

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

WRIT PETITION NO. 6107 OF 2022

Kiran Gulab Pokharkar

... Petitioner

Versus

The State of Maharashtra & Ors.

... Respondents

Mr. Nitin Gaware Patil for the Petitioner

Mr. N.K. Rajpurohit AGP for the Respondent-State.

**CORAM: R. D. DHANUKA AND
M.M.SATHAYE JJ.**

DATE : 19th JANUARY, 2023

PC. :-

1. Rule. Mr. Rajpurohit, learned AGP waives service for Respondents. Rule made returnable forthwith.

2. By this Petition filed under Article 226 of the Constitution of the India, the Petitioner has prayed for a declaration that provisions of Section 48(7) and 48(8) of Maharashtra Land Revenue Code, has not been applicable to the instant case as the sand which has been seized by Respondents has been transported from the river bed of Tapi, State of Gujarat and thus invocation of said provisions are illegal in the State of Maharashtra and for various other reliefs.

Vehicle of the Petitioner described in prayer clause (c) of the Petitioner is confiscated which is sought to be released by this Petition.

3. Mr. Rajpurohit, learned AGP for the State opposed this Petition on the ground that order passed by Tahasildar, Ambegaon District Pune is appellable under Section 247(1) of the Maharashtra Land Revenue Code and thus the Petitioner has remedy to file Appeal and this Court shall not entertain the Petition.

4. The Petitioner has raised various issues in this Petition which in our view can be decided by Appellate Authority and Appeal that would be filed by the Petitioner under Section 247(1) of the Maharashtra Land Revenue Code.

5. Mr. Patil, learned Counsel for the Petitioner on instructions, states that without prejudice to the rights and contention of the Petitioner, Petitioner would deposit 50% of the amount demanded under order dated 14th October 2021 with Respondent No. 2 within one week from today. Statement is accepted. He further states that his client would file an Appeal against the said impugned order

before the Appellate Authority within two weeks from today.
Statement is accepted.

6. If any such amount is deposited by the Petitioner with Respondent No. 2 within time prescribed, the same shall be accepted by Respondent No. 2 without prejudice to right and contentions of Respondent No. 2 and subject to outcome of the Appeal that would be filed by Petitioner before the Appellate Authority.

7. Respondent No. 2 shall release the vehicle of the Petitioner i.e. Tata Make Truck bearing registration No. MH-04-FD-8479, within three days from the date of Petitioner depositing the amount with Respondent No. 2 without fail.

8. The Appellate Authority to decide the Appeal on its own merits and in accordance with law within eight days from the date of filing such Appeal. The order that would be passed by Appellate Authority shall be communicated to the Petitioner within one week from the date of passing such order. If any adverse order is pass against the Petitioner by the Appellate Authority, no coercive steps

shall be taken to implement the said adverse order against the Petitioner for the period of two weeks from the date of communication of the order. If the Petitioner succeeds in said Appeal before the Appellate Authority and if it is found that no amount is due and payable by the Petitioner in pursuance of the impugned order, the Respondent No. 2 shall refund the amount deposited by the Petitioner within four weeks from the date of such order that would be passed by the Appellate Authority.

9. It is made clear that this Court has not expressed any opinion on the merits of the Petition. All contentions of both the parties are kept open. Writ Petition is disposed of. No order as to costs. Rule is made absolute in the aforesaid terms. All concerned to act on an authenticated copy of this order.

10. If any application for condonation of delay is filed by the Petitioner, the Appellate Authority to consider such plea in accordance with law.

[M.M.SATHAYE,J.]

[R. D. DHANUKA, J.]