

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

WRIT PETITION NO. 4808 OF 2022

Devendra Ashok Sathawane _ Vs. __ State of Maharashtra and 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 petitioner
Mrs. M.M.Barabade, AGP for respondent Nos. 1 to 4

CORAM : AVINASH G. GHAROTE, J.

DATE : 07/10/2022

1] Heard Mr. Ingole, learned counsel for the petitioner and Mrs. Barabde, learned AGP for respondents/State.

2] The petition assails the order dated 11.5.2022 (pg 32) whereby in exercise of the powers under Section 48 (8) (2) of the Maharashtra Land Revenue Code, the Respondent No.3/SDO has imposed a penalty of ₹.7,50,000/- upon the petitioner for excavating ordinary earth in his own field, which is based upon the Government Resolution/Notification GSR 95(E) dated 3.2.2000 issued by the Central Government.

3] The aforesaid notification came up for consideration before the learned Division Bench of this Court in **BGR Energy System Ltd vrs Tahsildar, Saoner, 2018 (1) Mh.L.J 332**, in which after considering the rival contentions and the language of the notification, it was

categorically held that the said notification would be applicable to commercial activities as indicated therein, in which case ordinary earth was to be considered as a minor mineral. It is further held that in case ordinary earth is used for any other purpose, other than those mentioned in the notification, the same is not to be considered as a minor mineral.

4] In the instant case, it is not disputed that the petitioner owns two fields, one bearing Survey No. 313 and other bearing Survey No.288, both situated at Mouza Narsinhtola at Mohadi, District Bhandara, and at the relevant time, earth was being excavated from his field Survey No.313, at which point of time the authorities apprehended him and based upon a presumption of applicability of the aforesaid notification have levied the penalty. The explanation given by the petitioner that the earth was being excavated in order to level his other field bearing Survey No. 288, has been rejected.

5] The record makes it apparent that there is absence of any material to indicate that there was any commercial utilization or any intended commercial use of the earth being excavated by the petitioner from his own field, which being the position, in light of what is held by the learned Division Bench in **BGR Energy System Ltd** (supra), the excavation of ordinary earth could not have been termed to be for any of the uses as indicated in the

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notification dated 3.2.2000, in view of which it was not permissible for Respondent No.3/SDO to have imposed the penalty by passing the impugned order. The impugned order is therefore quashed and set aside and the petition is accordingly allowed in the above terms. No costs.

JUDGE

Rvjalit