

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

WRIT PETITION NO.13247 OF 2021

GOVERDHAN CHAGAN CHAUDHARI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Shri A.R. Syed h/f Shri Brahme Shailesh P.
AGP for the Respondents/ State : Shri P.G. Borade
...

CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 26th February, 2022

Per Court:

1. Heard the learned counsel for the petitioner and the learned AGP for the respondents/ State.
2. In furtherance of the order dated 24.02.2022, the Nayab Tahasildar, Nandurbar, is present in the Court along with relevant record. The learned AGP has tendered the said record across the bar and I have perused the same.
3. The case of the petitioner in short is that, the petitioner is owner of the JCB machine and tractor in question and he was allotted the work of levelling of surface of the playground owned by the school, namely, Jawaharlal Nehru Vidyalaya, Lahan Shahada, run by Jeevan Jyoti Vidya Prasarak Mandal, Lahan Shahad, Taluka and District Nandurbar.

4. Pertinent to note that the work of development of ground was undertaken under the permission and authorization of the District Sports Officer, Nandurbar, who had granted approval for the said work of development of playgrounds in various schools in district for the year 2020-2021 and for which the grant of Rs.22.35 lacs was made available to various institutions including the said Jawaharlal Nehru School. The order passed by the District Sports Officer dated 23.03.2021 is placed on record and it reflects that the work is carried in the said school by levelling of playground for which administrative approval is granted for Rs.7.80 lacs.

5. The petitioner was allotted the said work and on the concerned date, when he was carrying out the work of levelling of ground, the Talathi seized his JCB machine and tractor by executing the panchanama on 20.09.2021 at around 15:15 hours under the allegation that excavation of mineral was illegal. Resultantly, his JCB and tractor were seized by mentioning the names of drivers of the vehicles.

6. The learned counsel for the petitioner places reliance upon the notification issued by the State Government on 11.05.2015, which is issued by the Revenue and Forest Department of the State of Maharashtra, in exercise of powers conferred under Section 15(1) and (3) of the Mines and Minerals (Development and Regulation) Act, 1957 and resultantly, the Maharashtra Minor Mineral Extraction (Development and Regulation) (Amendment) Rules, 2015, were brought into force whereby,

exemption has been granted from payment of royalty to the Government if the earth, which is extracted while development of plot of land, is utilized on the very same plot of land for levelling or carrying out any work in the process of development of such plot. This notification covered the clay, ordinary earth, slate, silt and all types of clays as well as stones and other minor minerals.

7. The learned counsel for the petitioner has also placed reliance on the order passed by the Division Bench of this Court at the Principal Seat in Writ Petition No.12206/2018 (CEAT Speciality Tyres Ltd. vs. State of Maharashtra) on 22.01.2020 where, this Court has granted benefit of the said notification and set aside the demand notice demanding royalty for alleged excavation of mineral since the explanation offered was that minor minerals so excavated, were used at the same site for levelling of the ground.

The case of the petitioner is similar to one covered by the order passed by this Court on 22.01.2020 to which, I am also a party.

8. The work undertaken by the petitioner through his JCB machine and tractor, was at the instructions of the school in which the work of levelling of playground was being undertaken since the school was selected for being allotted the grants under the playground development scheme by the District Sports Officer, Nandurbar.

9. The Tahasildar, Nandurbar wrongly intercepted the work and

confiscated the machinery belonging to the petitioner on the pretext that there is illegal excavation.

10. The learned AGP justifies the said action by submitting that the petitioner did not produce on record necessary permission.

11. Pertinent to note that if one department of the State Government is allotting grants for carrying out particular activity and in this case, the Sports Department has allotted the grants for carrying out activity of development of playgrounds in the schools, the other wing of the Government i.e. Revenue Department through the Tahasildar, Nandurbar, cannot say that they are not aware of what is happening and merely because he suspects illegal excavation, he ought not to have undertaken the exercise of confiscation of machinery and imposition of penalty.

12. Though the school authority on 21.09.2021 clarified to the Tahasildar about factual position that the land belongs to the school and the work of development of its play ground is being undertaken, the Tahasildar, however, did not pay any heed to the said letter nor did the Sub Divisional Officer to whom the letter was addressed by the Chairman of the educational trust. The impugned order passed by the Tahasildar proceeds on the footing that entire excavation was illegal and therefore, the action is taken under Section 48(7) and (8) of the Maharashtra Land Revenue Code by imposing penalty and also confiscating the machinery.

This highhandedness action of the Tahasildar, Nandurbar, undisputedly, deserves to be set aside, but at the same time, the Tahasildar must compensate the petitioner by paying costs of Rs.25,000/- (Rupees Twenty Five Thousand), though this is not an adequate compensation for the petitioner since his vehicles came to be seized on 20.09.2021 and though this Court passed an order on 22.12.2021, he was not able to arrange for the amount seeking release of the vehicles in terms of the directions of this Court since this Court had directed to deposit an amount of Rs.2 lacs for release of JCB and Rs.50,000/- for release of the tractor. The petitioner has been deprived of his source of livelihood from 20.09.2021 because of the recklessness and negligence on the part of the Tahasildar, Nandurbar. Reserving liberty to the petitioner to institute appropriate proceedings against the revenue authorities for recovering damages, the impugned order is quashed and set aside.

13. The Tahasildar, Nandurbar is directed to release the vehicles of the petitioner without deposit of the amount as directed by this Court on 22.12.2021, since on merits I have arrived at the conclusion that the confiscation of vehicles as well as initiation of action under Section 48(7) and (8) by the Tahasildar itself is illegal and is not sustainable in law. The vehicles shall be released within 48 hours. Costs of Rs.25,000/- shall be borne by the Tahasildar, Nandurbar personally and be paid to the petitioner.

The Writ Petition is, accordingly, allowed.

The record and proceedings produced in the Court are returned to the learned AGP.

kps

(SMT. BHARATI H. DANGRE, J.)