

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

Writ Petition No. 834 of 2022

Shahbaj Ahemad Nazir Ahemad
Aged about : 68 years,
Occupation : Business,
R/o. Kumbharpura, Nagpur Road,
Yavatmal, Tah. and 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,
Yavatmal, Distt. Yavatmal.
- (4) The Tahsildar, Yavatmal
Tah. Yavatmal, Dist. Yavatmal.

... Respondents

.....
Mr. P. S. Wathore, Advocate for the petitioner
Mr. K. L. Dharmadhikari, A. G. P. for the State/respondents
.....

CORAM : ROHIT B. DEO, J.
DATED : 2-3-2022

ORAL JUDGMENT

Issue notice for final disposal.

- 2. Learned Assistant Government Pleader, Mr. Dharmadhikari
waives service for the respondents.

3. Rule. With consent, the petition is finally heard.

4. The petitioner is assailing the order dated 24-1-2022 rendered by the Tahsildar, Yavatmal imposing penalty of Rs. 36,915/- (Rupees Thirty Six Thousand Nine Hundred Fifteen) as regards alleged illegal excavation and transportation of sand and penalty of Rs. 1,00,000/- (Rupees One Lac) as regards the alleged illegal user of the vehicle.

5. In so far as the penalty of Rs. 36,915/- (Rupees Thirty Six Thousand Nine Hundred Fifteen) imposed for illegal excavation of sand, the order can be challenged in statutory appeal and the petitioner is accordingly relegated to the said remedy.

6. The penalty of Rs. 1,00,000/- (Rupees One Lac) imposed for the alleged illegal user of the vehicle is unsustainable, since the penalty could have been imposed only by a revenue officer of the rank not lower in rank than the Deputy Collector. This is the mandate of Section 48(8)(2) of the Maharashtra Land Revenue Code, 1966 as is held by the Division Bench of this Court in Writ Petition No. 7165/2018 (Harihar s/o Mahadev Puri Vs. State of Maharashtra and anr.) dated 15-3-2019.

7. In this view of the matter, while the petitioner is relegated to remedy of statutory appeal as regards penalty of Rs. 36,915/- (Rupees Thirty Six Thousand Nine Hundred Fifteen) levied for illegal excavation and transportation of sand, the penalty of Rs. 1,00,000/- (Rupees One Lac) imposed for alleged illegal user of vehicle is set aside.

8. The release of vehicle and the conditions to be imposed including the penalty may be decided by the Sub Divisional Officer, Yavatmal (Respondent 3) within ten days from the appearance of the petitioner.

9. The petitioner shall appear before the Sub Divisional Officer, Yavatmal on 7-3-2022 and shall apprise the authority of this order.

10. The petition is partly allowed in the aforestated terms.

JUDGE

wasnik