

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

WRIT PETITION NO. 9051 OF 2022

Pravin Mahavir Agrawal

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Amol S. Sawant, Advocate for the Petitioner.

Mr. S. B. Pulkundwar, AGP for Respondent Nos. 1 to 5.

CORAM : KISHORE C. SANT, J.

DATED : 11th AUGUST, 2023.

P. C. :-

. This case is arising out of the action started by learned Tahsildar, Dhule (Rural) by issuing notice dated 08.12.2021. It was the case that, a Poklain Machine of the petitioner was found at bricks kiln at village Kundanewar, Gut No. 7. It was found that, some excavation was done of Murum and soil. The notice was therefore issued by drawing panchanama. Therefore, the learned Tahsildar issued show cause notice as to why no penalty of Rs. 7,50,000/- be imposed as per the Government Resolution dated 14.06.2017 which provides the penalty depending upon the nature of vehicle. The petitioner replied the notice stating that, this Pokland Machine was given on rent to other person for cleaning the ground of person namely Suresh Sitaram Patil. He had

taken the Poklain Machine for cleaning his land. In the night time the said machine was only parked near the brick kiln. Even the statement of Suresh Sitaram Patil was recorded along with petitioner, however, still the action was taken against the petitioner. The petitioner has challenged the order before the learned Collector. The learned Collector directed the petitioner to approach the learned S.D.O. The order was challenged before this Court by filing Writ Petition No. 2406/2022. This Court permitted the petitioner to withdraw the petition with liberty to approach the learned Commissioner. The petitioner therefore approached the learned Additional Divisional Commissioner, Nashik. The learned Additional Divisional Commissioner, Nashik, however, rejected the appeal and thus the petitioner is before this Court.

2. The main contention of learned advocate for the petitioner is that, the learned Tahsildar does not have authority to impose penalty under Section 48 (8) of the Maharashtra Land Revenue Code. He thus submits that, entire action is without authority and jurisdiction. However, learned Additional Divisional Commissioner failed to appreciate this legal position.

3. Learned A.G.P opposes the petition and submits that, in the enquiry the driver of the vehicle had said that the mud and sand was

transported for brick kiln of one Krushna More. Along with this Poklain Machine the vehicle of one Krushna More was also seized. In the statement of the driver of other vehicle he stated that his vehicle was carried mud and sand for the brick kiln of one Krushna More and therefore, the action was taken against the Pokland Machine which was found at brick kiln.

4. It is the submission of learned advocate for the petitioner that, his Poklain Machine was stationed at brick kiln and was not found carrying any sand or mud.

5. This Court finds that, when the learned Tahsildar has no power to impose fine for unauthorized use of machine this entire action needs to be quashed and set aside. However, it is open for the authorities to initiate fresh action, if any, as per law.

6. For the reasons stated above, this Court finds that, the petition needs to be allowed. Therefore, the writ petition is allowed in terms of prayer clause (A).

7. In view of the above, the authorities are directed to release the vehicle of the petitioner i.e. Pokland Machine, Tata Hitachi EX 200 Invoice No. 47200, Model No. EX 200, LC-SUPER-S-20022786.

8. The petitioner shall file an undertaking that if authorities take action against him, he will be bound by the same. Undertaking be submitted before the authority by giving one copy to this Court.

9. With this, the petition stands disposed off.

(KISHORE C. SANT, J.)

RS.B.