

Pradip

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3797 OF 2022**

Salim Gafoor Munshi & Anr

...Petitioners

Versus

State of Maharashtra & Ors

...Respondents

Mr Datta Mane, for the Petitioners.

Mr PG Sawant, AGP for the State.

**CORAM G.S. Patel &
 M.G. Sewlikar, JJ.
DATED: 7th June 2022**

PC:-

1. Rule. The Respondents waive service. By consent, Rule is made returnable forthwith and the Petition is taken up for hearing and final disposal.

2. The Petitioners challenge two orders of 23rd February 2021 and 27th May 2021. They seek a direction to Respondents Nos. 2 to 4, all officers of the Revenue and Forest Department of the Government of Maharashtra to return to the Petitioners its Poclain JCB machine type No.JS-140 and an air compressor. The next prayer is for a departmental enquiry. Then there is a prayer for damages.

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3. We will direct our attention only to the first prayer of return of the JCB machinery and the compressor. There does not seem to be any doubt that the Petitioners own the Poclain machine and the air compressor. These were purchased in the year 2010. The first Petitioner has a license for twenty years valid from 11th July 2008 to 10th July 2028 to carry on the extraction of minor minerals in CTS No. 398, village Virar, Taluka Vasai, District Palghar. This license has been granted by the State Government's Forest Department.

4. On account of some issues regarding environmental clearance, this being on a reserved forest, the excavation activity i.e. excavation of minor minerals was stayed by Government order since 2017. In the meantime, the Petitioners kept their Poclain vehicle and air compressor on site. When ever any one sought to use these on rent, the Petitioners would allow the Poclain vehicle and the compressor to be taken away and once the work was completed to be returned to the site.

5. On 5th December 2018, Respondent No.4 claimed on the basis of some 'secret' information received that the Petitioners were impermissibly excavating at the forest. He claimed also to have carried out a panchnama but did not confiscate the vehicle and the machine that day. There are no further details even in the panchnama of any illegal excavation such as quantities processed, location, people on site etc. According to the Petitioners, the vehicle was taken away by the 4th Respondent on 25th December 2018 not from the quarrying site but from the land of one Balkrushna Reddy where it had been kept by the Petitioners for Reddy's work. In other

words, the vehicle and the machine were not at the Petitioners' site at all as alleged by Respondent No. 4. He visited Mr Reddy's site without notice. The Petitioners complained to the Virar Police Station the very next day. The Petitioners also replied on 28th January 2019 to the Respondents, demanding a return of their vehicle and compressor. Then they made an application to the Judicial Magistrate First Class by Miscellaneous Application No. 6 of 2019. Respondent No.4 then gave a notice to the Petitioners on 28th March 2019 demanding a surrender of the vehicle. The Petitioners complied with this also on a without prejudice basis. The Petitioner ultimately had to withdraw Miscellaneous Application No. 6 of 2019. Their statements were recorded by the police. On 5th March 2019, the Petitioners applied to the 3rd Respondent for return of their vehicle and compressor.

6. Ultimately, on 23rd February 2021, the 3rd Respondent passed an order, a copy of which is at Exhibit I, saying that the vehicle and air compressor machine stood 'confiscated' to the Government. The Petitioners filed a Revision Application No.1 of 2021 before the 2nd Respondent. The Petitioners were heard. They also filed written submissions. On 27th May 2021, the 2nd Respondent quashed and set aside the 3rd Respondent's order of 23rd February 2021.

7. Counsel submits that Respondents Nos. 3 and 4 ought to have returned the vehicle and the machine i.e. air compressor to the Petitioners. This was not done. The Petitioners made a demand for return on 14th June 2021. Having received no reply, the Petitioners

filed a RTI application. The response to that was that Respondents Nos 3 and 4 had approached the higher authorities for approval to file a charge sheet and asked for opinions about the return of the vehicle and the machine. Both the vehicle and the machine are yet in custody of Respondent No.4.

8. Whatever be the outcome of the court proceedings if any and the fate of the charge sheet, we are unable to see how Respondents Nos. 3 and 4 can refuse to return the Poclain vehicle and the air compressor. Once the 2nd Respondent set aside the order of the 3rd Respondent in revision and there was no further challenge to the 2nd Respondent's order, Respondents No. 3 and 4, namely, the Sub Divisional Forest Officer and the Range Forest Officer had no authority in law to retain possession of either items. The actions of those officers smack of mala fides.

9. These officers of the Government will realize that they are answerable to this Court. This time, we only caution them. We will not be so considerate in future. Above all, the integrity of the process of law must be preserved. Government officers cannot defy legal processes like this.

10. We make Rule absolute in terms of prayer clause (b) which reads thus:

(b) That this Hon'ble Court be pleased to call for the record and proceedings of the petitioners case from the respondent no.2 to 4 and after perusing the legality and propriety of the orders dated 23/2/2021 and 27/05/2021, be pleased to direct the respondent No.2 to 4 to release/return the JCB

company's Poclain Machine, Type No.JS-140, Chassis No. PUNJS14CP01318789 and Air Compressor to the Petitioners.

11. The items are to be returned to the Petitioners by Friday, 10th June 2022. We list the Petition first on board on Monday, 13th June 2022 for limited purpose of compliance.

12. In the facts and circumstances of the case, there will be no order as to costs.

(M.G. Sewlikar, J)

(G. S. Patel, J)