

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

WRIT PETITION NO. 3298 OF 2022

Vilas S/o Shalikram Pawar vs. State of Maharashtra and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A. R. Ingole, Advocat for petitioner.
Mr. K. L. Dharmadhikari, AGP for respondent Nos.1 to 4.

CORAM : MANISH PITALE J.

DATE : 17/06/2022

This petition has come up for consideration for the first time. But, since the respondents are all State Authorities and the learned AGP is appearing for them. Considering the issue involved in the present petition, the same is taken up for final disposal.

2. In the present case, the petitioner is aggrieved by order dated 23/07/2021, passed by the respondent No.4 Tahsildar, whereby penalty has been imposed upon the petitioner for illegally transporting sand, which is minor mineral. Action was taken under Section 48 of the Maharashtra Land Revenue Code, 1966. It is brought to the notice of this Court on the basis of the documents on record that for transporting sand illegally, penalty of Rs.19,315/- was

imposed on the petitioner, while penalty of Rs.1,00,000/- was imposed for the vehicle on the ground that the said vehicle was used for illegally transporting the sand. The vehicle of the petitioner, which are a tractor and trolley were seized and continued to be in the custody of respondent No.4.

3. The learned counsel for the petitioner has relied upon the judgment and order dated 24/02/2022, passed by this Court in similar circumstances in the case of ***Saurabhsingh S/o Thamendrasingh Chouhan vs.State of Maharashtra and others (WP No.370 of 2022)***, to contend that seizure of the vehicle and imposition of penalty in that context by the respondent No.4 Tahsildar was without jurisdiction, considering the requirement of law under Section 48(7) and 48(8) of the aforesaid Code. It was submitted that the petitioner is ready to give up his challenge insofar as imposition of penalty of Rs.19,315/- in respect of the sand was concerned. On this basis, it was submitted that a direction ought to be issued for release the tractor and trolley and for appropriate steps to be taken in that regard, as the petitioner was ready to deposit the penalty of Rs.19,315/- within one week from today.

4. The learned AGP appearing on behalf of the respondent submitted that even in such cases, this Court has directed release of vehicle only upon deposit of 50% of the penalty imposed and that therefore, even if this Court is inclined to grant relief to the petitioner, appropriate conditions ought to be imposed.

5. This Court has perused the material on record. A perusal of the said judgment of this Court in the case of *Saurabhsingh* (supra) shows that in similar circumstances, this Court had granted appropriate relief to the petitioner therein, further directing that the respondent Additional Collector either himself or through the authorized officer in terms of Section 48(8) of the Code, could take appropriate steps in the matter.

6. As noted above, the petitioner has already stated that he is not pressing challenge as against imposition of penalty of Rs.19,315/- in respect of sand, which is a minor mineral. Insofar as imposition of penalty of Rs.1,00,000/- on tractor and trolley is concerned, the position of law laid down and clarified in the said judgment of this Court, clearly demonstrates that the respondent No.4 Tahsildar could not have imposed penalty, insofar as vehicle

was concerned and that the impugned order to that extent was without jurisdiction.

7. Hence, it is held that the imposition of penalty of Rs.1,00,000/- by the respondent No.4 is without jurisdiction and the impugned order is set aside to that extent. Since the petitioner is not pressing challenge as regards the imposition of penalty of Rs.19,315/-, upon deposit of the said amount within one week, the tractor and trolley of the petitioner bearing No.MH-31-G-4542 and MH-29-C-7478, respectively shall be released.

8. It is further directed that the respondent No.2 would be at liberty to take appropriate steps in the matter either himself or through an authorized officer in terms of Section 48(8) of the Code, for which purpose the matter is remanded back to respondent No.2. The said respondent will grant hearing to the petitioner before passing appropriate orders within six weeks from today. The petitioner shall abide by direction of respondent No.2, if required, for producing the tractor and trolley before the said respondent.

9. Writ petition stands disposed of.