

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12792 OF 2022

Sagar S. Kotwal

... Petitioner

Versus

The State of Maharashtra and Ors.

... Respondents

Mr. Vivek V. Salunkhe for the Petitioner.

Ms. Kavita Solunke AGP for the Respondent-State.

**CORAM: R. D. DHANUKA AND
M.M.SATHAYE JJ.**

DATE : 22nd DECEMBER, 2023

PC. :-

1. Rule. The learned AGP waives service for Respondent Nos. 1 to 3. Rule made returnable forthwith. Heard finally by consent of the parties.

2. By this Petition filed under Article 226 of the Constitution of the India, the Petitioner seeks writ of certiorari to quash and set aside order dated 24.06.2022 passed by Respondent No. 2 (Tahasildar, Baglan, District Nashik) and order dated 05.08.2022 passed by Sub Divisional Officer, Baglan Sub Division Baglan, District Nashik. The Petitioner also seeks writ of mandamus directing Respondent Nos. 2 and 3 (Tahasildar, Baglan, District Nashik, and

Village Talathi, Talawade, Taluka Baglan, District Nashik.) to forthwith release the vehicle of the petitioner bearing registration no. MH-18-BA-6417.

3. It is case of the Petitioner that he is owner of the truck bearing registration No. MH-18-BA-6417, which was in use for transportation of sand and the same is source of livelihood for the Petitioner. It is submitted that on 21.06.2022, when the Petitioner's vehicle was transporting sand from village Nizare, State of Gujarat to the State of Maharashtra, when it reached border of State of Maharashtra, it was intercepted at Satana by the mines and mineral squad of Respondent Nos. 2 and 3. The said vehicle was seized by drawing panchanama. On 21.06.2022, a notice was issued by Respondent No. 2 asking why penalty should not be imposed. Petitioner replied to the aforesaid notice on 22.06.2022. By order dated 24.06.2022, Respondent No. 2 directed Petitioner to pay penalty of Rs.1,26,675/- against which the Petitioner filed Appeal before SDO, Baglan, Sub Division. On 05.08.2022, learned SDO rejected the said Appeal and these orders passed by Respondent No. 2 and SDO Baglan are challenged in this Petition.

4. Learned Counsel for the Petitioner submitted that Petitioner can not be penalised, as done under the impugned Orders and for this submission, he invited our attention to a Judgment dt. 07.04.2022 delivered by Nagpur Bench of this Court in a batch of petitions, with lead Writ Petition No. 2078 of 2021 in case of **M/s Shree Rajesh Pathak Vs. State of Maharashtra and others** and subsequent Orders dt. 26.04.2022 delivered by Aurangabad Bench of this Court in Writ Petition No. 4397 of 2022 in case of **Vishal Babasaheb Dube @ Dhube Vs. State of Maharashtra and Another** and Order dt. 29.11.2022 passed in Writ Petition No. 9369 of 2022 in case of **Bhausahab R. Jadhav Vs. State of Maharashtra**.

5. Ms. Solunke learned AGP for the State could not distinguish the facts of this case from the aforesaid judgments taking consistent view and also could not dispute that recovery sought by Respondents from the Petitioner is ultimately recovery based on 10% royalty under circular dt. 5th February, 2021 which is held bad in law by this Court.

6. In our view, facts of this case are similar and therefore the impugned orders and the action on the part of the Respondents to

detain vehicle of the Petitioner, cannot be sustained. We accordingly pass the following order.

ORDER

- (i) Writ Petition is allowed in terms of prayer clause (a).
- (ii) Respondents are directed to release the Petitioner's vehicle bearing registration No. MH-18-BA-6417, within one week from the date of communication of this Order.
- (iii) Rule is made absolute in the aforesaid terms. No order as to costs.
- (iv) All concerned to act on an authenticated copy of this order.

[M.M.SATHAYE,J.]

[R. D. DHANUKA, J.]