks, river-beds, or such other places wherever situate, the right to which vests in, and has not been assigned by the State Government, shall, without prejudice to any other mode of action that may be taken against him, be liable, 1[on the order in writing of the Collector or any revenue officer not below the rank of Tahsildar authorised by the collector in this behalf, to pay penalty of an amount 2[upto five times]] the market value of the minerals so extracted, removed, collected, replaced, picked up or disposed of, as the case may be :

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[(8) (1) Without prejudice to the provision of sub-section (7), the Collector or any revenue officer not below the rank of Tahsildar authorised by the Collector in this behalf, may seize and confiscate any mineral extracted, removed, collected, replaced, picked up or disposed of from any mine, quarry or other place referred to in sub-section (7), the right to which vests in, and has not been assigned by the State Government, and may also seize and confiscate any machinery and equipment used for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals and any means of transport deployed to transport the same.

(2) Such machinery or equipment or means of transport, used for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals or transportation thereof, which is seized under sub-section (1), shall be produced before the Collector or such other officer not below the rank of Deputy Collector authorised by the Collector in this behalf, within a period of

forty-eight hours of such seizure, who may release such seized machinery, equipment or means of transport on payment by the owner thereof of such penalty as may be prescribed and also on furnishing personal bond of an amount not exceeding the market value or the seized machinery, equipment or means of transport, stating therein that such seized machinery, equipment or means of transport shall not be used in future for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals and transportation of the same]

(9) The State Government may make rules to regulate the extraction and removal of minor minerals required by the inhabitants of a village, town or city for their domestic, agricultural or professional use on payment of fees or free of charge as may be specified in the rules. 5[(10) Notwithstanding anything contained in this Act, prior to grant of prospecting license or mining lease for minor minerals and for grant of concession for the exploitation of minor minerals by auction in the Scheduled Areas referred to in clause (1) of article 244 of the Constitution of India, the consent of the Gram Sabha or the Panchayats at the appropriate level shall be mandatory.

Explanation.—For the purposes of this sub-section “Gram Sabha” shall have the same meaning as assigned to it in Chapter III A of the Maharashtra Village Panchayats Act.] Explanation.—For the purposes of this section, “minor minerals” means the minor minerals in respect of which the State Government is empowered to make rules under section 15 of the Mines and Minerals (Regulation and Development) Act, 1957.”

11. Section 48(8)(1) of the MLR Code provides that without prejudice to the provisions of Sub-section (7), the Collector or any

revenue officer not below the rank of Tahsildar authorized by the Collector in this behalf, may seize and confiscate any mineral extracted, removed, collected, replaced, picked up or disposed of from any mine, quarry or other place referred in Sub-section (7) of the MLR Code, the right to which vests in, and has not been assigned by the State Government and may also seize and confiscate any machinery and equipments used for unauthorized extraction, removal, collection, replacement, picking up or disposal of minor minerals and any means of transport deployed to transport the same.

12. Section 48(8)(2) of the MLR Code provides for production of seized vehicle before the Collector or any such other officer not below the rank of Deputy Collector authorised by the Collector within a period of forty-eight hours of the seizure and the said authority may release said seized vehicle/machinery on payment by the owner thereof of such penalty as may be prescribed and also on furnishing personal bond of an amount not exceeding the market value of the seized machinery/vehicle. Therefore, it is clear that the Collector or authorised person in his behalf can also release the seized machinery/vehicle on imposing penalty.

13. No doubt, in cited orders of this Court, the action of seizure or confiscation of the vehicle under the panchanama in absence of the Tahsildar was held to be ot legal and the vehicle was directed to be released. In order dated 04.03.2019 passed in Writ Petition No. 230 of 2019 (Sayyad Iqbal s/o Sayyed Safdar Vs. The State of Maharashtra and others), it has been held that the petitioner had alternate remedy of appeal raising a challenge to the final order with an application for releasing of the vehicle.

14. In the case in hand, it is not in dispute that the tractor seizure panchanama dated 18.11.2018 drawn by the District Mining Officer and recorded statements of the witnesses. It is not the contention of the petitioners that the District Mining Officer is below the rank of Tahsildar and the District Mining Officer was not authorised competent authority to seize the vehicle. Since the District Mining Officer is the competent and not being below the rank of the Tahsildar having powers about seizure of vehicles found illegally transporting minor minerals, we do not find any illegality in seizure of the tractor involved in the present petition.

15. It appears that the petitioner No.2 was served with the notice under Section 48(8)(1) of the MLR Code on 15.11.2018, but the petitioner No.2 failed to submit any cause. Ultimately, on 31.12.2018, the Tahsildar passed the impugned order and imposed penalty of Rs.1,04,300/- under Section 48(8)(1) of the MLR Code. Since the respondent No. 4 Tahsildar passed the impugned order under Section 48(8)(1) of the MLR Code which is appealable under Section 247 of the MLR Code, the petitioners can approach the Appellate Authority raising the challenge to the final order of the authority dated 31.12.2018 along with an application for releasing the tractor. This Court need not invoke Article 226 of the Constitution of India when alternate remedy is provided under the special enactment. Therefore, we are not inclined to entertain the present writ petition.

16. In view of above discussions, we are constrained to pass the following order:

ORDER

- (i) The writ petition is dismissed. Rule is discharged.
- (ii) The petitioners may file appeal under Section 247 of the MLR Code, along with application for release of tractor,

before the appellate authority within a period of two weeks from today and if the petitioners file appeal along with application for release of tractor, in that event the Appellate Authority may decide the same on its own merits without prejudice to the observations made herein above within eight weeks therefrom.

- (iii) It is made clear that the period which has been consumed by the petitioners before this Court, shall be governed by Section 14 of the Limitation Act.

[Y. G. KHOBRAGADE, J.]

[MANGESH S. PATIL, J.]

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