

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

33 WRIT PETITION NO.4675 OF 2023

**MACHINDRA TUKARAM HAKKADAR AND ANOTHER
VERSUS
STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS**

Mr. S. V. Dixit, Advocate for the petitioners
Mr. K. B. Jadhavar, AGP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 14th JUNE, 2023

P. C.

1. Heard the learned advocate for the petitioners.
2. The petitioners have challenged the order passed by the learned Tahasildar, Ahmednagar dated 10-01-2023 imposing penalty of Rs.2,67,490/- for carrying sand illegally.
3. Facts are that, the vehicle i.e. Dumper having registration No. MH-20-BT-9782 was caught carrying crush sand of 3.40 brass on 25-11-2022. Vehicle came to be seized and panchanama is also executed. The Tahasildar gave notice to

Santosh as owner of the vehicle. No one appeared for owner or the driver and therefore order came to be passed on 10-01-2023 under Section 48(7) and Section 48(8) of the Maharashtra Land Revenue Code.

4. The petitioners have challenged this order on two grounds 1] that no notice was given to the petitioner who is actually owner of the vehicle and thus the order is x-parte. 2] that the crush sand does not come under the definition of the Minor Minerals but is finished product. On both the counts order is challenged.

5. As regards the first ground the learned advocate for the petitioners submits that the present petitioner No.1 is owner of the vehicle. Though it is stated in the order that notice was served on Santosh Borude – Petitioner No.2, however he disputed even that fact. He further specifically submits that though the petitioner No.1 was owner of the vehicle there is no mention even in the order that notice is served upon him.

6. As regards the merits he submits that crush sand does not come under the definition of the Minor Minerals and on that count also the order is illegal.

7. Learned AGP submits that from the order what appears is that the notice was served upon petitioner No.2. On merits he submits that there is no case made out by the petitioners.

8. Considering the submissions it clearly appears that there is no mention of service of notice on the owner i.e. petitioner No.1. Thus the order needs to be set aside by directing the Tahasildar to give afresh hearing to the parties and release the vehicle on depositing 50% amount of the penalty. The fact of carrying of the crush sand is not denied only thing denied is that as to whether it falls under the definition of Minor Minerals.

9. Hence, the following order.

ORDER

- a] The writ petition stands disposed off.
- b] The order dated 10-1-2023 passed by the Tahasildar, Ahmednagar is quashed and set aside.
- c] The petitioners to appear before the Tahasildar, Ahmednagar on 21-06-2023.
- d] The respondents are directed to release the vehicle i.e. Dumber bearing registration No. MH-20-BT-9782 on depositing 50% amount of total amount of fine within two weeks from today.
- e] With this, petition stands disposed off.
- f] Needless to say that no fresh notice is required.
- g] Needless to say that Tahasildar, Ahmednagar would pass an order by considering the judgments cited by the parties.

[KISHORE C. SANT, J.]