

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

Writ Petition No. 116 of 2022

Abdul Javed Abdul Gaffar
Aged : 30 years, Occ. Business,
R/o. Gazi Plot, Hiwarkhed Road, Akot,
Taluka Akot, District : Akola.

... Petitioner

... Versus ...

(1) The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 400 032.

(2) Sub Divisional Officer,
Akot, Tq. Akot,
District – Akola.

(3) The Tahsildar, Tq. Akot,
District : Akola.

... Respondents

Mr. V. B. Bhise, 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 17-9-2021 rendered by the Tahsildar, Akot. The order impugned is in two parts.

3. The petitioner allegedly excavated and transported *murum* 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. 31,800/- (Rupees Thirty One Thousand Eight Hundred).

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 *murum*.

5. Learned counsel for the petitioner, Mr. Bhise submits that in so far as royalty and penalty on transportation of *murum* is concerned, the petitioner is not pressing the challenge and shall comply with the order impugned within the next seven days. However, Mr. Bhise 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 *murum*, 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 *murum*.

7. While the order of the Tahsildar was subjected to appeal and there is an order of dismissal of appeal by the Sub Divisional Officer, Akot, it is clear that the authority to decide whether the vehicle ought to be released, and the conditions for such release, was not the Tahsildar. In this view of the matter, the order impugned dated 17-9-2021 is quashed and the Sub Divisional Officer, Akot is directed to decide the matter in exercise of power under Section 48(8)(2) of the Code.

8. The petitioner shall appear before the Sub Divisional Officer, Akot on 2-3-2022 and shall apprise the authority of this order.

9. The authority is requested to take an appropriate decision on release of the vehicle and the conditions subject to which the release can be ordered, within ten days from the appearance of the petitioner.

10. The petition is disposed of in the aforestated terms.

JUDGE

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