



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

13 WRIT PETITION NO. 1048 OF 2024

SANJAY NAMDEO DHEKALE
VERSUS
THE TAHSILDAR AND ANOTHER

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Advocate for the Petitioner : Mr. Sonavane Narendra D.
AGP for Respondents-State : Mr. A. S. Shinde.
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CORAM : S. G. MEHARE, J.
DATE : 30.01.2024

PER COURT :-

1. Heard the learned counsel for the petitioner.
2. Issue notice to the respondents.
3. Learned AGP waives service of notice for the respondents-State.
4. Considering the issue involved, by consent heard finally.
5. A proceeding for illegal transporting of the minor minerals was initiated against the petitioner. The Tahsildar on 01.01.2024, imposed the penalty of Rs.45,770/-, on merit, for transporting illegally 2 brass of sand. The petitioner has a statutory remedy of appeal against the said order. However, on 06.12.2023, the Tahsildar made the submission to the SDO for

action under Section 48(8)(2) of the Maharashtra Land Revenue Code.

6. It is the submission of the learned counsel for the petitioner that the SDO before the disposal of the matter by the Tahsildar has passed an order on 27.12.2023 and imposed the penalty of Rs.2,45,770/- which includes the penalty imposed by the Tahsildar. It is his specific stand that the SDO did not serve a notice of proceeding on him. He has also raised the objection that the so called vehicle seized was not produced before the SDO within 48 hours as mandatory under Section 48(8)(2) of the Maharashtra Land Revenue Code. Therefore, the impugned order of the SDO dated 27.12.2023 is *prima facie* illegal and exceeding his jurisdiction.

7. Learned AGP would submit that the Tahsildar had sent a proposal for imposing the penalty by a letter dated 06.12.2023 in which he had already assessed the penalty for the transportation of the sand without royalty pass. Therefore, the SDO has correctly determined the total fine amount.

8. The letter of Tahsildar dated 06.12.2023 was a notice to the petitioner, calling upon him to explain about the penalty amount, determined by him. In the said letter/show cause

notice, he put a note that in the above table, the penalty is only for non paying the royalty. He gave a notice to the petitioner that the SDO has the power to take the action about the penalty for the confiscated truck. In anticipation he has also determined the penalty of Rs.2,00,000/- which was to be decided by the SDO. It appears that on the said letter, the SDO acted upon and passed the impugned order. The petitioner has a specific case that the notice of imposing the penalty for the use of the vehicle for transporting sand was never served upon him. The appeal period against the order of the Tahsildar is yet to over. In the circumstances, it appears that the SDO has illegally added the penalty for the royalty determined by the Tahsildar on merit. The order of the Tahsildar was subsequent to the date of the impugned order. There appear merits in the writ petition.

9. In view of the above, writ petition is allowed.

10. The order of SDO, Jalgaon passed in Case No.Gaunkha/SR/698/2023, dated 27.12.2023 is quashed and set aside and remitted to him for fresh disposal after giving hearing to the petitioner.

11. The petitioner should appear before the SDO on 12.02.2024.

12. Needless to say that by this order, the right of the petitioner to prefer the appeal against the order of the Tahsildar dated 01.01.2024 has not been taken away or disturbed.

(S. G. MEHARE, J.)

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vmk/-