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

WRIT PETITION NO.4961 OF 2022

Sudarshan S/o Rajkumar Badgujar,
Age : 35 years, Occu. Business,
R/o 16, Supadu Appa Colony,
Subhash Nagar, Old Dhule,
Tq. & Dist. Dhule

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Revenue and Forest Ministry,
Mumbai – 32

2. The Additional Collector,
Collector Office, Nandurbar,
Dist. Nandurbar

3. The Sub Divisional Officer,
Nandurbar, Dist. Nandurbar

4. The Tahsildar, Nandurbar,
Tq. Nandurbar, Dist. Nandurbar

..RESPONDENTS

Mr. B.S. Deshmukh, Advocate for petitioner;
Mr. S.G. Karlekar, A.G.P. for respondents

**CORAM : R.D. DHANUKA
AND
S. G. MEHARE, JJ.**

DATE : 2nd May, 2022

ORAL JUDGMENT (Per R.D. Dhanuka, J.)

1. Rule. Learned A.G.P. waives service for the respondents. Rule is made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a Writ of Certiorari for quashing and setting aside the impugned order of penalty dated 14.9.2021 issued by respondent no.4 and orders dated 1.2.2022 and 26.10.2021 passed by respondents no.2 and 3, respectively and seeks further direction against respondent no.4 to release the vehicle detained by them bearing registration No.MH-18 BG-6223, without further delay.

3. Learned Counsel for the petitioner tenders a copy of the judgment delivered by this Court on 26.4.2022 in Writ Petition No.4397 of 2022, in case of Vishal Babasaheb Dube @ Dhube vs. The State of Maharashtra & anr., and in companion matter and would submit that the facts involved in the present case are identical to that case.

(3)

4. This Court in the aforesaid judgment held that Clause 5 of the Circular dated 5.2.2021 shall not operate being excessive and travelling beyond the rule making power of the State of Maharashtra. Circular dated 5.2.2021 shall operate excluding Clause as aforesaid. After considering the said Circular, this Court granted various reliefs. In our view, the said judgment applies to the facts of this case. We, accordingly, pass the following order:-

ORDER

- (i) Writ Petition No.4961 of 2022 is allowed.
- (ii) The impugned order of penalty dated 14.9.2021 issued by respondent no.4 and further orders dated 1.2.2022 and 26.10.2021, passed by respondents no.2 and 3, respectively, are quashed and set aside.
- (iii) The Tahsildar, Nandurbar is directed to release the vehicle of the petitioner described in prayer clause (B) of the petition, forthwith.

(4)

- (iv) It is made clear that the respondents are free to act under the provisions of Section 48 of the Maharashtra Land Revenue Code, 1966, in accordance with law.
- (v) Circular dated 5.2.2021 shall operate excluding Clause 5 thereof.
- (vi) Rule is made absolute in Aforesaid terms. No order as to costs.

(S. G. MEHARE, J.)

(R.D. DHANUKA, J.)

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