

Digitally
signed by
TRUSHA
TUSHAR
MOHITE
Date:
2023.07.19
14:35:09
+0530

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

WRIT PETITION NO.8255 OF 2016

Pannalal C. Pandey and Ors.

..... Petitioners

Vs.

The State of Maharashtra and Ors.

..... Respondents

Mr.Madhur Rai a/w Mr.Sachin Kanse & Ms.Isha Deshpande i/b M/s.PRS
Legal for the Petitioners

Ms.K.N.Solunke, A.G.P. for the State

Mr.Abhijit B. Deshmukh, Tahsildar Dahanu present in court

**CORAM: K.R. SHRIRAM, J &
FIRDOSH P. POONIWALLA, J.**

DATED : 13TH JULY, 2023

P.C.

1. Petitioners are individuals who were aggrieved by the seizure and detention of trucks as well as the goods that were on board the trucks by respondent no.2, Tahsildar (Revenue Department).

2. Petitioner no.1 is owner of trucks bearing nos.MH 04 FU 8836 and MH 04 FU 9146. Petitioner no.2 owns truck bearing no.MH 04 6H 0714. Petitioner no.3 carries on sole proprietary business under the name and style "Shri Gajanand Bilcon". Petitioner no.3 is engaged in the activity of storage, processing and selling of Gravel/Sand (Minor Minerals).

Petitioner no.3 is also registered with the Geology & Mining Department at Narmada District (Gujarat).

3. Petitioner no.3 received an order from one M/s.Bhanu International situated at Nerul (Navi Mumbai) for supply of ready mix plaster worth Rs.50,694/-. To execute the contract, petitioner no.3 obtained raw material – ordinary sand for preparing the ready mix material from a leaseholder, whose name is not identified, at Narmada District. Petitioner no.3 engaged the services of petitioner nos.1 and 2 to transport the so-called ready mix plaster.

4. When the trucks were passing through Palghar District, Maharashtra, officials in the office of the Tahsildar, Revenue Department, Dahanu intercepted those trucks alleging that the material stacked in the trucks consist of sand taken out by illegal mining activity carried out within the district of Palghar in Maharashtra.

5. The trucks as well as the material on board the trucks were taken to Kasa Police Station. Subsequently, petitioners received a Notice dated 11th July 2016 from respondent no.2 alleging that respondent no.2 has seized the three trucks and required petitioners to pay respondent no.2 a sum of Rs.7,98,400/- as fine, failing which complaint in accordance with law would be filed against petitioners.

6. Petitioners thereafter filed this petition alleging that what was carried in the three trucks were not river sand and / or mining material as

alleged by respondent no.2 but were only ready mix plaster. Petitioners also amended the petition to include a direction to respondents to release the three trucks with materials lying thereon.

7. Pending the admission of the petition, by an order dated 22nd July 2016, petitioners were given liberty to take the three seized trucks subject to depositing 25% of the amount of Rs.7,98,400 /-.

8. Mr.Rai states that this amount has been deposited and in view thereof the three trucks have also been released. Ms.Solunke on instructions from Mr.Abhijit B. Deshmukh, Tahsildar Dahanu states that even the goods which were on board the trucks have been released to petitioners.

9. Respondent no.2 has filed affidavit of Abhijit Bhausaheb Deshmukh, Tahsildar, Dahanu, District Palghar affirmed on 3rd July 2023. To the affidavit is annexed a copy of the order dated 10th February 2020 by which respondents were directed to file an affidavit enclosing a report pertaining to the contents seized from the three trucks of petitioners. To the affidavit is annexed a communication dated 20th August 2016 from the District Mining Officer to respondent no.2 and also a certificate dated 20th August 2016 issued by the District Mining Officer. Relying on these two documents Ms.Solunke submitted that the material found on board the three trucks were actually 'Sand (Beach sand / River sand)'. Ms.Solunke also submitted that the certificate clearly indicates that the material did not

contain any amount of dolomite powder or fly ash which were stated to be contained in the seized ready mix plaster alongwith sand by petitioner no.3 in his letter dated 08th July 2016.

10. We have also considered the documents annexed to the petition. At Exhibit 'D' to the petition are copies of Royalty pass issued by the Geology and Mining Department at Narmada. These state that the mineral name (grade) was Ordinary Sand (Normal). At Exhibit 'E' to the petition are copies of declaration / invoice dated 18th January 2016 issued by petitioner no.3 to the consignee M/s.Bhanu International. Description of goods states "All goods not specified elsewhere".

At Exhibits 'G', 'H' and 'I' to the petition are copies of three invoices dated 5th July 2016, 6th July 2016 and 10th July 2019. None of these invoices are signed.

Therefore, we are unable to accept any of these documents.

11. In the circumstances, disputed questions of facts arise. These are issues which we cannot go into in our Jurisdiction under Article 226 of the Constitution of India.

12. Therefore, we dismiss the petition with liberty to petitioners to avail alternate remedy.

13. Interim Applications, if any, also stand disposed.

(FIRDOSH P.POONIWALLA, J.)

(K.R. SHRIRAM, J.)