

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3498 OF 2023

Manoj Dilip Pund,
Age : 32 years, Occu. Business,
Village Mendwan, Tal. Sangamner,
Dist. Ahmednagar.

... Petitioner

Versus

The Collector, Ahmednagar,
Dist. Ahmednagar & Ors.

... Respondents

...

Mr. Sandeep Shinde h/f Mr. Ravindra B. Narwade Patil – Advocate for
the petitioner

Mr. S. B. Pulkundwar – AGP for respondent/State

....

AND

WRIT PETITION NO. 3499 OF 2023

Vaishnav Rajkumar Murtadak,
Age : 48 years, Occu. Business,
Village Pimpale, Tal. Sangamner,
Dist. Ahmednagar.

... Petitioner

Versus

The Collector, Ahmednagar,
Dist. Ahmednagar & Ors.

... Respondents

...

Mr. Sandeep Shinde h/f Mr. Ravindra B. Narwade Patil – Advocate for
the petitioner

Mr. S. B. Pulkundwar – AGP for respondent/State

....

AND

WRIT PETITION NO. 3501 OF 2023

Raju Haribhau Kankate,
Age : 40 years, Occu. Business,
Malpani Nahar Ghulewadi, Tal. Sangamner,
Dist. Ahmednagar.

... **Petitioner**

Versus

The Collector, Ahmednagar,
Dist. Ahmednagar & Ors.

... **Respondents**

...

Mr. Sandeep Shinde h/f Mr. Ravindra B. Narwade Patil – Advocate for
the petitioner

Mr. S. B. Pulkundwar – AGP for respondent/State

....

AND

WRIT PETITION NO. 7166 OF 2023

Sayadri Hot Mixing, through Proprietor,
Shri. Kiran Kadu,
Age: Occu. Business,
R/o. Village Karhe, Tal. Sangamner,
Dist. Ahmednagar.

... **Petitioner**

Versus

The Collector, Ahmednagar,
Dist. Ahmednagar & Ors.

... **Respondents**

...

Mr. Sandeep Shinde h/f Mr. Ravindra B. Narwade Patil – Advocate for
the petitioner

Mr. S. B. Pulkundwar – AGP for respondent/State

....

AND

WRIT PETITION NO. 5752 OF 2023

Quasam Dadamia Mujawar,
Age : 48, Occu. Business,
Residing at Village Pimpale,
Tal. Sangamner, Dist. Ahmednagar.

... **Petitioner**

Versus

The Collector, Ahmednagar,
Dist. Ahmednagar & Ors.

... Respondents

...

Mr. Sandeep Shinde h/f Mr. Ravindra B. Narwade Patil – Advocate for
the petitioner

Mr. S. B. Pulkundwar – AGP for respondent/State

....

AND

WRIT PETITION NO. 5557 OF 2023

Indrajeet Panditrao Thorat,
Age : 50, Occu. Business,
Village Pimple, Tal. Sangamner,
Dist. Ahmednagar.

... Petitioner

Versus

The Collector, Ahmednagar,
Dist. Ahmednagar & Ors.

... Respondents

...

Mr. Sandeep Shinde h/f Mr. Ravindra B. Narwade Patil – Advocate for
the petitioner

Mr. A. V. Deshmukh – AGP for respondent/State

....

AND

WRIT PETITION NO. 3506 OF 2023

Manoj Dilip Pund,
Age : 32, Occu. Business,
Village Mendwan, Tal. Sangamner,
Dist. Ahmednagar.

... Petitioner

Versus

The Collector, Ahmednagar,
Dist. Ahmednagar & Ors.

... Respondents

...

Mr. Sandeep Shinde h/f Mr. Ravindra B. Narwade Patil – Advocate for
the petitioner

Mr. A. V. Deshmukh – AGP for respondent/State

....

AND

WRIT PETITION NO. 3505 OF 2023

Kisan Keshavrao Thorat,
Age : 58, Occu. Business,
Residing at Mhalaxmi Pride,
1st floor, Akole Bypass Road, Tal. Sangamner,
Dist. Ahmednagar.

... Petitioner

Versus

The Collector, Ahmednagar,
Dist. Ahmednagar & Ors.

... Respondents

...

Mr. Sandeep Shinde h/f Mr. Ravindra B. Narwade Patil – Advocate for
the petitioner

Mr. K. B. Jadhavar – AGP for respondent/State

....

CORAM : KISHORE C. SANT, J.

DATE : 31ST JULY, 2023

PER COURT :

1. Heard learned counsel appearing on behalf of the
respective parties.

2. All these petitions are similar in nature challenging the
similar order dated 01.12.2022 issued by Tahsildar, Sangamner, under
Sections 48(7) and 48(8) of the Maharashtra Land Revenue Code,
1966 [hereinafter referred to as 'MLRC' for the sake of brevity] being
dissatisfied with the reply tendered in response to the show-cause

notice dated 29.11.2022 calling for explanation as to why excavation in excess of the permission was carried out. All these petitioners are running the quarries at their respective places.

3. The grievance of the petitioners is that, the petitioners were directed to give explanation to the show-cause notice dated 29.11.2022 immediately on the next date i.e. 30.11.2022. The petitioners had submitted their reply on 30.11.2022 *inter alia* seeking time to file a detail reply. However, impugned orders under Sections 48(7) and 48(8) of the Maharashtra Land Revenue Code came to be passed within one day i.e. 01.12.2022 thereby imposing heavy penalty.

4. Learned counsel for the petitioners submits that the petitioners were not afforded sufficient opportunity for filing their response to the show-cause notice and the impugned orders came to be passed hastily. He further submits that all the quarry holders have been granted permission for mining as per rules by the Collector and they are operating within the area / premises owned by them and not the State Government and, therefore, no action could have been

taken against them. The action under Section 48(7) and 48(8) of the MLRC could have been taken for violation of the terms and conditions imposed in the permission granted to run the quarry. He draws attention of this Court to Rule 46 of the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013 [in short 'Rules of 2013']. Rule 46 of the Rules of 2013 specifies terms and conditions, which reads thus : -

46. Every quarry lease shall be subjected to conditions. -

- (i) The lessee shall pay royalty on minor minerals removed from the leased area at the rates specified by the Government, from time to time, on the date of the grant of the lease:

Provided that, such rates may be revised only once in every three years.

- (ii) The royalty shall be paid by the lessee quarterly for the quarters ending March, June, September and December and shall be payable within fifteen days after completion of every quarter.

- (iii) For the purpose of computation of royalty dues, the lessee shall compute the said dues on the basis of self assessment and make the payment in the treasury accordingly. It shall also be binding on the lessee to make payment of the difference of royalty after final assessment demand from the Competent Officer:

Provided that, the Competent Officer, without prejudice to the provision contained in rules, shall charge simple interest at the rate of fifteen percent per annum, on the delayed payment of royalty and other mining dues from the sixtieth day of the expiry of the date fixed by the Government for payment of such royalty and other mining dues until payment of such royalty and other mining dues is made.

5. Learned counsel for the petitioners submits that though the order is passed by the Tahsildar and though revenue is provided under the Act, however, considering the haste in which the order is passed, the petitioners could not get the fair opportunity to put up their case and in that case the petitioners can directly approach this Court. He placed reliance upon the judgments in the case of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others reported in AIR 1999 SC 22 and M/s. Radhika Krishan Industries v. State of Himachal Pradesh and Ors. reported in AIR 2021 SC 2114. He also relies upon the judgment delivered by the Division Bench of this Court at Nagpur in the case of Vijay Dashrath Shirbhate Versus State of Maharashtra and another [Writ Petition No.3296/1993 decided on 17 September, 2009], wherein it is held that all the lands which are not privately owned, vest in State Government under Section 20 of the MLRC. It is further held that Section 48(7) deals with the cases where said right of State Government is violated. The said provision clearly shows that its application depends on the place where any mineral is found and it operates only when such place is not leased or assigned for mining by State Government. He thus submits that, it is only in such case that where the minerals are

unauthorizedly extracted from the land owned by the State Government, action under Section 48(7) of the MLRC can be taken.

6. The learned AGP submits that though the permissions were granted to run the quarries, those were granted for extraction of permitted quantity. He further submits that the petitioners were found to have extracted in excess of the permissions granted. Any extraction in excess of the permission would certainly cause loss to the Government. He submits that the authorities received reports in respect of excess excavation and, therefore, show-cause notices were issued to the petitioners calling for the explanation, and on being dissatisfied with the explanation so furnished by the petitioners, the action under Section 48(7) and 48(8) of the MLRC has been taken against them.

7. Considering the above, this Court finds that the notice dated 29.11.2022 certainly cannot be said to be affording sufficient opportunity. Considering the judgment in the case of **Vijay Dashrath Shirbhate** (supra), it is seen that the petition was filed after the action was completed and it was that action which was challenged before

the Division Bench. In this case the petitioners have approached this Court at the stage of issuance of notice by the Tahsildar imposing penalty. This Court finds that the interest of justice would be met by directing the petitioners to approach the Tahsildar. Hence, the following order.

ORDER

- [i] The impugned order dated 01.12.2022 issued by Tahsildar, Tal. Sangamner, Dist. Ahmednagar, stands quashed and set aside.
- [ii] The petitioners shall appear before the Tahsildar on 07th August, 2023.
- [iii] The Tahsildar to supply all the documents to the petitioners and within fifteen (15) days thereafter, shall take fresh decision by affording sufficient opportunity to the petitioners.
- [iv] The petitioners are at liberty to agitate all the points before the Tahsildar. All the points are kept open.

[v] Petitioners shall cooperate with the Tahsildar and unnecessary adjournments shall not be sought.

8. With the observations as above, writ petitions stand disposed of.

[KISHORE C. SANT]
JUDGE