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931- WP-1441-2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 WRIT PETITION NO. 1441 OF 2024

Damodar Nivrutti Parge

VERSUS

The State Of Maharashtra Through Secretary And Others

...

Mr. Sachin Subhash Panale, Advocate for the Petitioner.

Mr. K. N. Lokhande, AGP for Respondent-State.

CORAM : KISHORE C. SANT, J.

DATE : 19th DECEMBER 2024

PC :-

1. Heard learned Counsel for the parties.
2. The petitioner had challenged an order passed by the learned Additional Divisional Commissioner, Aurangabad confirming the order dated 19th April 2023 passed by the learned Collector, Latur and order dated 8th December 2022 passed by the learned Sub-Divisional Officer, Udgir.
3. The grievance of the petitioner is that, the JCB vehicle of the petitioner came to be seized on 01.12.2022. On 13.02.2023 for the first time, it was produced before the Tahsildar and further action was taken.

The crime was also registered. The first intimation to the Tahsildar was given on 06.12.2022. It is therefore proceedings under Section 48 of the Maharashtra Land Revenue Code was taken. In the meantime in the criminal proceedings, the learned JMFC was pleased to release the vehicle on 19.01.2023. Since the amount of fine was not paid, the same again came to be seized by the Revenue Authority.

4. The petitioner challenged the order passed by the learned Sub-Divisional Officer mainly on the ground that, there is no compliance of provision under Section 48(8)(2) of the Act. He thus challenged the order before the learned Collector. The learned Collector confirmed the order passed by the learned SDO imposing fine and seizing the vehicle. The said order was again challenged before the learned Divisional Commissioner, Aurangabad. However, the revision came to be rejected and thus the petitioner is before this Court.

5. From the dates given in the petition and appearing from the record, it is amply clear that though the vehicle was seized on 01.12.2022 in the midnight, the first communication by the police to the

Tahsildar was on 06.12.2022 i.e. clearly beyond 48 hours. Panchnama was drawn on 13.02.2023 and it was seized. No amount of fine was paid. On 26.01.2023, one more panchnama was drawn handing over the custody of the vehicle to the police patil. All these events show that certainly vehicle was not produced before the Collector or Deputy Collector within 48 hours.

6. The learned Advocate Mr.Panale relied upon the order passed by this Court at principal seat in the case of ***Subhash Changdev Mali Vs. The State of Maharashtra through Principal Secretary and Anr.*** in Writ Petition No. 8915/2024 dated 16.10.2024 and the judgment in the case of ***Dipak Logistics and Forwarders Kharghar Navi Mumbai. Dist. Thane and Anr. Vs. The State of Maharashtra and Ors.*** in Writ Petition No.1273 of 2018 dated 06.02.2018. The Court was pleased to allow the said writ petition in terms of prayer clause (B). The orders passed by the Authorities imposing penalty were held to be illegal and arbitrary and the consequential actions were set aside.

7. The petition is vehemently opposed by the learned AGP. He

submits that the revision is maintainable before the learned Minister against the order passed by the Commissioner. He relied upon the judgment in the case of *Gurudassing Nawoosing Panjwani Vs. State of Maharashtra*¹. There is no dispute about the proposition that further revision is maintainable before the Minister. He also opposes the petition on merits. He submits that the authorities have rightly acted in accordance with law. The Tahsildar was given knowledge on 06.02.2022 by the Police and thereafter the Tahsildar has taken action. No fault can be found with the proceedings adopted and he prays for rejection of the petition.

8. This court finds that relegating the petitioner again for resorting one more remedy would be only killing of time and would not serve any purpose.

9. In view of the above, this Court is of the opinion that certainly there is violation of Section 48 (8)(2) of the MLRC., 1966.

10. In view of the same, the impugned judgment and order is quashed and set aside. The consequential action taken against the petitioner is

1 2015 AIR SCW 6277

also quashed and set aside. The vehicle shall be released. The authorities are free to take any other action if law permits.

11. Writ Petition stands disposed off.

[KISHORE C. SANT, J.]