

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO.1913 OF 2023

Gaurav S/o Anil Babad .. Petitioner
Versus
State of Maharashtra & Ors. .. Respondents

**ALONG WITH
WRIT PETITION NO.1647 OF 2023**

Sudarshan s/o Rajkumar Badgular .. Petitioner
Versus
State of Maharashtra & Ors. .. Respondents

**ALONG WITH
WRIT PETITION NO.1645 OF 2023**

Ganesh Shreehari Sarade .. Petitioner
Versus
State of Maharashtra & Ors. .. Respondents

Mr.Bhansaheb Deshmukh a/w Mr.Anshuman Deshmukh i/by Mr.Deepak Pote for the petitioners in all petitions.

Mrs.M.S. Bane, AGP for the respondent nos.1 & 2 in Writ Petition No.1913 of 2023.

Mrs.S.S. Bhende, AGP for the respondent nos.1 & 2 in Writ Petition No.1647 of 2023 & Writ Petition No.1645 of 2023.

**CORAM : R.D. DHANUKA &
M.M. SATHAYE, JJ.**
DATE : 14th February 2023

P.C.:-

. Rule. Learned AGP waives service for the respondent nos.1 & 2 in all petitions. Rule is made returnable forthwith.

2. By these petitions filed under Article 226 of the Constitution of India, the petitioners are challenging the impugned order of penalty dated 10th January 2023, impugned notice dated 14th January 2023 passed by Respondents- Tahsildar, Malegaon, District Nashik and the impugned notice dated 4th January 2023 issued by the Tahsildar, Chandwad, District Nashik and seeking a writ in the nature of mandamus directing the said authorities to release their vehicles i.e. Truck bearing registration **No.MH-18 BA-0668** in Writ Petition No.1913 of 2023, Truck bearing registration **No.MH-34 BG-4041** in Writ Petition No.1647 of 2023 and Truck bearing registration **No.MH-12 BG-1387** in Writ Petition No.1645 of 2023 of the petitioners.

3. It is the case of the petitioners that they are engaged in the business of transport of sand and for that purpose, the aforesaid vehicles are used. It is the case of the petitioners that they were transporting the sand from Village Nizar, District Tapi in the State of Gujarat to the State of Maharashtra.

4. It is the case of the petitioners that the said vehicles were intercepted by the respondent no.2 inside boundary of the State of Maharashtra and the impugned the show cause notice/order of penalty has been passed by exercising powers under Section 48 (7) & (8) of the Maharashtra Land Revenue Code and as a consequence thereof, Petitioners' said vehicles involved in transport are withheld.

5. Learned counsel for the petitioners submitted that the petitioner cannot be penalised by passing the impugned order of penalty and impugned notices and actions are illegal. In support of his

submission, learned counsel invited our attention to the judgment dated 7th April 2022 delivered by the Nagpur Bench of this Court in the batch of the petitions bearing Writ Petition No.2078 of 2021 in case of ***M/s.Shree Rajesh Pathak Vs. State of Maharashtra & Ors.*** and also the subsequent judgment dated 26th April 2022 delivered by the Aurangabad Bench of this Court in Writ Petition No.4397 of 2022 in case of ***Vishal Babasaheb Dube @ Dhube Vs.The State of Maharashtra*** as also the latest order dated 22nd December 2022 passed by this Court in Writ Petition No.10687 of 2022 in the case of ***Sachin Vishram Porje Vs. The State of Maharashtra & Anr.*** in support of his case.

6. Learned AGP for the State, could not distinguish the facts of these cases from the aforesaid judgments taking consistent view about illegality of such actions and also could not dispute that penalty sought by the Respondents from the Petitioners or impugned notices are ultimately based on the circular dated 5th February 2021 which is held bad in law in the aforesaid judgments.

7. In our view, the facts of these cases are similar to the facts of the judgments referred above and therefore, the impugned order or the impugned action and consequent withholding of the vehicles of the petitioners cannot be sustained.

8. We therefore pass following order :-

- (i) Writ Petitions are allowed in terms of prayer clause (B) of the respective writ petitions and impugned order and notices as mentioned in paragraph 2 above are quashed and set aside.

- (ii) The respondents are directed to release the petitioners' vehicles as described in paragraph 2 above within a period of one week from the date of communication of this order.
- (iii) Rule is made absolute in aforesaid terms. No order as to costs.
- (iv) All concerned to act on the authenticated copy of this order.

M.M. SATHAYE, J.

R.D. DHANUKA, J.

Order is corrected as per order dated 19th April 2023 for speaking to the minutes.