

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 5453 OF 2022

Sachin S/o Suryabhan Fating
Aged about 35 years, Occupation
business
R/o At and Post Chimnazari, Tehsil-
Umred, Dist. Nagpur

...Petitioner

// VERSUS //

1. State of Maharashtra,
through the Collector (Revenue),
Nagpur
2. The Tehsildar,
Tehsil Office, Kamptee, Dist. Nagpur
3. The Sub-Divisional Officer,
Sub-Divisional Office, Mauda,
Dist. Nagpur

... Respondents

Shri T.H.Bewali, Advocate for the petitioner.
Ms. H.N.Jaipurkar, AGP for the respondent nos. 1 to 3.

CORAM : ANIL S. KILOR, J.

DATED : 20th FEBRUARY, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith by consent of the parties.

2. In this writ petition, the challenge is raised to the order dated 30th November, 2021 passed by the respondent no.2 Tehsildar, Kamptee and the order dated 11th January, 2022 passed by the respondent no.3 Sub-Divisional Officer, Mouda. The Tehsildar vide order dated 30th November, 2021 directed the petitioner to pay the penalty under Section

48(7) of the Maharashtra Land Revenue Code, 1966 (herein after referred as 'Code, 1966') and the Sub Divisional Officer vide order dated 11th January, 2022 imposed penalty of Rs.2,00,000/- on the vehicle of the petitioner i.e. MH-40 BL-7345.

3. The challenge raised in this writ petition to both the above referred orders is on the ground that no show cause notice was issued to the petitioner calling upon to give his explanation by himself or through his lawyer and further without hearing the petitioner, both the orders were passed.

4. On the other hand, learned Assistant Government Pleader canvasses that the notice was issued by the Tehsildar and the Sub Divisional Officer to the petitioner before passing the orders. However, the learned Assistant Government Pleader failed to point out any acknowledgment about the service of such notice dated 27th November, 2021 by the Tehsildar. Further, there is no notice pointed out by the learned Assistant Government Pleader which was issued by the Sub Divisional Officer.

5. Thus, from the record it is clear that without issuing notice to the petitioner, without hearing to the petitioner and without following due procedure of law under the Code, 1966, the impugned orders came to be passed by the authorities. Therefore, for non compliance of principle of natural justice, the orders passed by the Tehsildar and Sub-Divisional

Officer needs to be quashed and set aside and remanded the matter back to the concerned authorities for afresh consideration.

6. However, Shri Bewali, learned counsel for the petitioner points out that the alleged vehicle involved in the transportation of sand is detained by the authority from last one year and petitioner has suffered huge loss. Accordingly, he submitted an undertaking to make the payment if order of the Sub Divisional Officer goes against him.

7. In the circumstances, I am of the opinion that the vehicle of the petitioner could be released on the undertaking as given by the petitioner. Accordingly, I pass the following order.

- i. Writ petition is allowed;
- ii. Order dated 30th November, 2021 passed by the respondent no.2 Tehsildar and the order dated 11th January, 2022 passed by the respondent no.3 Sub-Divisional Officer, Mouda are hereby quashed and set aside;
- iii. The matter is remanded back to the Tehsildar and Sub-Divisional Officer for afresh consideration. The petitioner shall appear before the Tehsildar, Kamptee on **1st March, 2023** and Sub-Divisional Officer, Mouda on **10th March, 2023**;

- iv. The Tehsildar and Sub-Divisional Officer are directed to decide the matter afresh after hearing the petitioner within three weeks from the date of appearance.
- v. The Tehsildar is directed to release the vehicle of the petitioner bearing number MH40 BL 7345.
- vi. The petitioner shall pay the amount of penalty if the Sub-Divisional Officer imposes the same on the vehicle after remand, within two weeks from the date of such order which shall be subject to the result of further proceeding, if any filed.

[ANIL S. KILOR, J.]

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