

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

WRIT PETITION NO. 14906 OF 2022

Sharad S/o. Rajaram Ushire

..Petitioner

V/s.

The State of Maharashtra and Ors.

..Respondents

Mr. Shashikant Gaikwad i/b Mr. Tukaram Venjane for the Petitioner.

Mr. A.P. Vanarase AGP for the Respondent/State.

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

DATE : 12th JANUARY 2023

P.C.

1. Rule. Rule made returnable forthwith. Mr. Vanarase, learned AGP for the Respondents/State waives service. Heard finally by consent of the parties.

2. By this petition filed under Article 226 and 227 of the Constitution of India, the Petitioner is seeking writ of certiorari to quash and set aside Order dated 10.11.2022 passed by learned Tahasildar, Baglan, District Nashik and direction to said Authority to release the vehicle of the Petitioner bearing registration no. MH-41-AU-9142, hereinafter referred to as 'the said Vehicle' for short.

3. It is case of the Petitioner that he is doing business of transportation for which he is using the said vehicle. It is submitted that the said vehicle and the business of transportation is the only source of income for the Petitioner and his family.

4. It is further case of the Petitioner that on 01.11.2022, he was transporting **Gitti** (metal stone) when the said vehicle was seized by the Respondents' authority at Satana on the ground of illegal transportation of Gitti; panchnama was drawn on 01.11.2022 and accordingly show cause notice was also issued. Thereafter, the Petitioner approached Tahasildar, Baglan and told that gitti (metal stone) is not mine or mineral and requested to release his vehicle, but without considering the said plea, Tahasildar, Baglan , District Nashik, on 10.11.2022 passed order imposing fine of Rs. 32,725/- on the Petitioner's vehicle exercising power u/s. 48 of the Maharashtra Land Revenue Code. It is his case that on 14.11.2022, he made an application to Tahasildar, Baglan contending that Gitti (metal stone) or crushed stone is finished product and cannot be treated as mineral for invoking provisions of Maharashtra Land Revenue Code. However, no action is taken whatsoever on the said application.

5. Learned Counsel for the Petitioner has invited our attention to and relied upon Judgment dated 13.12.2018 delivered by Nagpur Bench of this Court in Writ Petition No. 5466 of 2004 in case of **Bansilal S/o Lunkaranji Chandak(since deceased), through his legal legal heirs Smt. Kantabai Bansilal Chandak Vs. State of Maharashtra and Anr.**, Judgment dated 25.03.2022, delivered by single Judge of Nagpur Bench of this Court in Writ Petition No. 1579 of 2022 in case of **Sumit S/o Hargovind Lanje Vs. State of Maharashtra and others**, Order dated 01.07.2022 delivered by single Judge of Nagpur Bench of this Court in case of **Ramchandra Dadaji Tangle Vs. State of Maharashtra and Another**, and Judgment dated 25.08.2022 passed by single Judge of Aurangabad Bench of this Court in Writ Petition No. 8194 of 2022 in case of **Vishal s/o. Laxman Shinde Jadhav Vs. State of Maharashtra and others**.

6. Mr. Vanarase, learned AGP for the State, filed Affidavit-in-Replies of Respondent No. 3 (Tahsildar, Baglan) affirmed on 10.01.2023 and 11.01.2023 alongwith certain documents. We have perused said Affidavit-in-Replies. In para 3 of affidavit dt. 11.01.2023 it is stated that in view of this Court's queries raised in

the light of some of above judgments, “it is better to give proper hearing to Petitioner by withdrawing order under challenge”.

7. We find that such statements are mere eye-wash. It is impliedly conceded by concerned Tahsildar that proper hearing was not given to Petitioner. Mr. Vanarase learned AGP for the State could not distinguish the facts of this case from the facts of the aforesaid judgments.

8. This Court in the aforesaid Judgments have taken consistent view that gitti (metal stone) is a finished product and as such provisions of Section 48 of the Maharashtra Land Revenue Code cannot be applied and for vehicle carrying Gitti (metal stone), transit pass is not required. In this view of the matter, it is not possible to take contrary view. Hence the petition succeeds and we pass following order.

ORDER

- (i) Writ Petition is allowed in terms of prayer clauses (b) and(c).
- (ii) Respondents are directed to release the vehicle of Petitioner bearing registration No. MH-41-AU-9142, within one week from the date of communication of this Order.

- (iii) Rule is made absolute in the aforesaid terms.
- (iv) All concerned to act on an authenticated copy of this order.

[M.M.SATHAYE,J.]

[R. D. DHANUKA, J.]