

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

Writ Petition No. 1812 of 2020

- (1) Sk Matin Atikur Raheman,
aged 27 years, Occ. Business,
- (2) Atikur Raheman Ata Ur Raheman,
aged 60 years, Occ. Business,
Both R/o Jawali Bes, Balapur,
Tq Balapur, Dist Akola.

... Petitioners

... Versus ...

- (1) The District Collector Akola,
Office of the Collector, Akola
Dist. Akola
- (2) The Tahsildar, Balapur
Office of the Tahsildar Balapur,
Distt. Akola.
- (3) The Sub Divisional Officer, Balapur,
Office of the SDO, Balapur,
Dist Akola.
- (4) The Naib Tahsildar, Balapur
- (5) The Circle Officer, Balapur,
Office of the Tahsildar, Balapur,
Dist. Akola.

... Respondents

Mr. A. A. Syed, Advocate for the petitioners
Ms. T. H. Khan, A.G.P. for the respondents

CORAM : ROHIT B. DEO, J.

DATED : 28-2-2022

ORAL JUDGMENT

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

2. The petitioners have suffered an order dated 7-9-2019 rendered by the Tahsildar, Balapur in purported exercise of power under Sections 47 and 48(8) of the Maharashtra Land Revenue Code, 1966 (Code) whereby penalty of Rs. 13,14,139/- (Rupees Thirteen Lacs Fourteen Thousand One Hundred Thirty Nine) is imposed for illegal excavation and transport of sand and penalty of Rs. 7,50,000/- (Rupees Seven Lacs Fifty Thousand) is imposed for illegal use of the vehicles for transporting sand.

3. Being aggrieved, the petitioners approached the Sub Divisional Officer, Balapur in appeal which is dismissed vide order dated 31-12-2019.

4. In so far as penalty of Rs. 7,50,000/- (Rupees Seven Lacs Fifty Thousand), which is imposed by the Tahsildar, the same will have to be set aside in view of the decision of 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. 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.”

5. It is true that the order of the Tahsildar is considered by the Sub Divisional Officer in appeal. However, since the order of the Tahsildar is without jurisdiction to the extent penalty is imposed on

illegal use of vehicles, the matter will have to be decided by the Sub Divisional Officer as the first authority.

6. Accordingly, the matter is remitted to the Sub Divisional Officer, Balapur only for the limited purpose of deciding the issue of imposing penalty for illegal use of the vehicles.

7. In so far as the penalty of Rs. 13,14,139/- (Rupees Thirteen Lacs Fourteen Thousand One Hundred Thirty Nine) which the Tahsildar has imposed and which is upheld by the Sub Divisional Officer in respect of illegal excavation and transportation of sand, I do not see any reason to interfere in writ jurisdiction. The learned counsel for the petitioners would submit that the officers are guilty of serious misconduct and fabrication of panchanama, since the Tahsildar, who has purportedly signed the panchanama, was not present on the spot when the vehicles were seized, and it was the Naib Tahsildar, who effected the seizure. I do not see any material to support the allegation. The presumption is that executive acts are done in accordance with law and the burden would be heavy on a person accused of sand theft to substantiate the contention that the Government Officers have manipulated the record. In this view of the matter, I need not delve deeper in the submission of the learned Assistant Government Pleader

Ms. Khan that even otherwise, the Naib Tahsildar was authorized to effect the seizure. Ms. Khan hastens to add that this submission is made as a proposition of law and the case of the respondents is that as a fact the seizure is done by the Tahsildar. Other grievance raised is that the documents were not supplied. Despite repeated queries from the Court, the learned counsel was unable to point out any application or formal request demanding any document in support of the defence.

8. I see no reason to interfere in writ jurisdiction in so far as the penalty of Rs. 13,14,139/- (Rupees Thirteen Lacs Fourteen Thousand One Hundred Thirty Nine) which is imposed by the Tahsildar, acting within jurisdiction, in respect of illegal excavation and transportation of sand. As observed earlier, in so far as the penalty imposed for illegal user of the vehicles, the issue will have to be decided by the Sub Divisional Officer or any other officer duly authorized who is not below the rank of Deputy Collector. Subject to the limited remand, the petition is dismissed.

JUDGE

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