

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 101 of 2022

Nitin S/o Sohanlalji Rathi,
Aged about : 42 years,
Occupation : Business,
R/o. Marwadi Chowk, Sawar,
Yavatmal, Tq. & District - Yavatmal.

... Petitioner

... Versus ...

- (1) State of Maharashtra,
through its Secretary, Revenue
and Forest Department,
Mantralaya, Mumbai – 32.
- (2) The Additional Collector, Yavatmal,
District - Yavatmal.
- (3) The Sub Divisional Officer,
Babhulgaon, Tq. Babhulgaon,
District - Yavatmal.
- (4) The Tahsildar, Babhulgaon,
Tq. Babhulgaon, Distt – Yavatmal.

... Respondents

Mr. A. R. Ingole, Advocate for the petitioner
Mr. S. M. Ukey, Addl. G. P. for the respondents

CORAM : ROHIT B. DEO, J.
DATED : 24-2-2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally with consent of the learned counsel appearing for the parties.

2. The petitioner is assailing the order dated 6-4-2021 rendered by the Tahsildar, Babhulgaon. The order impugned is in two parts.

3. The petitioner allegedly excavated and transported sand illegally. The Tahsildar was pleased to act under the provisions of Section 48(7) of the Maharashtra Land Revenue Code, 1966 (Code) and saddled the petitioner with royalty and penalty of Rs. 55,315/- (Rupees Fifty Five Thousand Three Hundred Fifteen).

4. The other part of the order impugned is the imposition of penalty of Rs. 1,00,000/- (Rupees One Lac) in purported exercise of power under Section 48(8) of the Code for illegal use of vehicle for transportation of sand.

5. Learned counsel for the petitioner, Mr. Ingole submits that in so far as royalty and penalty on transportation of sand is concerned, the petitioner is not pressing the challenge and shall comply with the order impugned within the next seven days. However, Mr. Ingole points out that the other part of the order which imposes penalty as regards the allegedly illegal vehicular use for transportation of the minor mineral, is without jurisdiction as held by the Division Bench in Writ Petition No. 7165/2018 (Harihar s/o Mahadev Puri Vs. State of

Maharashtra and anr.) dated 15-3-2019. The relevant paragraph of the said decision reads thus :

“10. The third submission of the learned counsel for the petitioner is that by the impugned order penalty in respect of illegal transport of the sand as well as the means of convenience employed for such illegal transport has been imposed under Section 48(7) by the Tahsildar, but it is not permissible for him to do so. Upon perusal of subsections (7) and (8) of Section 48 we find that there is substance in the argument of learned counsel for the petitioner. What can be imposed by way of a penalty by the Tahsildar by invoking his power under subsection (7) of Section 48 of MLR Code is only that penalty which is for illegal transportation of sand only to the extent of five times of the market value of the minerals transported in addition to the amount of royalty and nothing more. But, in the present case the penalty imposed by the Tahsildar is of composite nature, one for the transportation of the minerals as such and the other for the user of the vehicle in question for such transport. For the later part of the offence, the penalty can be imposed only by the Collector or any officer not below the rank of a Deputy Collector specifically authorized in this behalf by the Collector himself. This is under Section 48(8)(2) of the MLR Code. It is here that the impugned order has made itself vulnerable to law and to this extent only, the impugned order deserves to be quashed and set aside.”

6. In view of the settled position of law, the order impugned is confirmed to the extent, royalty and penalty is demanded in respect of excavation of sand, and is set aside to the extent of amount of penalty of Rs. 1,00,000/- (Rupees One Lac) demanded as regards the alleged illegal vehicular use for transportation of sand.

7. It is made clear that nothing is decided on merits.
8. It is common ground that the appropriate authority to decide the issue is the Respondent 2 or such authorized officer not below the rank of Deputy Collector. The matter is, therefore, remitted to the respondent 2, who may decide the matter personally or assign the same to duly authorized officer not below the rank of Deputy Collector.
9. The authority shall pass order, after hearing the petitioner, within the next 30 days.
10. The petition is partly allowed in the aforestated terms.

JUDGE

wasnik