

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

WRIT PETITION NO. 6169 OF 2023

Taslim Abdul Kadir Patel

.. Petitioner

Versus

The Tahsildar and another

.. Respondents

Mr. Narendra D. Sonavane, Advocate for the Petitioner.

Mr. K. N. Lokhande, AGP for Respondent Nos. 1 and 2.

CORAM : KISHORE C. SANT, J.

DATED : 16th JUNE, 2023.

P. C. :-

. The petitioner has challenged the order dated 04.05.2023 passed by the S.D.O., Jalgaon wherein, the S.D.O. has considered the order passed by the Tahsildar dated 14.04.2023 and imposed fine amount of Rs. 3,14,425/-.

2. Learned advocate for the petitioner submits that, by order dated 14.04.2023 the Tahsildar had imposed fine of Rs. 1,14,425/- for carrying sand that was being transported in the vehicle of the petitioner to be of five brass. The petitioner applied to the Tahsildar for re-measurement of the sand by application dated 25.04.2023. The Tahsildar on the basis of that application was pleased to direct re-measurement of the sand. In view of the order passed by the Tahsildar

dated 03.05.2023, fresh panchanama came to be drawn by the Circle Inspector, Jalgaon and Engineer of Panchayat Samiti, Jalgaon. It was found that, the sand was only three brass and not five brass. Based on the fresh measurement, the Tahsildar passed fresh order and corrected the measurement and imposed fine considering the sand to be three brass.

3. The petitioner has challenged the order dated 04.05.2023 passed by the Tahsildar by filing Writ Petition No. 5495/2023 before the Vacation Court. The Vacation Judge by order dated 16.05.2023 directed release of the vehicle that was seized on a condition to deposit the entire amount of fine as per the fresh order passed by the Tahsildar. Now, the case of the petitioner is that on 04.05.2023 the S.D.O. passed an order imposing fine of Rs. 3,14,425/-. This order is based upon the order dated 14.05.2022 which already stood corrected on the same day by the Tahsildar and therefore, the order of the S.D.O. is in fact null and it was necessary to pass fresh order based upon the order of the Tahsildar dated 04.05.2023.

4. It is found that, there is substance in the submission of the petitioner. It is necessary for the S.D.O. to consider the fresh order passed by the Tahsildar dated 04.05.2023 and to pass fresh order.

5. Learned A.G.P opposes the petition stating that, the petitioner has already approached this Court and order is also passed on 16.05.2023. The petitioner in such facts again filed fresh petition for the same cause. It was necessary for the petitioner to challenge even the order passed by the S.D.O. at that time itself. It is the specific case of the petitioner that when he filed petition in the vacation, he had no knowledge of the order presently impugned in this petition passed by the S.D.O. He specifically made averment to that effect in paragraph No. 10 of the petition.

6. Considering this, this Court finds that the petitioners' request can be entertained in view of the order passed by this Court on 16.05.2023. However, this shall be subject to outcome of the proceedings before the S.D.O.

7. The impugned order dated 04.05.2023 is quashed and set aside. The S.D.O. to pass fresh order keeping in view the modified order and pass fresh order based on order dated 04.05.2023 passed by the Tahsildar.

8. Till then, the respondents are directed to release the vehicle of the petitioner in view of order dated 16.05.2023 on depositing of the amount of Rs. 68,655/- subject to outcome of the fresh order passed by the S.D.O.

9. With this, the writ petition stands disposed off.

10. It is needless to state that, the S.D.O. shall grant proper opportunity of hearing to the petitioner.

(KISHORE C. SANT, J.)

RS.B.