

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

WRIT PETITION NO. 2608 OF 2022
(Sachin S/o Sudhakar Rao Itankar Vs. State of Maharashtra & others)

WITH

WRIT PETITION NO. 3014 OF 2022
(Pitambar Chintaman Rao Ahirkar Vs. State of Maharashtra & Others)

WITH

WRIT PETITION NO. 3017 OF 2022
(Yogesh S/o Domalu Tidke Vs. State of Maharashtra & others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.R. Ingole, Advocate for Petitioners
Mr. K.L. Dharmadhikari, AGP for Respondent – State
in WP No. 2608/2022 & 3017/2022,
Mrs. S.S. Jachak, AGP for Respondent – State in W.P.
No. 3014/2022

CORAM : MANISH PITALE, J.

DATE : 17th JUNE, 2022

In these three writ petitions a common question arises. It is the contention of the petitioners that insofar as imposition of penalty on the vehicles for illegal transportation of minor mineral i.e. sand is concerned, the impugned orders are vitiated, for the reason that the respondent – Tahsildar did not have jurisdiction to pass any order imposing penalty in the context of the vehicles.

2. In these three petitions, the vehicles belonging to the petitioners were seized for illegally transporting sand in violation of the provisions of the Maharashtra Land Revenue

Code, 1966, particularly Section 48 thereof. In the process of imposing penalty for such activity, apart from imposing penalty for illegally transporting sand, the Tahsildar by the impugned orders imposed penalty for the vehicles used in the said activity.

3. The learned counsel for the petitioners in these three petitions has relied upon number of judgments passed by this Court, particularly a recent judgment in the case **Saurabhsingh S/o Thamendrasingh Chouhan Vs. State of Maharashtra and others**, judgment and order dated **24/02/2022**, passed in Writ Petition No.370 of 2022, to contend that imposition of penalty in respect of the vehicles by the respondent – Tahsildar was without jurisdiction under Section 48(8) of the Code, as only a Collector or an authorized Officer not below the rank of Deputy Collector could have imposed penalty. It is submitted on instructions that the petitioners are ready to deposit the penalty imposed on them in respect of the transport of the said minor mineral i.e. sand and that, therefore, this Court may allow the writ petitions. to the extent of setting aside penalties imposed in respect of the vehicles and to direct immediate release of the said vehicles.

4. The learned Assistant Government Pleaders appeared for respondent – State, but, they were unable to distinguish the facts of the present cases from the facts in the case of **Saurabhsingh S/o Thamendrasingh Chouhan Vs. State of**

Maharashtra (supra) and other such cases already dealt with by this Court. But, an apprehension was expressed that if appropriate directions are not given and the vehicles are released, it may lead to unnecessary complications.

5. This Court has considered the aforesaid judgment in the case of **Saurabhsingh S/o Thamendrasingh Chouhan Vs. State of Maharashtra** (Supra). In the said judgment, in similar circumstances, this Court found that penalty could not have been imposed by the Tahsildar in connection with vehicles engaged in such illegal activity of transport of sand. In the said case also the petitioner did not press challenge in respect of the penalty imposed for illegal transportation of sand. Therefore, this Court set aside only that part of the order, whereby penalty was imposed for use of the vehicles. The matter was then remanded to the respondent – Deputy Collector for further appropriate action in the matter.

6. This Court is of the opinion that the present cases are covered in favour of the petitioners in view of the said position of law reiterated in the judgment in the case of **Saurabhsingh S/o Thamendrasingh Chouhan Vs. State of Maharashtra** (supra). The learned counsel for the petitioners on instructions has already stated that the petitioners are not pressing challenge as against imposition of penalty for illegal transportation of sand. In that view of the matter, the writ petitions are partly allowed.

7. In Writ Petition No.2608 of 2022, while imposition of penalty to the extent of Rs.61,200/-, for illegal transportation of sand is upheld, the penalty imposed in respect of the truck of the petitioner to the tune of Rs.2,00,000/-, is set aside. The matter is remanded to respondent No.2 – Additional Collector for further appropriate steps in the matter for the said Officer or an Officer authorized by him not below the rank of Deputy Collector to proceed in the matter, in accordance with Section 48(8) of the aforesaid Code. On the petitioner in the said petition depositing the penalty for illegal transportation of sand to the tune of Rs.61,200/-, the vehicle of the petitioner i.e. truck bearing No. MH-40-7775, shall be released forthwith. The petitioner shall produce the said vehicle before the respondent No.2 or the Officer authorized by him as and when directed. The respondent No.2 or the Officer authorized by him shall dispose of the proceedings in accordance with law within six weeks from today.

8. In Writ Petition No.3014/2022, the petitioner has given up the challenge for imposition of penalty of Rs.90,500/-, for illegal transportation of sand. Accordingly, in view of the above-mentioned position of law the penalty to the tune of Rs.2,00,000/-, imposed in respect of the vehicle i.e. truck bearing No. MH-49-AT-1987, is set aside and the matter is remanded to respondent No.2 – Additional Collector for further proceedings. The said respondent either himself or through an authorized Officer not below the rank

of Deputy Collector shall proceed in accordance with law as per Section 48(8) of the said Code, in respect of the said vehicle.

9. On the petitioner in the said petition depositing the penalty amount of Rs.90,500/- pertaining to illegal transportation of sand, the vehicle i.e. truck bearing No. MH-49-AT-1987, shall be released forthwith. The petitioner shall produce the vehicle before the respondent No.2 or an Officer authorized by him as and when directed. The respondent No.2 or the Officer authorized by him shall complete the proceedings within a period of six weeks from today.

10. In Writ Petition No. 3017/2022, the petitioner has given up challenge as regards imposition of penalty of Rs.1,08,600/-, for illegal transportation of sand. But, in view of the aforementioned position of law the penalty of Rs.2,00,000/-, imposed in respect of the vehicle i.e. truck belonging to the petitioner is set aside. Upon the petitioner depositing amount of Rs.1,08,600/-, towards penalty imposed for illegal transportation of sand, the vehicle i.e. truck bearing No. MH-40-BL-9565, shall be released in favour of the petitioner forthwith. The proceedings in respect of the vehicle are remanded to the respondent No.2 – Additional Collector, who shall now proceed in accordance with law and shall complete the proceedings within a period of six weeks from today. The petitioner shall produce the

said vehicle before the respondent No.2 or the Officer authorized by him during the said proceedings as and when directed.

11. The writ petitions stand disposed in above terms.

JUDGE