

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5109 OF 2021

Kailas Bhuta Sonawane,
Age: 47 years, Occu : Agriculture,
R/o. At Village Vaijnath, Post Kadholi,
Tq. Dharangaon, Dist. Jalgaon.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary
Revenue and Forest Department
Mantralaya, Mumbai-32.
2. The Collector
Collector Office, Jalgaon.
3. The Sub Divisional Magistrate
Yerandol Sub Division
Yerandol, Dist. Jalgaon.
4. The Tahsildar,
Tahasil Office, Tq. Dharangaon,
Dist. Jalgaon.

.. RESPONDENTS

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Mr.Chetan T. Jadhav, Advocate for the petitioner
Mr.K.N.Lokhande, AGP for the respondent-State

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 01.12.2022
Pronounced on : 12.01.2023

JUDGMENT :

1] The petitioner is challenging the order dated 22.01.2020 passed by the Additional Collector, Jalgaon under Section 247 of the Maharashtra Land Revenue Code whereby the appeal filed by the petitioner herein was dismissed and the order passed by the Sub-Divisional Officer and the Tahsildar, Erandol, upholding the order imposing penalty of Rs.1,19,800/- for using the tractor bearing No. MH-20-CR-5226 for transporting minor mineral without license and payment of royalty.

2] Brief facts of the case can be summarized as under :

i] The show-cause notice issued to the petitioner dated 20.05.2018 indicates that on 22.04.2018 in Gat No.248/2 situated at village Bhambhori, a Tractor bearing No. MH-20-CR-5226 was found carrying 1 brass of minor mineral with an intention of sale and the same was detained by the authorities, constituted under the Land Revenue Code. Accordingly, notice was issued to the

petitioner under Section 48 [7] of the Maharashtra Land Revenue Code read with Government Resolution dated 12.01.2018, seeking an explanation from the petitioner as to why penalty of Rs.1,19,800/- should not be imposed upon him.

ii] The petitioner submitted his reply to the said notice stating that the vehicle of the petitioner was standing (empty) in front of the house of friend of the petitioner, namely, Devidas Rama Nannaware at village Bhambhori, Taluka Erandol, District Jalgaon on 22.04.2018. Only due to the political rivalry, such empty vehicle standing in front of the house of the friend of the petitioner was seized. The Tahsildar, Dharangaon, after considering the reply, as also, the panchnama and the statements of the panchas held that explanation is not satisfactory and confirmed the demand by order dated 24.06.2018 and directed to pay the aforesaid amount.

iii] Against the aforesaid notice dated 22.04.2018, the petitioner approached this Court by way of filing Writ

Petition No.8020/2018. In the said Writ Petition, directions were given to produce the vehicle before the Sub Divisional Magistrate and the petitioner be heard for release of vehicle. Thereafter, on 19.09.2018, fresh notice was issued by the Tahsildar asking to deposit the amount of penalty.

iv] Against the said order dated 24.06.2018, the petitioner approached Sub Divisional Officer on 28.09.2018. On 01.02.2019, the Sub Divisional Officer rejected the application of the petitioner. Thereafter on 24.04.2019, the petitioner filed revision before the Collector which came to be dismissed on 21.01.2020. Thereafter, on 14.08.2020, the petitioner made fresh representation to the Sub Divisional Officer to release the vehicle. The representation was taken as appeal under Section 247 and decided on 04.11.2020 holding that such an application is barred by *res judicata* as the revision is disposed on 22.1.2020. Aggrieved thereby, the petitioner has filed the present Writ Petition, challenging the order passed by the authorities below.

3] It is the contention of the petitioner that on account of private political rivalry, an empty tractor was seized, he is not being given an opportunity to cross examine the witnesses mentioned on the aspect of transportation of the minor mineral and the place of seizure of the minor mineral. The petitioner submits that the number of tractor is mentioned but the trolley number is not mentioned.

4] The learned counsel for the petitioner further submits that the petitioner has given affidavit of the panchas to the Appellate Authority stating therein that there was no seizure and they have not witnessed seizure of the tractor of the petitioner and panchnama drawn is false.

5] *Per contra*, the learned AGP for the respondent-State submits that the evidence on record is sufficient to hold that the petitioner was transporting minor mineral of 1 brass and that he had no authority to transport the same. The learned AGP further submits that subsequent affidavits filed by the panchas at an appellate stage would only mean

that the petitioner has been able to influence the panch witnesses at a later stage as they are resident of the same village.

6] It appears that a tractor bearing No. MH-20-CR-5226 was found carrying minor mineral on 24.04.2018 and when the driver of the tractor was asked about the permission to carry the same [minor mineral], he had no such permission to carry the minor mineral. Thereafter, notices were issued to the owners and it was found that response was non-satisfactory. Response of the petitioner was that there was deliberate attempt to implicate the petitioner and that stationery vehicle in front of the house of the petitioner's friend was attached. However, explanation was rejected because the official concerned and the panchanama indicated that vehicle was transporting minor mineral without permission and payment of royalty and accordingly the order dated 22.06.2018 was passed. Thereafter, appeal preferred before the Sub Divisional Officer, Erandol under Section 247 of the Maharashtra Land

Revenue Code. After giving various opportunities to the petitioner and also considering the material on record, dismissed the appeal by order dated 01.02.2019. Thereafter, the petitioner filed revision before the Collector and the same was also dismissed by order dated 22.01.2020.

7] It is to be noted that the authorities have concluded that the driver of the tractor was trying to vacate the minor mineral from the trolley and run away from the spot and that since the same happened in front of the revenue officers and relying on the statement of the panch witnesses, the authorities also took into consideration the fact that the petitioner did not have any permission to carry the minor mineral, rejected the appeals filed by the petitioner.

8] There is no counter evidence produced by the petitioner that the tractor was parked in front of the house of the friend of the petitioner as contended by the petitioner. It is to be noted that the statement of panchas

retracting the panchanama was after a period of one year and not much reliance can be placed on the retracted statement of panchas. Thus, in view of the same, this petition stands dismissed on merits.

9] However, it is also the contention of the petitioner that there was an interim direction by the Division Bench of this Court by common order dated 2nd August, 2018 in Writ Petition No.8020 of 2018 for release of the petitioner's truck and there was a violation of the order dated 2nd August, 2018. The petitioner is at liberty to move appropriate application for violation of the order of the Division Bench of this Court dated 2nd August, 2018, as may be available in law and the violation of the said order is not considered in the present petition.

10] Accordingly, the Writ Petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE