

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

67 WRIT PETITION NO.14716 OF 2023

SANTOSH DASHARATH WARPADE
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS PRINCIPAL SECRETARY AND OTHERS

...

Advocate for Petitioner : Mr. Anerao Panditrao S
AGP for Respondents State: Mr. P. K. Lakhotiya

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.

DATE : 4th December, 2023

ORDER:

1. The Petitioner has rushed to this Court assailing the show cause notice issued by the Tahsildar, Kandhar, dated 02.11.2023 with regard to the unauthorized quantity of sand being carried in the offending vehicle. He has dealt with the material carried in the vehicle and has issued a show cause notice to the Petitioner as to why the amount of penalty towards excess sand being transported, as well as the vehicle may not be recovered from the Petitioner.

2. We have heard the learned Advocate for the respective sides. We have perused the judgment delivered by this court at the Principal seat dated 15.03.2019 in Writ Petition No. 7165 of 2018 (**Harihar s/o Mahadev Puri Vs. State of Maharashtra, AIR Online 2019 Bom. 3395**)

and the judgment dated 09.12.2021 in Writ Petition No. 7390 of 2010, **(P.S.C. Pacific Vs. the State of Maharashtra and others)**.

3. The learned AGP fairly states in the light of the judgments that the Tahsildar would have power to deal only with the minor minerals and, therefore, he further submits that the issue as regards penalty on the vehicle is the subject matter, which can be adjudicated upon by the Sub Divisional Officer.

4. Section 48(8) (1) and (2) of the Maharashtra Land Revenue Code reads as under:

48-(8) (1) Without prejudice to the provision of sub-section (7), the Collector or any revenue officer not below the rank of Tahsildar authorised by the Collector in this behalf, may seize and confiscate any mineral extracted, removed, collected, replaced, picked up or disposed of from any mine, quarry or other place referred to in sub-section (7), the right to which vests in, and has not been assigned by the State Government, and may also seize and confiscate any machinery and equipment used for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals and any means of transport deployed to transport the same.

(2) Such machinery or equipment or means of transport, used for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals or transportation thereof, which is seized under sub-section

(1), shall be produced before the Collector or such other officer not below the rank of Deputy Collector authorised by the Collector in this behalf, within a period of forty-eight hours of such seizure, who may release such seized machinery, equipment or means of transport on payment by the owner thereof of such penalty as may be prescribed and also on furnishing personal bond of an amount not exceeding the market value or the seized machinery, equipment or means of transport, stating therein that such seized machinery, equipment or means of transport shall not be used in future for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals and transportation of the same.

5. In **Harihar Mahadev Puri (supra)**, this Court permitted any officer authorized by the District Collector and not below the rank of Deputy Collector (which also includes S.D.O.), to exercise jurisdiction for considering a case under Section 48(8) (2) with regards to the imposition of penalty for the user of the vehicle.

6. As such, insofar as the hearing on the imposition of royalty as well as penalty on the minor minerals is concerned, the Tahsildar Kandhar would have the jurisdiction. To the extent of imposing penalty for the user of the vehicle, the S.D.O./Deputy Collector or the Collector, as the case may be, would have the jurisdiction under Section 48(8)(2).

7. In view of the above, **this Petition is disposed off** with the observation that the Petitioner would address the Tahsildar to the extent

of the cause in relation with the minor minerals. Since the Petitioner has already submitted his reply to the show cause notice dated 02.11.2023, the Tahsildar would deal with the said reply to the extent of the contents of the notice in relation to the minor minerals. We expect such decision to be arrived at within a period of 30 days.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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