

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

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**WRIT PETITION NO. 3957 OF 2023
ALONGWITH
INTERIM APPLICATION NO. 14786 OF 2023
IN
WRIT PETITION NO. 3957 OF 2023**

Ashapuri Enterprises

Through Karmiram B. Choudhary

....Petitioner

V/s.

The State of Maharashtra and Ors.

...Respondents

Ms. Anima Mishra a/w Mr. Ritu Singh, Mr. Anuj Singh, Ms. Kajal Upadhyay
and Mr. Nagesh Avhad i/b SBG Law for Petitioner.

Mr. S.H. Kankal, AGP for State/Respondents.

**CORAM : K.R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED : 14th DECEMBER 2023**

P.C. :

1. Petitioner carries on the business of transportation of construction materials. On 4th January 2023 while petitioner was transporting 10 mm metal stone also known as Khadi or Gitti in truck bearing No.MH-04-KF-7524, the truck was intercepted by one Mr.Suryawanshi, Mining Officer near Bapane Police Station who demanded Royalty Payment details against the materials being transported. In spite of petitioner's explanation that Gitti is not a mineral and the question of paying any royalty does not arise, the said Mr. Suryawanshi seized the truck. Petitioner was forced to pay a sum of Rs.2,31,200/- under protest. After paying the said amount the truck was released.

2. Petitioner is seeking return of this amount deposited on the ground that the seizure of the truck was illegal because metal stone/Khadi/Gitti do not fall under the category of mineral.

3. An Affidavit in reply has been filed through one Mr. Avinash Koshti affirmed on 19th October 2023 in which reliance has been placed on Rule 78 of the Maharashtra Minor Minerals Extraction (Development and Regulation) Rules 2013. According to respondents under Rule 78 a transit pass is required for transporting of minor mineral and Mr. Kankal states it is a free pass.

4. Ms. Mishra relied upon a judgment of the Division Bench of this Court in *Pralhad s/o Vishnu Wayade and Ors. vs. The State of Maharashtra and Ors.*¹ and an order passed by the learned single Judge of this court in *Vishal s/o. Laxman Shinde vs. The State of Maharashtra and Ors.*² to submit that Gitti or Khadi are not minerals and hence the question of obtaining any transit pass or payment of any royalty does not arise.

5. The learned single Judge in *Vishal s/o. Laxman Shinde* (supra) has expressly held in Paragraph No. 7 as under :

7. In the case at hand, this Court is constrained to exercise jurisdiction under Article 227 of the Constitution of India as time and again this Court has held that Gitti is not a mineral product, still the authorities are passing the orders and seizing the vehicles in which Gitti is transported in flagrant violation of the Judgment

1 Writ Petition No. 4077/2009 dated 19th March 2010

2 Writ Petition No. 8194/2022 dated 25th August 2022

and orders of Division Bench and the Single Judges. Therefore, this Court has to exercise jurisdiction under Article 227 of the Constitution of India. In view of this, petition is allowed in terms of prayer clauses – ‘B’ and ‘C’.

6. In *Sumit s/o Hargovind Lanje vs. State of Maharashtra*³ the learned single Judge of this court (Nagpur Bench) has held that the coercive action initiated against the transportation of Gitti will have to be held illegal and ultra vires. In that case also respondent has relied upon the said Rule.

7. In the circumstances, since the courts have repeatedly held that Gitti is not a mineral product, seizure of petitioner’s vehicle is illegal and in breach of the orders passed by this court.

8. In the circumstances, we allow the petition in terms of prayer clause – (c) which reads as under :

c) The Respondents be directed to refund the amount of Rs.2,31,200/- paid by the Petitioner in respect of seizure of its truck bearing number MH-04-KF-7524 along with interest there on.

9. Petitioner may apply to the Tehsildar for return of money of Rs.2,31,200/-. Within two weeks of receiving the application, the amount to be refunded together with interest @ 9% from the date the amount was deposited until the refund amount is credited to petitioner’s account.

10. Respondents are directed not to take any coercive action or to

³ Writ Petition No. 1579/2022 Dated 25th March 2022

seize trucks carrying Gitti since as the law stands Gitti is not a mineral product.

11. Petition disposed.

12. In view of the above, Interim Application, if any, also stands disposed.

(DR. NEELA GOKHALE, J.)

(K.R. SHRIRAM, J.)