IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.917 OF 2023

Nilesh Banudas Thakare, Pote Township, Amravati
-vs-
State of Maharashtra, Thr. its Secretary, Revenue and Forest Dept. Mantralaya, Mumbai and ors.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Shri A. R. Ingole, Advocate for petitioner.
Smt Sangita S. Jachak, Assistant Government Pleader for respondents.

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI JJ.
DATE : March 21, 2023

P. C.

Rule. Rule made returnable forthwith and heard the counsel for the parties.

The petitioner on the strength of a valid zero royalty pass as well as transit pass submits that he had undertaken transportation of sand from Madhya Pradesh from where it was loaded to Warud, Tahsil Amravati. The transit pass was valid from 23/01/2023 at 11.34 pm till 24/01/2023 till 5.04 am. However, at 0.50 hours in the morning on 24/01/2023, the petitioner's vehicle came to be seized on the ground that he was carrying sand without a valid permit. The petitioner's vehicle was accordingly seized by referring to the provisions of Section 48 of the Maharashtra Land Revenue Code, 1966. It is the specific case of the petitioner that for exceeding the load capacity of his vehicle, the petitioner was issued a challan and he had paid fine amount of Rs.46,000/- to the Regional Transport Office Authority. Except overloading of the said truck there was no justification for seizing the truck in question when the petitioner was in possession of a valid permit.

2. The learned counsel for the petitioner by relying upon the decision in *M/s Rumao Constructions and ors. vs. State of Maharashtra* ***2010(4) ALL MR 591*** submits that insofar as the offence under the Motor Vehicles Act, 1988 is concerned, he has already been penalised. Since the petitioner was carrying a valid transit pass, there was no justification for seizing the vehicle in terms of Section 48(8) (ii) of the Maharashtra Land Revenue Code, 1966. The seized vehicle ought to have been produced before the Deputy Collector within forty eight hours but the same has not been done. It is thus prayed that the vehicle of the petitioner be released by imposing appropriate conditions.

3. The learned Assistant Government Pleader has relied upon the affidavit in reply filed by respondent Nos.2 to 4 wherein it is admitted that fine amount of Rs.46,000/- has been paid by the petitioner for overloading of the vehicle. Based on the aforesaid, the vehicle in question came to be seized.

4. On perusing the documents on record, we find that the transit pass issued to the petitioner was in operation at the relevant point of time when the vehicle was seized. The vehicle came to be seized at 0.50 hours on 24/01/2023 while transit pass was valid till 5.04 am of the same day. It appears that on account of overloading of the said vehicle action was taken by the Regional Transport Office Authority and the petitioner has paid a fine of Rs.46,000/- in that regard. It is therefore clear that for violation of provisions under the Motor Vehicles Act, 1988, action has been taken against the petitioner. For same reason, further action under Section 48(7) of the Maharashtra

Land Revenue Code, 1966 appears to be unwarranted especially when the petitioner possesses a valid transit pass. Moreover, in terms of Section 48(8)(ii) of the Code, the seized vehicle was not produced before the Deputy Collector within a period of forty eight hours. We therefore find the action of seizing the vehicle to be unsustainable though fine amount of Rs.46,000/- has been paid.

5. For aforesaid reasons, the notice dated 24/01/2023 seizing the petitioner's vehicle is set aside.

The respondent No.4 shall immediately release the seized vehicle of the petitioner bearing No.MH-27-BX-6852 latest by 5 pm on 22/03/2023.

Rule is made absolute in aforesaid terms with no order as to costs.

Authenticated copy of this order be supplied to the counsel for the parties to act upon.

(M. W. Chandwani, J.) **(A. S. Chandurkar, J.)**

Asmita