

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

WRIT PETITION NO. 4807 OF 2022

Rakesh S/o. Liladhar Bhelave,
Aged about 40 years, Occ.: Business,
R/o. Ghogra, Tah. Tiroda,
District : Gondia.

.... **PETITIONER.**

// VERSUS //

1. State of Maharashtra,
through its Secretary, Revenue and
Forest Department, Mantralaya,
Mumbai -32.
2. The Additional Collector,
Bhandara, District : Bhandara.
3. The Sub-Divisional Officer,
Tumsar, Tah. Tumsar,
District : Bhandara.
4. The Tahsildar, Mohadi,
Tah. Mohadi, District : Bhandara.

.... **RESPONDENTS.**

Shri A.R.Ingole, Advocate for Petitioner.
Shri N.R.Patil, A.G.P. for Respondent Nos.1 to 4.

CORAM : **ANIL S. KILOR, J.**
DATED : **JANUARY 09, 2023**

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. Order dated 15/07/2022 passed by the Additional Collector, Bhandara and order dated 11/05/2022 passed by the Sub-Divisional Officer, Tumsar, imposing fine of Rs.7,50,000/- on the petitioner, are under challenge.
4. The learned counsel for the petitioner submits that Ordinary Earth is not a minor mineral and the panchnama shows that the petitioner was found excavating the Ordinary Earth by JCB. It is pointed out that though a specific ground was taken before the Sub-Divisional Officer or before the Appellate Authority, no findings are recorded under which provision or Rules the Ordinary Earth is a minor mineral. He has drawn attention of this Court to the order of the Sub-Divisional Officer which was passed at the first instance, wherein without recording a single reason he has just observed that the case put up by the petitioner not

found justifiable and satisfactory and therefore, fine of Rs.7,50,000/- was imposed. In the order of the appellate Authority, though the case of the petitioner is stated in detail and the reply to the same by the Tahsildar is recorded, however, the reasons are absent. Moreover, there is nothing to show that the point raised by the petitioner that Ordinary Earth is not a minor mineral was considered by both the Authorities below.

5. In that view of the matter, I am of the opinion that the matter needs to be remanded back to the Sub-Divisional Officer to decide it afresh by recording reasons. Accordingly, I pass the following order:

- i) The writ petition is partly allowed.
- ii) The impugned order dated 15/07/2022 passed by learned Additional Collector, Bhandara and impugned order dated 11/05/2022 passed by Sub-Divisional Officer, Tumsar are hereby quashed and set aside.
- iii) The matter is remanded back to the Sub-Divisional Officer, Tumsar to decide the same afresh, according to law, after hearing both the parties and taking into consideration the observations made in this judgment.

- iv) The parties are directed to appear before the Sub-Divisional Officer on 19/01/2023 at 11:00 a.m., thereupon the Sub-Divisional Officer shall fix a date of hearing and after hearing both the parties decide the proceedings afresh within one month thereafter.

Rule accordingly. No costs.

(ANIL S. KILOR, J)

RRaut..