

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

WRIT PETITION NO. 3589 OF 2022

Rajendra Vitthalrao Bhange

-- Petitioner

Vs.

State of Maharashtra and others

-- Respondents

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 Petitioner

Mr. K.L. Dharmadhikari, AGP for Respondent Nos.1 to 4

CORAM : MANISH PITALE, J.

DATE : 01st JULY, 2022

By this petition, the petitioner has challenged order dated 30/12/2020, passed by the respondent – Tahsildar, whereby penalty was imposed on illegal transportation of sand. The vehicle of the petitioner, which was allegedly carrying the aforesaid minor mineral illegally, was seized.

2. The principal contention raised on behalf of the petitioner is that the imposition of penalty on the vehicle by the respondent – Tahsildar was without jurisdiction under Section 48(8) of the Maharashtra Land Revenue Code, 1966. In that regard, reliance is placed on judgments of this Court, including a Division Bench of judgment of this Court in the case of **Harihar s/o. Mahadev Puri Vs. State of Maharashtra**

and another (Writ Petition No.7165 of 2018), passed on 15/03/2019.

3. On instructions, the learned counsel for the petitioner submits that the petitioner is ready to deposit the penalty of Rs.30,000/-, imposed on the transportation of minor mineral i.e. sand, but, the imposition of penalty of Rs.1,00,000/-, on the vehicle is wholly without jurisdiction. It is submitted that under Section 48(8)(2) of the said Code, penalty for use of such vehicle could be imposed only by a Collector or an Officer not below the rank of Deputy Collector authorized in that regard. It is submitted that in the present case, since the Tahsildar has imposed the penalty on the vehicle, it is wholly without jurisdiction. On this basis, it is also prayed that upon the penalty for transportation of minor mineral i.e. sand being deposited, this Court may direct release of the vehicle, subject to conditions that may be imposed by this Court.

4. The learned Assistant Government Pleader appearing on behalf of the respondent submitted that even if imposition of penalty on the vehicle by the respondent – Tahsildar could be said to be without jurisdiction, release of the vehicle at this stage may not be permitted, as Collector or an Officer not below the rank of Deputy Collector duly authorized does have jurisdiction to consider the question of imposition of penalty on the vehicle. It is further submitted that when the petitioner himself has conceded to payment of penalty imposed for

transportation of sand, he is obviously conceding to having illegally transported the sand and that, therefore, the penalty can certainly be imposed on the vehicle. On this basis, it was submitted that even if the petitioner is proposing to deposit the penalty imposed towards illegal transportation of sand, the vehicle may not be released.

5. In similar cases, this Court has passed order on 17/06/2022, directing that the vehicles used by the petitioners be released upon payment of penalty for illegal transportation of sand and the matters have been relegated to the Additional Collector to proceed in accordance with law on the question of imposition of penalty on the vehicle. In fact, the Additional Collector was directed in the said order to dispose of the proceedings in a time bound manner and petitioners therein were directed to produce the vehicle before the Additional Collector or authorized Officer as and when directed.

6. Despite the specific contentions raised on behalf of the respondent by the learned Assistant Government Pleader, this Court is of the opinion that a similar course can be adopted. Accordingly. The writ petition is partly allowed.

7. As per the statement made on behalf of the petitioner, he shall pay the amount of penalty of Rs.30,000/-, imposed for illegal transportation of sand before the concerned authority. Upon such amount being deposited, the vehicle of the

petitioner i.e. truck bearing registration No. MH-32-D-1099, shall be released forthwith, subject to the petitioner producing the said vehicle before the respondent No.2 i.e. the Additional Collector or duly authorized Officer as per Section 48(8)(2) of the Code, as and when directed.

8. The matter to that extent is remitted to the respondent No.2, who shall pass appropriate orders within six weeks from today.

JUDGE