

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

WRIT PETITION NO. 3878 OF 2021

Sudarshan s/o Bhajandas Bansod,
Aged about : 34 years, Occupation :
Business, R/o Devhada Khurd, Tah.
Mohadi, District Bhandara.

.... **PETITIONER**

// **VERSUS** //

1. State of Maharashtra, through its
Secretary, Revenue and Forest
Department, Mantralaya, Mumbai –
32.
2. The Additional Collector, Nagpur,
District Nagpur.
3. The Sub-Divisional Officer, Mouda,
Tah. Mouda, District Nagpur
4. The Tahsildar, Kamptee, Tah.
Kamptee, District – Nagpur.
5. Police Station Officer, Police Station
Mouda, Tah. Mouda, District –
Nagpur

.... **RESPONDENTS**

Shri A.R. Ingole, Advocate for the petitioner.
Mrs. T.H. Khan, A.G.P. for respondent nos. 1 to 5.

CORAM : ROHIT B. DEO, J.
DATED : 01.03.2022

ORAL JUDGMENT :

Heard. **RULE.** With consent, the petition is heard finally.

2. The petitioner is assailing an order dated 24.09.2021 rendered by the Tahsildar, Kamptee, whereby penalty of Rs.40,500/-(Rupees Forty Thousand and Five Hundred only) is imposed on the premise that the petitioner was transporting illegal excavated sand weighing 5 brass.

3. This Court passed an interim order dated 05.10.2021, which reads thus :

“Heard.

Issue notice for final disposal to the respondents, returnable in four weeks.

Ms. N.P. Mehta, learned Assistant Government Pleader waives service of notice for the respondents.

In the meanwhile, if the petitioner deposits Rs.1,00,000/- with the respondent no.4-Tahsildar, Kamptee, District-Nagpur; the respondent no.5- Police Station Officer of Police Station, Mouda, District – Nagpur shall release the Truck of the petitioner bearing registration No.MH-36-F-3353 in empty condition. The petitioner is also directed to furnish the personal bond as contemplated under Section 48(8)(2) of the Maharashtra Land Revenue Code, 1966.

Place this matter along with connected matters after four weeks. Hamdast granted.

Registry is directed to tag the matter together district-wise.”

4. Having perused the record after hearing the learned Counsel for the petitioner Mr. Ingole, I find no error whatsoever in the order of the

learned Tahsildar, Kamptee.

5. The submission which is canvassed is that after the seizure of the vehicle, the same was not produced before the appropriate authority within 48 hours. The learned Assistant Government Pleader Mrs. Khan rightly points out that the very same submission is considered and rejected by the Division Bench in Writ Petition 7165 of 2018 (Harihar s/o Mahadev Puri vs. State of Maharashtra and anr.). The relevant observations read thus :

“9. The next contention of the learned Counsel for the petitioner is that the vehicle in question was not produced before the Collector within 48 hours of its seizure and that violated the mandate of sub-section (8) of Section 48 of the MLR Code. From the documents placed on record, we find that there is a delay in production of the vehicle in question before the Collector or duly authorized Deputy Collector by the Tahsildar, Armori and this delay went beyond the stipulated time of 48 hours. But, the question would be, whether such belated production of the vehicle before the concerned authority would make the transport of excess sand found to be illegal as legal and the answer has to be stated in negative terms. Of course, the Division Bench of this Court in the case of Dipak Ghadge and others vs. State of Maharashtra and others, reported in 2018(66) GST 314 has taken a view that the provision of Section 48(8)(2) is mandatory in nature and if it is not followed, a serious prejudice would occur to the affected person for, it is likely that such person may suffer substantial financial loss. This view expressing the consequence of not following the mandate of Section 48(8)(2) is only about a prejudice occurring to an affected person in terms of financial loss and not in terms of the legality or otherwise of the action of illegal transportation of the sand belonging to the State Government. Therefore, so far as the question involved in the present case is concerned, in our humble opinion, the view so expressed by the coordinate Bench of this Court, on facts, would be of no assistance to the case of the petitioner here. In the present case, question of financial loss would arise only when the petitioner has proved his right over the excess sand, which he has not. Facts show that the petitioner failed to dislodge the presumption of the sand belonging to the Government. Financial loss would occur to only that person who illegally or wrongly loses or sacrifices a thing owned by them. There is another dimension

involved. Violation of mandate of Section 48(8) by itself would not legalize an action, the action of illegal transport of sand, which is otherwise patently unlawful and in clear violation of the right of the State Government to all the minerals found in the State and the transporter has to make out a case of specific prejudice to him, which the petitioner has not done in the present case.”

6. The petition is dismissed.
7. The interim order is recalled.
8. The petitioner is directed to deposit the vehicle in the office of the Tahsildar, Kamptee, District Nagpur, within the next 72 hours.
9. If any amount is deposited by the petitioner, after deducting the penalty payable, the balance amount, if any, shall be refunded within two weeks from the deposit of the vehicle.

(ROHIT B. DEO, J.)

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