

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

WRIT PETITION NO.1550 OF 2022

Rajeshkumar s/o Rambalan Chaudhary
Aged about 30 yrs, occu: Business,
R/o Tekadi, Tahsil Paraseoni,
District Nagpur.

..... **PETITIONER**

...V E R S U S...

- 1 State of Maharashtra Through
Secretary Ministry of Revenue and
Forests, Mantralaya, Mumbai 32.
2. Sub-Divisional Officer,
Pusad, District Yavatmal.
3. The Tahsildar, Pusad,
District Yavatmal.

..... **RESPONDENTS**

Mr. S. G. Karmarkar, Advocate for Petitioner.
Ms. T. H. Khan, AGP for Respondents 1 to 3/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **18th APRIL, 2022.**

ORAL JUDGMENT:

This petition assails the order dated 05.10.2020 passed by the Sub-Divisional Officer, Pusad in Appeal 1/MNL-37/2020-2021 whereby the order dated 30.07.2020 passed by the Tahsildar, Pusad is confirmed.

2. The Tahsildar, Pusad invoked power under Section 48 (7) and (8) of the Maharashtra Land Revenue Code (Code) and imposed penalty of Rs.1,40,000/- (Rupees One Lakh Forty Thousand) and levy of royalty of Rs.28,000/- (Rupees Twenty Eight Thousand) for the alleged illegal transportation of 7 brass sand. This part of the order is confirmed in appeal. Against the order in appeal, there is a further remedy available and I am not inclined to exercise writ jurisdiction.

3. However, to the extent the Tahsildar has invoked the power under Section 48 (8) (2) of the Code, the order impugned will have to be quashed. The law is settled *inter alia* by the Division Bench in ***Writ Petition 7165/2018 (Harihar s/o Mahadev Puri v. State of Maharashtra and anr.)***.

4. It is true that acting as the appellate authority the Sub-Divisional Officer, Pusad has confirmed even the penalty imposed for illegal used of vehicle. However, since the imposition of penalty for illegal user of vehicle by the Tahsildar was without jurisdiction, the aspect shall have to be looked into by the Sub-Divisional Officer, Pusad as the first authority and not as the appellate authority. It is the Sub-Divisional Officer, Pusad or

Deputy Collector who is empowered to decide the aspect involved.

5. The order impugned is quashed to the extent penalty is imposed on illegal user of vehicle.

6. The petitioner shall appear before the Sub-Divisional Officer, Pusad on 25.04.2022 and the Sub-Divisional Officer, Pusad shall after hearing the petitioner decide the matter afresh, in so far as the prayer of the petitioner for releasing the vehicle and the conditions subject to which the vehicle can be released.

7. The decision shall be taken within ten days from the date of appearance of the petitioner.

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

JUDGE

NSN